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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. P-06-2206. March 16, 2011]

EXECUTIVE JUDGE LEONILO B. APITA, Regional Trial Court, Branch 7, Tacloban City, *complainant, vs.* **MARISSA M. ESTANISLAO, Court Legal Researcher II, Regional Trial Court, Branch 34, Tacloban City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHALL NOT BE REQUIRED TO PERFORM ANY WORK OUTSIDE THE SCOPE OF THEIR JOB DESCRIPTION; EXCEPTION.— While the Manual provides that court personnel may perform other duties the presiding judge may assign from time to time, said additional duties must be directly related to, and must not significantly vary from, the court personnel's job description. However, in case of a sudden vacancy in a court position, the judge may temporarily designate a court personnel with the competence and skills for the position even if the duties for such position are different from the prescribed duties of the court personnel. The temporary designation shall last only for such period as is necessary to designate temporarily a court personnel with the appropriate prescribed duties. Such temporary designation cannot go on for an indefinite period, or until the vacancy is filled up like in the designation by Judge Apita to respondent in this case. Section 7, Canon IV of the

Code of Conduct for Court Personnel expressly states that court personnel shall not be required to perform any work outside the scope of their job description x x x.

2. ID.; ID.; ID.; ID.; REASSIGNMENT OF LOWER COURT PERSONNEL; CONDITIONS.— While the executive judge may not require court personnel to perform work outside the scope of their job description, except duties that are identical with or are subsumed under their present functions, the executive judge may reassign court personnel of multiple-branch courts to another branch within the same area of administrative supervision when there is a vacancy or when the interest of the service requires, after consultation with the presiding judges of the branches concerned. x x x However, consistent with Section 7, Canon IV of the Code of Conduct for Court Personnel, the reassignment of court personnel in multiple-branch courts to another branch within the same area of the executive judge's administrative supervision must involve (1) work **within** the scope of the court personnel's job description or (2) duties that are identical with or are subsumed under the court personnel's present functions.

3. ID.; ID.; ID.; ID.; A LEGAL RESEARCHER MAY NOT BE DESIGNATED TO ACT AS COURT INTERPRETER FOR AN INDEFINITE PERIOD OR UNTIL A NEW COURT INTERPRETER IS APPOINTED; CASE AT BAR.— In this case, since respondent's job description is that of Legal Researcher, Judge Apita may not designate her to act as Court Interpreter indefinitely or until the vacancy is filled up. The said designation will require respondent to perform work, which is outside the scope of her job description and which involves duties not identical with or subsumed under respondent's current functions. To do so would violate the express language of Section 7, Canon IV of the Code of Conduct for Court Personnel. This rule is rooted in the time-honored constitutional principle that public office is a public trust. Hence, all public officers and employees, including court personnel in the judiciary, must serve the public with utmost responsibility and efficiency. Exhorting court personnel to exhibit the highest sense of dedication to their assigned duty necessarily precludes requiring them to perform any work outside the scope of their assigned job description, save for duties that are identical with or are

subsumed under their present functions. Indeed, requiring a Legal Researcher to perform the work of a Court Interpreter is counter-productive and does not serve the ends of justice. Not only will respondent jeopardize her present position as Legal Researcher by constantly shifting from one job to another, her qualification as Court Interpreter will also be put in question. This arrangement does nothing but compromise court personnel's professional responsibility and optimum efficiency in the performance of their respective roles in the dispensation of justice. Judge Apita may not designate respondent to act as Court Interpreter for an indefinite period or until a new Court Interpreter is appointed. To meet a sudden vacancy or emergency, Judge Apita may only designate respondent in an acting capacity pending designation of a Court Interpreter from another branch of the RTC of Tacloban City to temporarily fill the vacancy in Branch 7 of the same court. This would have been in accord with pertinent rules governing the reassignment of, and the code of conduct for, court personnel.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is an administrative complaint for insubordination filed by Executive Judge Leonilo B. Apita of the Regional Trial Court (Branch 7) of Tacloban City against respondent Marissa M. Estanislao, Court Legal Researcher II in Branch 34 of the same court.

The Facts

In 2004, Atty. Pamela A. Navarrete, Court Interpreter in Branch 7 of the RTC of Tacloban City, was appointed as Clerk IV under Justice Pampio Abarintos of the Court of Appeals, leaving the position of Court Interpreter in Branch 7 vacant. Judge Apita designated respondent to act as Court Interpreter in the said Branch **until the vacancy was filled up**.[1]

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[1] *Rollo*, p. 24.

However, respondent refused to act as Court Interpreter claiming that her designation was a demotion tantamount to removal from the service without cause; that interpreting during trials was not included in the duties and responsibilities of her present position; and that she was not defying Judge Apita's directive, but merely asserting her right as a civil service employee holding a permanent appointment.[2]

In his Complaint[3] for insubordination filed in the Office of the Court Administrator (OCA), Judge Apita requested the OCA to rule whether his directive designating respondent as Court Interpreter in Branch 7 was valid and if so, whether respondent may be subjected to administrative sanctions for insubordination.

The Complaint was docketed as OCA-IPI No. 04-2051-P. The OCA forthwith required respondent to submit her Comment.[4]

In her Comment,[5] respondent maintained that acting as Court Interpreter was outside the scope of her job description as Legal Researcher and constituted a demotion tantamount to removal from the service without cause.

The OCA's Report and Recommendation

The OCA, in its Report and Recommendation,[6] found respondent liable for insubordination. According to the OCA, Judge Apita acted well within his authority in designating respondent as Court Interpreter in view of the vacancy in the position. The OCA explained that respondent had no right to defy Judge Apita's directive in the absence of any showing of abuse of discretion or any proof that the designation was due to some improper motive. The OCA recommended that respondent be suspended from the service for one (1) month and one (1) day with a warning that a repetition of the same

[2] *Id.* at 25-26, 28-30.

[3] *Id.* at 2-6.

[4] *Id.* at 14.

[5] *Id.* at 16-23.

[6] *Id.* at 35-36.

or similar act in the future shall be dealt with more severely, thus:

> Respectfully submitted for the consideration of the Honorable Court are our recommendations that:
>
> 1. This matter be FORMALLY DOCKETED as an administrative complaint against Marissa M. Estanislao, Legal Researcher, RTC, Branch 34, Tacloban City; and
>
> 2. Marissa M. Estanislao be SUSPENDED for one (1) month and one (1) day for insubordination with a WARNING that a repetition of the same or similar act in the future shall be dealt with more severely.[7]

The Court's Ruling

This is an administrative complaint of first impression involving the designation of court personnel by an executive judge. Judge Apita admitted he was unsure whether he could designate a Legal Researcher from one branch to act as a Court Interpreter in another branch of the same court. Hence, he brought the matter to the OCA for a ruling.

In *Castro v. Bague*,[8] the Sheriff IV of the RTC (Branch 1) of Tagbilaran City was designated to act as Deputy Sheriff in the Office of the Clerk of Court to fill a temporary vacancy. The Court did not question the designation since the duties of a Sheriff IV are identical with the duties of a Deputy Sheriff as described in the 2002 Revised Manual for Clerks of Court[9] (Manual), which defines the general functions of all court personnel in the judiciary.

Under 2.2.4 of Chapter VI, Volume I of the Manual, the Sheriff IV is tasked with serving writs and processes of the court; keeping custody of attached properties; and maintaining the record book on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes.

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[7] *Id.* at 36.

[8] 411 Phil. 532 (2001).

[9] Dated 8 March 2002.

Under 2.1.5 of the same Chapter, the Deputy Sheriff serves writs and processes of the court; keeps custody of attached properties; and maintains the record book on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes. Unarguably, the Sheriff IV and the Deputy Sheriff perform exactly the same functions.

The duties of a Legal Researcher in the RTC are described under 2.2.1 of Chapter VI, Volume I of the Manual, to wit:

2.2.1.1. verifies authorities on questions of law raised by parties-litigants in cases brought before the Court as may be assigned by the Presiding Judge;

2.2.1.2. prepares memoranda on evidence adduced by the parties after the hearing;

2.2.1.3. prepares outlines of the facts and issues involved in cases set for pre-trial for the guidance of the Presiding Judge;

2.2.1.4. prepares indexes to be attached to the records showing the important pleadings filed, the pages where they may be found, and in general, the status of the case;

2.2.1.5. prepares and submits to the Branch Clerk of Court a monthly list of cases or motions submitted for decision or resolution, indicating therein the deadlines for acting on the same; and

2.2.1.6. performs such other duties as may be assigned by the Presiding Judge or the Branch Clerk of Court.

On the other hand, 2.2.3 of Chapter VI, Volume I of the Manual describes the functions of a Court Interpreter in the RTC thus:

2.2.3.1. acts as translator of the court;
2.2.3.2. attends court hearings;
2.2.3.3. administers oath to witnesses;
2.2.3.4. marks exhibits introduced in evidence and prepares the corresponding list of exhibits;
2.2.3.5. prepares and signs minutes of the court session;
2.2.3.6. maintains and keeps custody of record book of cases calendared for hearing;
2.2.3.7. prepares court calendars and the records of cases set for hearing; and

2.2.3.8. performs such other functions as may, from time to time, be assigned by the Presiding Judge and/or Branch Clerk of Court.

Notably, the duties of a Legal Researcher are vastly different from those of a Court Interpreter. A Legal Researcher focuses mainly on verifying legal authorities, drafting memoranda on evidence, outlining facts and issues in cases set for pre-trial, and keeping track of the status of cases. On the other hand, a Court Interpreter is limited to acting as translator of the court, administering oaths to witnesses, marking exhibits, preparing minutes of court session, and preparing the court calendar.

While the Manual provides that court personnel may perform other duties the presiding judge may assign from time to time, said additional duties must be directly related to, and must not significantly vary from, the court personnel's job description. However, in case of a sudden vacancy in a court position, the judge may temporarily designate a court personnel with the competence and skills for the position even if the duties for such position are different from the prescribed duties of the court personnel. The temporary designation shall last only for such period as is necessary to designate temporarily a court personnel with the appropriate prescribed duties. Such temporary designation cannot go on for an indefinite period, or until the vacancy is filled up like in the designation by Judge Apita to respondent in this case.

Section 7, Canon IV of the Code of Conduct for Court Personnel[10] expressly states that court personnel shall not be required to perform any work outside the scope of their job description, thus:

Sec. 7. Court personnel **shall not be required** to perform any work or duty **outside the scope of their assigned job description**. (Emphasis supplied)

In *Re: Report of Senior Chief Staff Officer Antonina A. Soria on the Financial Audit Conducted on the Accounts of*

[10] Otherwise known as A.M. No. 03-06-13-SC. Effective 1 June 2004.

Clerk of Court Elena E. Jabao, Municipal Circuit Trial Court, Jordan-Buenavista-Nueva Ecija, Guimaras,[11] the Clerk of Court of the Municipal Circuit Trial Court (MCTC) of Jordan-Buenavista-Nueva Valencia in Guimaras was designated to act as Court Stenographer in addition to her duties as Clerk of Court to fill in for the newly appointed Court Stenographer who was not yet well-versed in stenography. The designation passed the Court's scrutiny as the duties of a Court Stenographer are subsumed under the general responsibilities of a Clerk of Court since Clerks of Court exercise control and supervision over Court Stenographers.

In the instant case, both Legal Researcher and Court Interpreter are subject to the control and supervision of the Clerk of Court.[12] Since Legal Researchers do not exercise control and supervision over Court Interpreters,[13] the duties of a Court Interpreter cannot be deemed subsumed under the general functions of a Legal Researcher.

While the executive judge may not require court personnel to perform work outside the scope of their job description, except duties that are identical with or are subsumed under their present functions, the executive judge may reassign court personnel of multiple-branch courts to another branch within the same area of administrative supervision when there is a vacancy or when the interest of the service requires, after consultation with the presiding judges of the branches concerned. Section 6, Chapter VII of A.M. No. 03-8-02-SC *Re: Guidelines on the Selection and Designation of Executive Judges and Defining their Powers, Prerogatives and Duties*[14] so provides:

Sec. 6. *Reassignment of lower court personnel*. – (a) Executive Judges of the RTCs shall continue to have authority to effect the

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[11] 359 Phil. 385 (1998).

[12] Chapter VI, Volume I of the 2002 Revised Manual for Clerks of Court.

[13] *Id*.

[14] Approved 27 January 2004.

following temporary assignments within his/her area of administrative supervision:

(1) Personnel of one branch to another branch of a multiple-branch court;

x x x x x x x x x

Reassignments shall be made only **in case of vacancy in a position in a branch, or when the interest of the service so requires.** In either case, **the assignment shall be made only after consultation with the Presiding Judges of the branches concerned.** In case of any disagreement, the matter shall be referred to the OCA for resolution. (Emphasis supplied)

However, consistent with Section 7, Canon IV of the Code of Conduct for Court Personnel, the reassignment of court personnel in multiple-branch courts to another branch within the same area of the executive judge's administrative supervision must involve (1) work **within** the scope of the court personnel's job description or (2) duties that are identical with or are subsumed under the court personnel's present functions.

In this case, since respondent's job description is that of Legal Researcher, Judge Apita may not designate her to act as Court Interpreter indefinitely or until the vacancy is filled up. The said designation will require respondent to perform work, which is outside the scope of her job description and which involves duties not identical with or subsumed under respondent's current functions. To do so would violate the express language of Section 7, Canon IV of the Code of Conduct for Court Personnel.

This rule is rooted in the time-honored constitutional principle that public office is a public trust. Hence, all public officers and employees, including court personnel in the judiciary, must serve the public with utmost responsibility and efficiency.[15] Exhorting court personnel to exhibit the highest sense of dedication to their assigned duty necessarily precludes requiring them to

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[15] *Court Personnel of the Office of the Clerk of Court of the Regional Trial Court-San Carlos City v. Llamas*, 488 Phil. 62 (2004).

perform any work outside the scope of their assigned job description, save for duties that are identical with or are subsumed under their present functions.

Indeed, requiring a Legal Researcher to perform the work of a Court Interpreter is counter-productive and does not serve the ends of justice. Not only will respondent jeopardize her present position as Legal Researcher by constantly shifting from one job to another, her qualification as Court Interpreter will also be put in question. This arrangement does nothing but compromise court personnel's professional responsibility and optimum efficiency in the performance of their respective roles in the dispensation of justice.

Judge Apita may not designate respondent to act as Court Interpreter for an indefinite period or until a new Court Interpreter is appointed. To meet a sudden vacancy or emergency, Judge Apita may only designate respondent in an acting capacity pending designation of a Court Interpreter from another branch of the RTC of Tacloban City to temporarily fill the vacancy in Branch 7 of the same court. This would have been in accord with pertinent rules governing the reassignment of, and the code of conduct for, court personnel.

WHEREFORE, we *DISMISS* for lack of merit the instant administrative complaint for insubordination filed by Executive Judge Leonilo B. Apita of the Regional Trial Court (Branch 7) of Tacloban City against respondent Marissa M. Estanislao, Legal Researcher II in Branch 34 of the same court.

SO ORDERED.

Leonardo-de Castro, [*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

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[*] Designated additional member per Special Order No. 933-A dated 24 January 2011.

SECOND DIVISION

[A.M. No. MTJ-08-1718. March 16, 2011]

ATTY. RAFAEL T. MARTINEZ, and SPOUSES DAN and EDNA REYES, *complainants, vs.* **JUDGE GRACE GLICERIA F. DE VERA, Presiding Judge, Municipal Trial Court in Cities, San Carlos City, Pangasinan,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; GOOD FAITH AND ABSENCE OF MALICE, CORRUPT MOTIVES OR IMPROPER CONSIDERATIONS ARE SUFFICIENT DEFENSES IN WHICH A JUDGE CHARGED WITH IGNORANCE OF THE LAW CAN FIND REFUGE.— To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of respondent judge in the performance of her official duties is contrary to existing law and jurisprudence but, most importantly, she must be moved by bad faith, fraud, dishonesty or corruption. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.

2. ID.; ID.; CANNOT TAKE REFUGE BEHIND THE INEFFICIENCY OR MISMANAGEMENT BY COURT PERSONNEL.— Judge De Vera would do well to keep in mind that "[a] judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity." A judge cannot take refuge behind the inefficiency or mismanagement by court personnel. Proper and efficient court management is as much her responsibility. She is the one directly responsible for the proper discharge of her official functions.

3. ID.; ID.; AN ADMINISTRATIVE COMPLAINT IS NOT THE APPROPRIATE REMEDY FOR EVERY IRREGULAR OR ERRONEOUS ORDER OR DECISION ISSUED BY A

JUDGE WHERE A JUDICIAL REMEDY IS AVAILABLE.— Complainants should also bear in mind that an administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge where a judicial remedy is available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*. Disciplinary proceedings against a judge are not complementary or suppletory to, nor a substitute for these judicial remedies whether ordinary or extraordinary. For, obviously, if subsequent developments prove the judge's challenged act to be correct, there would be no occasion to proceed against her at all. Besides, to hold a judge administratively accountable for every erroneous ruling or decision rendered, assuming she has erred, would be nothing short of harassment and would make her position doubly unbearable.

D E C I S I O N

CARPIO, *J.*:

Atty. Rafael T. Martinez (Atty. Martinez) and spouses Dan and Edna Reyes (spouses Reyes) (collectively, complainants) filed the present administrative complaint against Judge Grace Gliceria F. De Vera (Judge De Vera), Presiding Judge of the Municipal Trial Court in Cities (MTCC), San Carlos City, Pangasinan, for Gross Ignorance of the Law, relative to Civil Case No. MTCC-1613 entitled "*Letecia Samera v. Sps. Dan Reyes and Edna Reyes*." The Office of the Court Administrator (OCA) recommended that Judge De Vera be found guilty of gross ignorance of the law and be fined ₱10,000.00 with a stern warning that a repetition of the same offense shall be dealt with more severely.

The Facts

The memorandum from the OCA narrated the facts as follows:

The following were filed with the Office of the Court Administrator:

1. VERIFIED COMPLAINT dated January 18, 2008 (with enclosures) of Atty. Rafael T. Martinez and Dan and Edna Reyes

charging Judge Grace Gliceria F. De Vera, [Presiding Judge of] MTCC, San Carlos City, Pangasinan with Gross Ignorance of the Law relative to Civil Case No. MTCC-1613 entitled "*Letecia Samera vs. Sps. Dan Reyes and Edna Reyes*."

Complainants narrated that they are defendants in Civil Case No. MTCC-1613 for ejectment with damages heard before the sala of the respondent judge. Complainant Atty. Rafael T. Martinez was their counsel of record.

After the termination of the preliminary conference, the complainant averred that respondent issued a pre-trial order directing the parties to submit their position paper within ten (10) days from receipt of the pre-trial order. The pre-trial order was received by complainant Atty. Rafael T. Martinez on November 21, 2007. Hence, they have until December 1, 2007 within which to file their position paper. However, since the last day of filing falls on Saturday, the complainants filed their position paper together with their evidence by registered mail on December 3, 2007.

Complainant Martinez narrated that on December 28, 2007, his attention was called by Ms. Yolanda Basa, the Clerk of Court of the MTCC, San Carlos City, Pangasinan about the order promulgated by the respondent denying the admission of the position paper of the complainants on the ground that the same was filed out of time. On the same day, his wife informed him that a certain "JR" of the MTCC delivered the order of the court dated December 12, 2007. On January 2, 2008, complainant Martinez filed, by registered mail, a motion for reconsideration.

On January 6, 2008, complainant Martinez received the adverse decision dated December 28, 2007 in favor of the plaintiff therein.

The complainants claimed that the respondent judge, in denying the admission of their position paper and the evidence attached to it, is obviously ignorant of the basic and elementary provision of the rules. They also abhorred the hastily [sic] rendition of decision of the respondent judge. The said decision of the respondent judge is unjust because it was rendered in violation of the complainants' substantive right to be heard and to present evidence.

Finally, the complainants contended that the respondent judge, who has shown her inability to observe a very simple and elementary provision of the rules and her disposition to trample upon the rights of litigants, should not be allowed to stay in her lofty position which

requires competence, impartiality and probity.

2. COMMENT dated April 23, 2008 (with enclosure) of respondent Judge Grace Gliceria F. De Vera.

In her Comment dated April 23, 2008, the respondent judge contended that the administrative complaint lodged against her is devoid of merit and is meant to harass her when she rendered an adverse Decision dated December 28, 2007 against the complainant[s] Dan & Edna Reyes in Civil Case No. MTCC-1613.

She denied that she gave instructions to serve the extra copy of the Order dated December 12, 2007 at the residence of complainant Atty. Martinez. She averred that she does not even know the residence of the latter. This was later corroborated by Mr. Austria Jr., when he admitted in front of his other officemates on March 4, 2008, that it was his own idea to serve the extra copy of the Order dated December 12, 2007 at the house of the complainant Atty. Martinez.

The respondent asserted that the copy of the Order dated December 12, 2007 was sent to the complainant Atty. Martinez on December 17, 2007 as evidenced by Registry Receipts [sic] No. 893 dated December 17, 2007 and not on December 28, 2007 as claimed by the complainants.

Anent the early resolution of the MTCC Case No. 1613, the respondent judge contended that it is in compliance with her duty to promptly decide a case within the period required by law. She claimed that there is nothing wrong if a judge renders judgment on the day after the case is submitted for resolution.

The respondent argued that the complainants' position paper dated December 3, 2007 is a mere rehash of the Answer with Counterclaim dated July 18, 2007. Assuming that she committed a mistake in the computation of the period, the respondent claimed that said error was made in good faith and done without any malice, corrupt motives or improper considerations since the complainants submitted their position paper on the twelfth (12) day, not the tenth (10) day.

OTHER RELEVANT INFORMATION: The respondent assails the conduct of the complainant Atty. Martinez in filing what she claims as unfounded administrative complaint and prayed that complainant Atty. Martinez be held responsible, as member of the BAR, for violating his oath and the Canons of Professional Responsibility.

3. REPLY TO THE COMMENT dated May 8, 2008

The complainants, in their reply to the comment of the respondent judge, disagreed with the contention of the respondent judge that she should not be subject to disciplinary action for the error she allegedly commits in the absence of malice, fraud, dishonesty or corruption. They asserted that the respondent judge failed to consider the basic and elementary provision of Section 1, Rule 22 of the Rules of Court. The complainants continued to cite several instances to show that the respondent judge has a continuing pattern of committing legal error. Lastly the complainants averred that the explanation proffered by the respondent judge should never be allowed.[1]

Complainants filed their Complaint[2] dated 18 January 2008 before the OCA. Then Court Administrator Zenaida N. Elepaño (CA Elepaño) directed Judge De Vera to file her comment within ten days from receipt of the indorsement from OCA.[3]

Atty. Martinez moved for the preventive suspension of Judge De Vera.[4] Atty. Martinez filed a motion for inhibition of Judge De Vera in all cases where Atty. Martinez is counsel of record in Judge De Vera's court, and cited the present administrative complaint as the ground for inhibition. Judge De Vera then issued orders in three cases directing Atty. Martinez to show cause why he should not be cited for indirect contempt because the allegations in the motion for inhibition undermine the integrity of Judge De Vera's court. Atty. Martinez thus moved for Judge De Vera's preventive suspension pending the resolution of the present administrative complaint.

Judge De Vera moved to extend the filing of her comment twice.[5] She finally filed her comment on 24 April 2008, one day after the due date, with heavy workload as her excuse.[6]

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[1] *Rollo,* pp. 609-611.

[2] *Id.* at 1-6.

[3] *Id.* at 112.

[4] *Id.* at 114-116.

[5] *Id.* at 196-203.

[6] *Id.* at 210-265.

Complainants filed their reply on 27 May 2008.[7]

The OCA's Ruling

On 11 July 2008, the OCA, under then Court Administrator Jose P. Perez[8] and Assistant Court Administrator Reuben P. Dela Cruz, issued its Evaluation and Recommendation on the present complaint.

The OCA underscored that the issue in the instant case is whether or not respondent Judge De Vera could be held administratively liable for gross ignorance of the law in denying the admission of the position paper and the evidence attached to it in Civil Case No. MTCC No. 1613 entitled "*Letecia Samera vs. Sps. Dan Reyes and Edna Reyes*." The OCA stated that ordinarily, before the judge can be held liable, the subject decision, order or actuation of the judge in the performance of his official duties should be contrary to existing law and jurisprudence, and the judge must be moved by bad faith, fraud, dishonesty or corruption. Although there is absence of bad faith or malice in the present case, the OCA opined that respondent Judge De Vera cannot be excused from applying a basic law. When the law is so elementary, not to be aware of it also constitutes gross ignorance of the law.

The OCA's recommendation reads as follows:

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court is our recommendation that the instant complaint against Judge Grace Gliceria F. De Vera [of] MTCC, San Carlos City, Pangasinan be REDOCKETED as a regular administrative matter; and that the respondent judge be found GUILTY of gross ignorance of the law and be FINED in the amount of Ten Thousand (PHP10,000.00) Pesos with a STERN WARNING that a repetition of the same offense shall be dealt with more severely.[9]

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[7] *Id.* at 473-506.

[8] Now Supreme Court Justice.

[9] *Rollo*, p. 612.

This Court, in a Resolution[10] dated 11 August 2008, re-docketed administrative complaint OCA-IPI No. 08-1969-MTJ as regular administrative matter A.M. No. MTJ-08-1718. Judge De Vera filed a Rejoinder[11] on 4 September 2008.

In a Resolution[12] dated 15 October 2008, this Court required the parties to manifest, within ten days from notice, if they were willing to submit the administrative matter for resolution on the basis of the pleadings filed. Both parties filed their respective manifestations that they were willing to have the case so decided. Atty. Martinez stated his willingness to resolve the present administrative matter based on the pleadings after the submission of the envelope showing that the position paper was indeed sent via registered mail on 3 December 2007.[13] Judge De Vera stated her willingness to submit the case for resolution after the submission of her supplemental rejoinder.[14] Judge De Vera submitted her Supplemental Rejoinder[15] on 12 January 2009.

Issue

The sole issue is whether respondent Judge De Vera should be held administratively liable for issuing the Order dated 12 December 2007 denying the admission of the position paper of the complainants on the ground that the same was filed out of time.

Both parties raise other issues and detail other facts which, to our mind, deviate from the proper subject matter.

The Court's Ruling

We reverse and set aside the recommendation of the OCA.

Relevant portions of Section 1, Rule 22 of the Rules of Court read:

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[10] *Id.* at 628.
[11] *Id.* at 639-743.
[12] *Id.* at 1528.
[13] *Id.* at 1529-1538.
[14] *Id.* at 1553-1558.
[15] *Id.* at 1677-1706.

Section 9. *How to compute time.* – x x x If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

From the OCA's recommendation, we glean the following pertinent facts: (1) After the pre-trial conference, Judge De Vera issued a pre-trial order directing the parties to submit their position paper within ten days from receipt. Atty. Martinez received the order on 21 November 2007. Hence, he had until 1 December 2007 to submit his position paper. (2) Atty. Martinez filed, via registered mail, his position paper on 3 December 2007 as 1 December 2007 fell on a Saturday; and (3) Judge De Vera denied, in an order dated 12 December 2007, Atty. Martinez' position paper for being filed out of time.

From Judge De Vera's Supplemental Rejoinder, we learn that "the envelope showing that the position paper was sent through registered mail on December 3, 2007 was not stitched to the Record and was in fact found in the drawer of Verna Galvez (Galvez), a court personnel, on October 27, 2008."[16] Judge De Vera's explanation continues:

Thus, respondent thought all along that the Position Paper was filed personally by complainants on December 6, 2007 [date of receipt of the Position Paper by the trial court], or on the 15th day from receipt of the complainants of the Order dated November 5, 2007 on November 21, 2007. The record, when forwarded to the undersigned, prior to the release of the interlocutory order dated December 12, 2007 denying the Position Paper of the complainants shows only Registry Receipt No. 8677, showing that the complainants have sent Atty. Juvy F. Valdez, counsel for the plaintiffs, through registered mail on December 3, 2007 the said position paper. For this reason, the respondent, in good faith, denied the said Position Paper for being filed out of time. Good faith is a defense in a charge of gross ignorance of the law.[17]

Despite the existence of Registry Receipt No. 8677 showing that the position paper sent to the counsel of the adverse party

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[16] *Id.* at 1688.

[17] *Id.* at 1689-1690.

was served through registered mail on 3 December 2007, which was well within the allowed period, Judge De Vera presumed that complainants' position paper was filed late, on 6 December 2007, and through personal filing with the Court. Given this presumption, it was correct for Judge De Vera to deny complainants' position paper for being filed out of time.

Judge De Vera prepared the questioned order between 6 December and 12 December 2007. However, Judge De Vera failed to effectively verify whether the presumption in her 12 December 2007 order was correct. Eight months later, Judge De Vera found herself saying that she would conduct an investigation as to whether complainants' position paper was sent via registered mail.[18]

Judge De Vera issued a Memorandum[19] dated 10 October 2008, ten months after the 12 December 2007 order, and required Julie Soriano (Soriano), clerk responsible for the receipt of pleadings filed by litigants[20] before Judge De Vera's court, to file a comment as to whether complainants' position paper was sent via registered mail.

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[18] *Id.* at 1597-1598.

[19] *Id.* at 1712-1713.

[20] Under Chapter VII, D.2 of the 2002 Revised Manual for Clerks of Court, Clerk III Soriano had the following functions:

2.1.12.1. Receives and dockets cases filed with the Court;

2.1.12.2. Receives and records all pleadings, documents and communications pertaining to the Court;

2.1.12.3. Refers to the Clerk of Court or Branch Clerk of Court all cases, pleadings, documents and communications received;

2.1.12.4. Takes charge of all mail matters and maintains a systematic filing of criminal, civil, special civil actions, land registration and administrative cases;

2.1.12.5. Maintains and keeps custody of record books on pending cases, record book on disposed cases, books on appealed cases;

2.1.12.6. Checks and verifies in the docket book applications for clearances and certifications;

2.1.12.7. Prepares weekly reports to the court on the status of individual cases;

In her Comment[21] dated 15 October 2008, Soriano explained that she indeed received complainants' position paper through registered mail on 6 December 2007 at 2:05 in the afternoon. Soriano stated that she attached all pleadings received that day, with their respective envelopes, to the records of the cases concerned and submitted them to Mrs. Yolanda Basa, the Clerk of Court.

In a Memorandum[22] dated 27 October 2008, Judge De Vera asked Soriano to explain why there was no envelope attached to the record. In her Comment[23] dated 5 November 2008, Soriano stated that the envelope was stapled on top of the record of Civil Case MTCC-1613. However, the envelope was found in the drawer of Galvez on 27 October 2008, and might have been inadvertently detached from the position paper.

Judge De Vera reprimanded Soriano in a Memorandum[24] dated 5 January 2008.

> You should be more circumspect in the performance of your duties. Your failure to attach the mailing envelope in the record shows that you failed to apply appropriate measure[s] to ensure that all pertinent documents are securely attached thereto to the record of MTCC No. 1613.

2.1.12.8. Checks and reviews exhibits and other documents to be attached to records on appeal;

2.1.12.9. Keeps record book on warrants of arrest issued, record book on accused persons who are at-large, and record book on judgment against bail bonds;

2.1.12.10. Prepares subpoenas, notices, processes, and communications for the signature of the Judge and/or the Clerk of Court;

2.1.12.11. Releases decisions, orders, processes, subpoenas and notices as directed by the Judge or Clerk of Court by delivering them in addressed envelopes and with return cards to the process server for service or mailing; and

2.1.12.12. Performs other duties that may be assigned to him.

[21] *Rollo*, pp. 1714-1716.

[22] *Id.* at 1719-1720.

[23] *Id.* at 1725-1727.

[24] *Id.* at 1730-1732.

This led to the filing of the administrative case against the undersigned when the Position Paper was denied as the undersigned thought that the said pleading was filed personally by the complainants on the 15th day, not on the 10th day as mandated.

You are, likewise expected to discharge your duty of keeping court records with care, efficiency and professionalism. Proper and efficient court management is a judge's responsibility. But while I have supervision over you, I cannot be expected to constantly check on your performance of your duties.

As your superior, I have a right to expect that all mailing envelopes are stitched to the record. You are hereby reprimanded for this negligence. A repetition of the same will be dealt with more severely.[25]

Subsequently, in a motion[26] filed on 19 November 2008, Atty. Martinez alleged that Judge De Vera is suppressing evidence because the envelope which proves that the complainants' position paper was sent via registered mail is in Judge De Vera's possession. Portions of Atty. Martinez's motion read:

2. In the said rejoinder, the respondent asseverated among others that no envelope showing that the position paper the complainants filed in Civil Case No. 1613 was sent by registered mail on December 3, 2007;

3. Recently, an employee of the Municipal Trial Court in Cities of San Carlos City, Pangasinan, the court being presided by the respondent handed to the undersigned a xerox copy of the envelope of the said position paper, the said xerox copy of the said envelope is hereto attached as Annex "A";

4. Today, the undersigned went to the Municipal Trial Court in Cities of San Carlos City, Pangasinan for the purpose of securing a certified xerox copy of the said envelope;

5. The undersigned was able to talk with Mrs. Yolanda Basa, the Clerk of Court of the MTCC, San Carlos City, Pangasinan.

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[25] *Id.* at 1731-1732.

[26] *Id.* at 1529-1534.

In the course of the said conversation, the undersigned informed Mrs. Basa of his intention to secure a certified xerox copy of the envelope;

6. Mrs. Basa informed the undersigned that the said envelope is in the possession of the respondent judge;

7. The said envelope is a vital piece of evidence considering that the respondent is claiming in her rejoinder that the complainants are lying when they stated in their complaint that their position paper was filed in December 3, 2007;

8. The said envelope would clearly show that the position paper was mailed in Dagupan City on December 3, 2007;

9. There is a need for the Honorable Court to safeguard the integrity of the present proceedings by not allowing any of the parties to suppress a vital piece of evidence. Hence, the Honorable Supreme Court should order the respondent to surrender the envelope to the Honorable Court and once the envelope is surrendered, the same be considered as part of the evidence for the complainants;

10. The undersigned complainant, due to oversight, failed to attach to the copy of the position paper submitted as an annex to the complaint the original copy of the registry receipt of the said position paper;

11. He is submitting herewith the original copy of the said registry receipt bearing the number 8679[.][27]

The circumstances related above were not yet known when the OCA made its recommendation. It is for this reason that we modify the OCA's findings.

Contrary to Atty. Martinez' allegations, the circumstances surrounding the loss and subsequent discovery of the envelope point to Judge De Vera's good faith. We acknowledge that compared to the present administrative proceedings, it would have been far simpler for Judge De Vera to immediately verify the submission of complainants' position paper to the court at

[27] *Id.* at 1529-1531.

the time of her preparation of the questioned order. Albeit belated, Judge De Vera exerted reasonable efforts to rectify the errors of her staff. The inconvenience caused by the present administrative case could be considered as sufficient penalty against Judge De Vera, and should serve as a reminder to her to "diligently discharge administrative responsibilities, [and to] maintain professional competence in court management x x x."[28]

To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of respondent judge in the performance of her official duties is contrary to existing law and jurisprudence but, most importantly, she must be moved by bad faith, fraud, dishonesty or corruption. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.[29]

Judge De Vera would do well to keep in mind that "[a] judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity."[30] A judge cannot take refuge behind the inefficiency or mismanagement by court personnel. Proper and efficient court management is as much her responsibility. She is the one directly responsible for the proper discharge of her official functions.[31]

Complainants should also bear in mind that an administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge where a judicial remedy is available, such as a motion for reconsideration, an appeal, or a petition for *certiorari.* Disciplinary proceedings against a judge are not complementary or suppletory to, nor a substitute

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[28] Rule 3.08, Code of Judicial Conduct.

[29] *Lumbos v. Baliguat,* A.M. No. MTJ-06-1641, 27 July 2006, 496 SCRA 556, 573 (citations omitted).

[30] Rule 3.09, Code of Judicial Conduct.

[31] *Nidua v. Lazaro*, A.M. No. R-465 MTJ, 29 June 1989, 174 SCRA 581, 586.

for these judicial remedies whether ordinary or extraordinary. For, obviously, if subsequent developments prove the judge's challenged act to be correct, there would be no occasion to proceed against her at all. Besides, to hold a judge administratively accountable for every erroneous ruling or decision rendered, assuming she has erred, would be nothing short of harassment and would make her position doubly unbearable.[32]

WHEREFORE, the administrative complaint against respondent Judge Grace Gliceria F. De Vera, Presiding Judge, Municipal Trial Court in Cities, San Carlos City, Pangasinan, is hereby *DISMISSED* for lack of merit. All the other charges and countercharges between the parties are also dismissed.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-11-2914. March 16, 2011]
(Formerly A.M. OCA IPI No. 09-3159-P)

DY TEBAN TRADING CO., INC., *complainant, vs.* **ARCHIBALD C. VERGA, Sheriff IV, RTC, Branch 33, Butuan City,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; THE

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[32] *De Vega v. Asdala,* A.M. No. RTJ-06-1997, 23 October 2006, 505 SCRA 1, 5 citing *De Guzman v. Pamintuan*, A.M. No. RTJ-02-1736, 26 June 2003, 405 SCRA 22.

[*] Designated additional member per Special Order No. 933 dated 24 January 2011.

SHERIFF'S RESPONSIBILITY IN THE EXECUTION OF A WRIT IS MANDATORY AND PURELY MINISTERIAL.— The Sheriff's responsibility in the execution of a writ is mandatory and purely ministerial. Once the writ is placed in his hand, it becomes his duty, to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court. In *Sanga v. Alcantara*, the Court had another occasion to remind sheriffs on the performance of this duty: "Under Section 9, Rule 141 of the Rules of Court, the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process."

D E C I S I O N

CARPIO MORALES, *J.*:

By Complaint dated May 20, 2009,[1] Leo C. Dy, on behalf of Dy Teban Trading Co., Inc., charges Archibald C. Verga, Sheriff IV, Regional Trial Court (RTC), Branch 33, Butuan City, with Dishonesty, Graft and Corruption, Gross Inefficiency, Neglect of Duty and Usurpation of Judicial Authority in connection with the Writ of Execution issued by the trial court following the finality of its decision in SEC Case No. 16-2004, "*Dy Teban Trading Co., Inc. v. Peter Dy, et al.,*" for Injunction with Prayer for Temporary Restraining Order or Preliminary Injunction and Damages.

The trial court granted the petition of the therein plaintiff-herein complainant, disposing as follows:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered in favor of petitioner and against respondents as follows:

1. Pursuant to petitioner's prayer for injunctive relief, let a writ of injunction issue against respondents Peter C. Dy, Johnny C. Dy and Ramon C. Dy, their lawyers, representatives, agents or any persons acting for and in behalf directing, commanding and

[1] *Rollo,* pp. 1-15.

ordering them to immediately cease and desist from physically entering, occupying, possessing or otherwise controlling and remove themselves from the entire premises of the commercial building and the land on which it is erected as then convened by Tax Declaration No. 96GR-03-003-1290-C in a manner that is permanent and not to hinder or prevent physically otherwise, the petitioner's officers, directors, agents, lawyers or representatives, or all persons acting for and on its behalf from physically entering, occupying, possessing or otherwise utilizing the same and its entire premises as lawful owner and possessor thereof upon receipt of this decision.

2. Respondents Peter C. Dy, Johnny C. Dy, and Ramon C. Dy are likewise ordered and directed to pay unto petitioner in solidum the following amount:

a. As compensatory damages, the sum of Two Million (₱2,000.000.00) Pesos and for loss of stocks and the further sum of:

a.1 One Hundred Sixty Thousand (₱160,000.00) Pesos per month from September 2004 up to and until respondents shall have actually vacated the outlet premises in question representing unrealized income for deprivation of possession and use of the outlet in the form of rentals; and

a.2 One Hundred Fifty Thousand (₱150,000.00) Pesos as damages under Article 2205 [2] of the Civil Code;

b. One Hundred Fifty Thousand (₱150,000.00) Pesos as nominal damages;

c. One Hundred Thousand (₱100,000.00) Pesos as exemplary damages;

d. Five Hundred Thousand (₱500,000.00) Pesos as attorney's fees; and

e. Five Hundred Thousand (₱500,000.00) Pesos as litigation expenses.[2] (Italics in the original)

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[2] *Id.* at 19-20.

By complainant's claim, respondent, to enforce the Writ of Execution[3] (the writ), demanded from his (complainant's) brother Lorencio Dy (Lorencio) the amount of Ten Thousand (₱10,000) Pesos on December 12, 2008 and another Ten Thousand (₱10,000) Pesos on December 17, 2008, no receipts for which were issued.[4]

Complainant refers to his brother Lorencio's Affidavit of May 18, 2009[5] in which the affiant claimed to have handed Twenty Thousand (₱20,000) Pesos to respondent, and the Affidavit executed by Emma Lim, cashier of the company, in which she attested to processing the amounts that were given to respondent on the dates alleged by Lorencio.

Complainant laments, however, that respondent never implemented the writ as he was "cavorting or transacting with the judgment debtors."[6] He draws attention to respondent's Return of Service dated January 15, 2009[7] which shows that he did not serve copies of the writ to the judgment obligors because of an alleged decision of the Court of Appeals.

Additionally, complainant faults respondent for causing the lifting of the notices of garnishment earlier served upon the judgment obligors despite the absence of any directive for the purpose from the court. He thus finds respondent liable for usurpation of authority of the judge.

Respondent, in his Comment of July 6, 2009,[8] denies receiving Twenty Thousand (₱20,000) Pesos from Lorencio, explaining that the writ was issued on December 15, 2008 and, therefore, he could not have demanded any amount as early as December 12, 2008. He admits, however, having received Five Thousand (₱5,000) Pesos from Lorencio.

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[3] *Id.* at 19-21.

[4] *Id.* at 2.

[5] *Id.* at 27-30.

[6] *Id.* at 8.

[7] *Id.* at 45.

[8] *Id.* at 83-89.

Respondent informs that he prepared on December 16, 2008[9] a "Particulars of Expenses" in the amount of Eleven Thousand (₱11,000) Pesos for the implementation of the writ, which was approved by Judge Edgar G. Manilag of the trial court and served upon complainant Dy through Lorencio. He draws attention to the itemized expenses charged to the Five Thousand (₱5,000) Pesos he received from Lorencio and which he reflected in his liquidation report dated January 28, 2009.

Respondent goes on to cite his partial Sheriff's Report dated December 18, 2008[10] indicating why he failed to implement the writ – the judgment obligors refused to acknowledge receipt of the writ. Furthermore, he claims that there was a decision of the Court of Appeals directing the remand of the case for further proceedings.

Respondent thus claims that he was actuated by good faith when he caused the lifting of the notices of garnishment which was earlier served by another sheriff.

Complainant, by Reply of August 3, 2009,[11] claims that respondent showed to his brother Lorencio on December 12, 2008 a photocopy of a writ which appeared to have been issued by the trial court on even date.

Respecting respondent's "Particulars of Expenses" which respondent claims was approved by the Clerk of Court and Judge Manilag, complainant brands it a forgery. For the Clerk of Court denied, by letter of July 29, 2009, as did the Branch Clerk of Court, by letter also of July 29, 2009, the authenticity of the document.

By Memorandum dated January 3, 2011, the Office of the Court Administrator came up with the following evaluation of the case:

It would appear, therefore, that the "Particular of Expenses" was merely concocted by respondent Sheriff Verga to justify the amount

[9] *Id.* at 92.

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

[11] *Id.* at 152-164.

of ₱5,000.00 which he demanded from the brother of complainant Dy. The acts of respondent Sheriff Verga reek of Dishonesty.

Granting *arguendo* that the "Particulars of Expenses" is genuine, respondent Sheriff Verga, in asking for the amount of ₱5,000.00 upfront, failed to observe the proper procedure set forth under Section 10 of Rule 141 (*Re: Legal Fees, as amended by A.M. No. 04-2-04-SC; 16 August 2004*). In the case of *Cebrian vs. Monteroso, Sheriff IV, RTC, Branch 34, Cabadbaran, Agusan del Norte* (A.M. No. P-08-2461; 23 April 2008), the Court, in suspending the respondent sheriff for six (6) months, noted this failure to observe the aforesaid provision under Rule 141, *to wit*:

> **Under no circumstance should a sheriff, more so should any of his relatives, receive and keep money for executing a court process from the party**. The sheriff has to seek approval of the amount of expenses from the court; have the interested party deposit the amount to the clerk of court or *ex-officio* sheriff for the latter to disburse the amount to the sheriff; and liquidate the expenses within the period for rendering a return or process.
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> There are very valid and serious reasons why the procedure in Sec. 9 is meticulously laid out. When it comes to money changing hands in court transactions, courts have always adhered to very stringent procedure to assure the public that the judiciary could be trusted, Any possibility of the courts being perceived as dishonest and corrupt erodes public confidence and contravenes the policy on public accountability.

Respondent Sheriff Verga also failed to satisfactorily explain why he caused the lifting of the notices of garnishment previously served to the respondents in Sec. Case No. 16-2004 (Sp. Civil Case No, 1235). Sheriff Verga claimed he merely acted in good faith when he lifted the said notices, claiming that he received a copy of the decision from the Court of Appeals supposedly remanding the case to the trial court for further proceedings. Respondent Sheriff Verga should have known better that his duty of implementing the writ of execution is purely ministerial. It does not grant him the authority to decide otherwise in the absence of a clear and direct order from the court.

In the case of *Vargas vs. Primo, Sheriff IV, RTC Branch 65, Bulan, Sorsogon* (A.M. No. P-07-2336; 24 January 2008), the respondent

sheriff was suspended for six (6) months for deferring the implementation of the writ because of a pending motion for reconsideration, The Court held that "it is settled that when a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. As a sheriff, respondent has no discretion whether or not to execute a writ. Indeed, unless restrained by a court order, a sheriff must act with considerable dispatch and ensure that the execution of judgment is not unduly delayed.

In the *Monteroso* case, the respondent sheriff was found guilty of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Service and suspended for six (6) months for non-observance of Rule 141 in the collection of sheriff's expenses. In the *Primo* case, respondent sheriff was found guilty of neglect of duty and was likewise suspended for six (6) months for the unauthorized deferment of the implementation of the writ of execution. The same penalty should be imposed on the respondent in the instant case.[12] (Emphasis and italics in the original)

Accordingly, the OCA gave the following recommendation:

(1) the matter be **RE-DOCKETED** as a regular administrative complaint against Archibald C. Verga, Sheriff IV, Regional Trial Court, Branch 33, Butuan City; and

(2) that respondent Sheriff Verga be found **GUILTY** of Grave Misconduct, Dishonesty and Neglect of Duty and, accordingly, **SUSPENDED** from office without pay for a period of six (6) months, with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.[13] (Emphasis in the original)

The Court finds the evaluation and recommendation of the OCA well-taken.

The sheriff's responsibility in the execution of a writ is mandatory and purely ministerial. Once the writ is placed in his hand, it becomes his duty, to proceed with reasonable speed

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[12] *Rollo*, pp. 210-211.

[13] *Rollo*, p. 211.

to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred, unless the execution of which is restrained by the court.[14] In *Sanga v. Alcantara*,[15] the Court had another occasion to remind sheriffs on the performance of this duty:

> Under Section 9, Rule 141 of the Rules of Court, the sheriff is required to secure the court's prior approval of the estimated expenses and fees needed to implement the court process. Specifically, the Rules provide:
>
> SEC. 9. S*heriffs and other persons serving processes*. — x x x
>
> (l) For money collected by him by order, execution, attachment, or any other process, judicial or extrajudicial, the following sums, to wit;
>
> 1. On the first four thousand (₱4,000.00) pesos, four (4%) per centum.
> 2. On all sums in excess of four thousand (₱4,000.00) pesos, two (2%) per centum.
>
> In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, *subject to the approval of the court*. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.
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> Thus, following the above-mentioned rules, a sheriff is guilty of violating the Rules if he fails to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ, for which

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[14] *Dacdac v. Ramos*, A.M. No. P-052054, 553 SCRA 32, 35-36.

[15] A.M. No. P-09-2657, January 25, 2010, 611 SCRA 1.

he must seek the court's approval; (2) render an accounting; and (3) issue an official receipt for the total amount he received from the judgment debtor. The rule requires that the sheriff execute writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *Ex-Officio* Sheriff. The expenses shall then be disbursed to the executing Sheriff, subject to his liquidation, within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.

Sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service, because even assuming *arguendo* that the payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Corollary to this point, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps; otherwise, such act would amount to dishonesty or extortion.

In this case, it is undisputed that both Alcantara and Bisnar miserably failed to comply with the above requirements of Section 9. Both Alcantara and Bisnar demanded and collected money from the plaintiff allegedly to defray the expenses for the implementation of the writ. The acquiescence or consent of the plaintiffs to such expenses does not absolve the sheriff of his failure to secure the prior approval of the court concerning such expenses. There was no evidence showing that respondents submitted to the court, for its approval, the estimated expenses for the execution of the writ before they demanded monies from complainant. They did not deposit the sums received from complainant with the Clerk of Court who, under Section 9, was then authorized to disburse the same to respondent sheriff to effect the implementation of the writ. Neither was it shown that they rendered an accounting and liquidated the said amount to the court. We also note that both Alcantara and Bisnar made no mention in the sheriff's return, which they submitted to court, of the amounts of money they had received from complainant. Any act deviating from these procedures laid down by the Rules is misconduct that warrants disciplinary action.

Furthermore, we also agree with the findings of the OCA that respondents' issuance of *Temporary Receipts,* which were handwritten on scraps of papers, also constitutes a violation of Section 113 of

Article III, Chapter V of the National Accounting and Auditing Manual, which provides that "no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof.

A sheriff is an officer of the court. As such, he forms an integral part of the administration of justice, since he is called upon to serve the orders and writs and execute all processes of the court. As such, he is required to live up to the strict standards of honesty and integrity in public service. His conduct must at all times be characterized by honesty and openness and must constantly be above suspicion. Respondent Sheriff's unilateral and repeated demands for sums of money from a party-litigant, purportedly to defray the expenses of execution, without obtaining the approval of the trial court for such purported expense and without rendering to that court an accounting thereof, in effect, constituted dishonesty and extortion. That conduct, therefore, fell far too short of the required standards of public service. Such conduct is threatening to the very existence of the system of the administration of justice.[16]

WHEREFORE, for grave misconduct, dishonesty and neglect of duty, Archibald C. Verga, Sheriff IV, Regional Trial Court, Branch 33, Butuan City, is *SUSPENDED* from office without pay for Six Months. He is WARNED that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

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[16] A.M. No. P-09-2657, January 25, 2010, 611 SCRA 1, 8-11.

[*] Designated member in view of the leave of absence of Justice Arturo D. Brion per Special Order No. 940 dated February 7, 2011.

FIRST DIVISION

[G.R. No. 131481. March 16, 2011]

BUKLOD NANG MAGBUBUKID SA LUPAING RAMOS, INC., *petitioner, vs.* **E. M. RAMOS and SONS, INC.,** *respondent.*

[G.R. No. 131624. March 16, 2011]

DEPARTMENT OF AGRARIAN REFORM, *petitioner, vs.* **E. M. RAMOS and SONS, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT; ZONING CLASSIFICATION; AN EXERCISE BY THE LOCAL GOVERNMENT OF POLICE POWER; ZONING ORDINANCE, ELUCIDATED.— *Zoning classification* is an exercise by the local government of police power, not the power of eminent domain. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines, and apportions a given political subdivision into specific land uses as present and future projection of needs. x x x By virtue of a *zoning ordinance*, the local legislature may arrange, prescribe, define, and apportion the land within its political jurisdiction into specific uses based not only on the **present,** but also on the **future** projection of needs. To limit zoning to the existing character of the property and the structures thereon would completely negate the power of the local legislature to plan land use in its city or municipality. Under such circumstance, zoning would involve no planning at all, only the rubber-stamping by the local legislature of the current use of the land. Moreover, according to the definition of *reclassification*, the specified non-agricultural use of the land must be embodied in a land use plan, and the land use plan is enacted through a zoning ordinance. Thus, zoning and planning ordinances take precedence over reclassification. The reclassification of land use is dependent on the zoning and land use plan, not the other way around. It may, therefore, be

reasonably presumed that when city and municipal boards and councils approved an ordinance delineating an area or district in their cities or municipalities as residential, commercial, or industrial zone, pursuant to the power granted to them under Section 3 of the Local Autonomy Act of 1959, they were, at the same time, reclassifying any agricultural lands within the zone for non-agricultural use; hence, ensuring the implementation of and compliance with their zoning ordinances. The logic and practicality behind such a presumption is more evident when considering the approval by local legislative bodies of subdivision ordinances and regulations. The approval by city and municipal boards and councils of an application for subdivision through an ordinance should already be understood to include approval of the reclassification of the land, covered by said application, from agricultural to the intended non-agricultural use. Otherwise, the approval of the subdivision application would serve no practical effect; for as long as the property covered by the application remains classified as agricultural, it could not be subdivided and developed for non-agricultural use.

2. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); CLASSIFICATION OF LANDS; THE POWER DELEGATED TO THE PRESIDENT IS LIMITED TO THE CLASSIFICATION OF LANDS OF THE PUBLIC DOMAIN THAT ARE ALIENABLE OR OPEN TO DISPOSITION.— The power delegated to the President under [Section 9]of the Public Land Act is limited to the classification of **lands of the public domain that are alienable or open to disposition.** It finds no application in the present cases for the simple reason that the subject property involved herein is no longer part of the public domain. The subject property is already privately owned and accordingly covered by certificates of title.

3. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; AGRICULTURAL LANDS; CONVERSION AND RECLASSIFICATION, DISTINGUISHED.— The concept that concerns this Court in the instant cases is the *reclassification of agricultural lands.* In *Alarcon v. Court of Appeals,* the Court had the occasion to define and distinguish *reclassification* from *conversion* as follows: "*Conversion* is the act of changing the current use of a piece of agricultural

land into some other use as approved by the Department of Agrarian Reform. *Reclassification*, on the other hand, is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion. x x x." Reclassification also includes the reversion of non-agricultural lands to agricultural use.

4. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; RECLASSIFICATION OF LANDS; THE AUTHORITY TO RECLASSIFY AGRICULTURAL LANDS PRIMARILY RESIDES IN THE SANGGUNIAN OF THE CITY OR MUNICIPALITY.— Under the present Local Government Code, it is clear that the authority to reclassify agricultural lands primarily resides in the *sanggunian* of the city or municipality.

5. ID.; ID.; LOCAL AUTONOMY ACT OF 1959; CITY AND MUNICIPAL BOARDS AND COUNCILS; ZONING POWER; LIBERAL INTERPRETATION THEREOF, EXPLAINED.— A liberal interpretation of the zoning power of city and municipal boards and councils, as to include the power to accordingly reclassify the lands within the zones, would be in accord with the avowed legislative intent behind the Local Autonomy Act of 1959, which was to increase the autonomy of local governments. Section 12 of the Local Autonomy Act of 1959 itself laid down rules for interpretation of the said statute x x x. Moreover, the regulation by local legislatures of land use in their respective territorial jurisdiction through zoning and reclassification is an exercise of police power. In *Binay v. Domingo*, the Court recognized that police power need not always be expressly delegated, it may also be inferred x x x. [I]t cannot be said that power to reclassify agricultural land was first delegated to the city and municipal legislative bodies under Section 26 of the Local Government Code of 1991. Said provision only articulates a power of local legislatures, which, previously, had only been implied or inferred.

6. ID.; ID.; ID.; ID.; ZONING OR SUBDIVISION ORDINANCE; MANDATORY REQUIREMENTS; CONSULTATION WITH THE NATIONAL PLANNING COMMISSION, MERELY DISCRETIONARY.— DAR and Buklod aver that Resolution

No. 29-A was not reviewed and approved by the NPC, in violation of the line in Section 3 of the Local Autonomy Act of 1959, stating that "[c]ities and municipalities may, however, consult the National Planning Commission on matters pertaining to planning and zoning." Consideration must be given, however, to the use of the word "may" in the said sentence. Where the provision reads "may," this word shows that it is not mandatory but discretionary. It is an auxiliary verb indicating liberty, opportunity, permission and possibility. The use of the word "may" in a statute denotes that it is directory in nature and generally permissive only. The "plain meaning rule" or *verba legis* in statutory construction is thus applicable in this case. Where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Since consultation with the NPC was merely discretionary, then there were only two mandatory requirements for a valid zoning or subdivision ordinance or regulation under Section 3 of the Local Autonomy Act of 1959, namely, that (1) the ordinance or regulation be adopted by the city or municipal board or council; and (2) it be approved by the city or municipal mayor, both of which were complied with by Resolution No. 29-A.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED, APPLIED IN CASE AT BAR.— It is apparent that Section 16(a) of Ordinance No. 1 and Administrative Ordinance No. 152 contained the same directive: that the final plot of the subdivision be reviewed by the NPC to determine its conformity with the minimum standards set in the subdivision ordinance of the municipality. A closer scrutiny will reveal that Section 16 (a) of Ordinance No. 1 and Administrative Order No. 152 related to the duties and responsibilities of local government and NPC officials as regards the final plat of the subdivision. There is no evidence to establish that the concerned public officers herein did not follow the review process for the final plat as provided in Section 16(a) of Ordinance No. 1 and Administrative Order No. 152 before approving the same. Under Section 3(m), Rule 131 of the Rules of Court, there is a presumption that official duty has been regularly performed. Thus, in the absence of evidence to the contrary, there is a presumption that public officers performed their official duties regularly and legally and in compliance with

applicable laws, in good faith, and in the exercise of sound judgment. And - just as the Court of Appeals observed — even if it is established that the accountable public officials failed to comply with their duties and responsibilities under Section 16(a) of Ordinance No. 1 and Administrative Order No. 152, it would be contrary to the fundamental precepts of fair play to make EMRASON bear the consequences of such non-compliance.

8. POLITICAL LAW; STATUTES; INTERPRETATION OF; A STATUTE OPERATES PROSPECTIVELY ONLY AND NEVER RETROACTIVELY, UNLESS THE LEGISLATIVE INTENT TO THE CONTRARY IS MADE MANIFEST EITHER BY THE EXPRESS TERMS OF THE STATUTE OR BY NECESSARY IMPLICATION.— The Court again agrees with the Court of Appeals that Resolution No. 29-A need not be subjected to review and approval by the HSRC/ HLURB. Resolution No. 29-A was approved by the Municipality of Dasmariñas on **July 9, 1972**, at which time, there was even no HSRC/HLURB to speak of. The earliest predecessor of the HSRC, the Task Force on Human Settlements, was created through Executive Order No. 419 more than a year later on **September 19, 1973**. And even then, the Task Force had no power to review and approve zoning and subdivision ordinances and regulations. It was only on **August 9, 1978**, with the issuance of Letter of Instructions No. 729, that local governments were required to submit their existing land use plans, zoning ordinances, enforcement systems, and procedures to the Ministry of Human Settlements for review and ratification. The HSRC was eventually established on **February 7, 1981**. x x x Neither the Ministry of Human Settlements nor the HSRC, however, could have exercised its power of review retroactively absent an express provision to that effect in Letter of Instructions No. 729 or the HSRC Charter, respectively. A sound cannon of statutory construction is that a statute operates prospectively only and never retroactively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication. Article 4 of the Civil Code provides that: "Laws shall have no retroactive effect, unless the contrary is provided." Hence, in order that a law may have retroactive effect, it is necessary that an express provision to this effect be made in the law, otherwise nothing should be understood

which is not embodied in the law. Furthermore, it must be borne in mind that a law is a rule established to guide our actions without no binding effect until it is enacted, wherefore, it has no application to past times but only to future time, and that is why it is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions.

9. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; VESTED RIGHTS; MUST YIELD TO THE EXERCISE OF POLICE POWER.— While the subject property may be physically located within an agricultural zone under the 1981 Comprehensive Zoning Ordinance of Dasmariñas, said property retained its residential classification. According to Section 17, the Repealing Clause, of the 1981 Comprehensive Zoning Ordinance of Dasmariñas: "All other ordinances, rules or regulations in conflict with the provision of this Ordinance are hereby repealed: Provided, that **rights that have vested before the effectivity of this Ordinance shall not be impaired**." In *Ayog v. Cusi, Jr.*, the Court expounded on vested right and its protection x x x. It is true that protection of vested rights is not absolute and must yield to the exercise of police power x x x. Nonetheless, the *Sangguniang Bayan* of Dasmariñas in this case, in its exercise of police power through the enactment of the 1981 Comprehensive Zoning Ordinance, itself abided by the general rule and included in the very same ordinance an express commitment to honor rights that had already vested under previous ordinances, rules, and regulations. EMRASON acquired the vested right to use and develop the subject property as a residential subdivision on July 9, 1972 with the approval of Resolution No. 29-A by the Municipality of Dasmariñas. Such right cannot be impaired by the subsequent enactment of the 1981 Comprehensive Zoning Ordinance of Dasmariñas, in which the subject property was included in an agricultural zone. Hence, the Municipal Mayor of Dasmariñas had been continuously and consistently recognizing the subject property as a residential subdivision.

10. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP); THE SUBJECT PROPERTY IN CASE AT BAR IS EXEMPT FROM CARP.— The Court reiterates that since July 9, 1972, upon approval of Resolution No. 29-A by the

Municipality of Dasmariñas, the subject property had been reclassified from agricultural to residential. The tax declarations covering the subject property, classifying the same as agricultural, cannot prevail over Resolution No. 29-A. x x x Since the subject property had been reclassified as residential land by virtue of Resolution No. 29-A dated July 9, 1972, it is no longer agricultural land by the time the CARL took effect on June 15, 1988 and is, therefore, exempt from the CARP.

11. ID.; ID.; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); THE OPERATIVE FACT THAT PLACES A PARCEL OF LAND BEYOND THE AMBIT OF THE LAW IS ITS VALID RECLASSIFICATION FROM AGRICULTURAL TO NON-AGRICULTURAL PRIOR TO THE EFFECTIVITY OF THE LAW.— That the land in the *Natalia Realty case* was reclassified as residential by a presidential proclamation, while the subject property herein was reclassified as residential by a local ordinance, will not preclude the application of the ruling of this Court in the former to the latter. The operative fact that places a parcel of land beyond the ambit of the CARL is its valid reclassification from agricultural to non-agricultural prior to the effectivity of the CARL on June 15, 1988, not by how or whose authority it was reclassified.

12. ID.; ID.; COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP); TO BE EXEMPT THEREFROM, ALL THAT IS NEEDED IS ONE VALID RECLASSIFICATION OF THE LAND FROM AGRICULTURAL TO NON-AGRICULTURAL BY A DULY AUTHORIZED GOVERNMENT AGENCY BEFORE THE EFFECTIVITY OF THE COMPREHENSIVE AGRARIAN REFORM LAW.— Noticeably, there were several government agencies which reclassified and converted the property from agricultural to non-agricultural in the *Pasong Bayabas case*. The CARL though does not specify which specific government agency should have done the reclassification. To be exempt from CARP, all that is needed is one valid reclassification of the land from agricultural to non-agricultural by a duly authorized government agency before June 15, 1988, when the CARL took effect. All similar actions as regards the land subsequently rendered by other government agencies shall merely serve as confirmation of the reclassification. The Court actually recognized in the *Pasong Bayabas case* the power of

the local government to convert or reclassify lands through a zoning ordinance.

13. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; NO QUESTION MAY BE RAISED FOR THE FIRST TIME ON APPEAL; EXCEPTIONS.— As a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration. Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. The issues were first raised only in the Motion for Reconsideration of the Decision of the Court of Appeals, thus, it is as if they were never duly raised in that court at all. Hence, this Court cannot now, for the first time on appeal, entertain these issues, for to do so would plainly violate the basic rule of fair play, justice and due process. The Court reiterates and emphasizes the well-settled rule that an issue raised for the first time on appeal and not raised timely in the proceedings in the lower court is barred by estoppel. Indeed, there are exceptions to the aforecited rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.

14. LABOR AND SOCIAL LEGISLATION: AGRARIAN LAWS; AGRICULTURAL LAND REFORM CODE; SECTION 36 (1) THEREOF WOULD APPLY ONLY IF THE LAND IN QUESTION IS SUBJECT TO AN AGRICULTURAL LEASEHOLD.— Contrary to the contention of Buklod, there is no necessity to carry out the conversion of the subject property to a subdivision within one year, at the risk of said property reverting to agricultural classification. x x x At the time Resolution No. 29-A was enacted by the Municipality of Dasmariñas on **July 9, 1972**, the Code of Agrarian Reforms was already in effect. The amended Section 36(1) thereof no longer contained the one-year time frame within which conversion should be carried out. More importantly, Section

36(1) of the Code of Agrarian Reforms would apply only if the land in question was subject of an agricultural leasehold, a fact that was not established in the proceedings below. It may do well for the Buklod members to remember that they filed their present Petition to seek award of ownership over portions of the subject property as qualified farmer-beneficiaries under the CARP; and not payment of disturbance compensation as agricultural lessees under the Code of Agrarian Reforms. The insistence by Buklod on the requisites under Section 36(1) of the Agricultural Land Reform Code/Code of Agrarian Reforms only serves to muddle the issues rather than support its cause.

15. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; WHEN ALLOWED.— To apply the rules strictly, the motion of Buklod to intervene was filed too late. According to Section 2, Rule 19 of the Rules of Civil Procedure, "a motion to intervene may be filed at any time **before** rendition of judgment by the trial court." Judgment was already rendered in DARAB Case No. IV-Ca-0084-92 (the petition of EMRASON to nullify the notices of acquisition over the subject property), not only by the **DAR Hearing Officer**, who originally heard the case, but also the **DAR Secretary**, and then the **OP**, on appeal. Buklod only sought to intervene when the case was already before the Court of Appeals. The appellate court, in the exercise of its discretion, still allowed the intervention of Buklod in CA-G.R. SP No. 40950 only because it was "not being in any way prejudicial to the interest of the original parties, **nor will such intervention change the factual legal complexion of the case**." The intervention of Buklod challenged only the remedy availed by EMRASON and the propriety of the preliminary injunction issued by the Court of Appeals, which were directly and adequately addressed by the appellate court in its Decision dated March 26, 1997.

16. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); DEPARTMENT OF AGRARIAN REFORM; HAS PRIMARY JURISDICTION OVER THE CLAIMS RAISED IN CASE AT BAR.— The factual matters raised by Buklod in its Motion for Reconsideration of the March 26, 1997 Decision of the Court

of Appeals, and which it sought to prove by evidence, inevitably changes "the factual legal complexion of the case." The allegations of Buklod that its members are tenant-farmers of the subject property who acquired vested rights under previous agrarian reform laws, go against the findings of the DAR Region IV Hearing Officer, adopted by the DAR Secretary, the OP, and Court of Appeals, that the subject property was being acquired under the CARP for distribution to the tenant-farmers of the neighboring NDC property, after a determination that the latter property was insufficient for the needs of both the NDC-Marubeni industrial estate and the tenant-farmers. Furthermore, these new claims of Buklod are beyond the appellate jurisdiction of the Court of Appeals, being within the primary jurisdiction of the DAR.

APPEARANCES OF COUNSEL

Delfin B. Samson for petitioner in G.R. No. 131624.

Pelaez Gregorio Sipin Bala & Robles for E.M. Ramos & Sons, Inc.

David Cui-David Buenaventura & Ang Law Offices and *Aleli A. Okit* for petitioner in G.R. No. 131481.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court are consolidated Petitions for Review on *Certiorari*, under Rule 45 of the 1997 Rules of Civil Procedure, filed by the Buklod nang Magbubukid sa Lupaing Ramos, Inc. (Buklod) and the Department of Agrarian Reform (DAR), assailing the Decision[1] dated March 26, 1997 and the Resolution[2] dated November 24, 1997 of the Court of Appeals in CA-G.R. SP No. 40950.

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[1] *Rollo* (G.R. No. 131481), pp. 22-41; penned by Associate Justice Cancio C. Garcia with Associate Justices Eugenio S. Labitoria and Oswaldo D. Agcaoili, concurring.

[2] *Id.* at 54-59.

The Court of Appeals declared the parcels of land owned by E.M. Ramos and Sons, Inc. (EMRASON), located in Barangay Langkaan, Dasmariñas, Cavite (subject property), exempt from the coverage of the Comprehensive Agrarian Reform Program (CARP), thus, nullifying and setting aside the Decision[3] dated February 7, 1996 and Resolution[4] dated May 14, 1996 of the Office of the President (OP) in O.P. Case No. 5461.

Quoted hereunder are the facts of the case as found by the Court of Appeals:

> At the core of the controversy are several parcels of unirrigated land (303.38545 hectares) which form part of a larger expanse with an area of 372 hectares situated at Barangay Langkaan, Dasmariñas, Cavite. Originally owned by the Manila Golf and Country Club, the property was acquired by the [herein respondent EMRASON] in 1965 for the purpose of developing the same into a residential subdivision known as "Traveller's Life Homes."
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> Sometime in 1971, the Municipal Council of Dasmariñas, Cavite, acting pursuant to Republic Act (R.A.) No. 2264, otherwise known as the "Local Autonomy Act," enacted Municipal Ordinance No. 1, hereinafter referred to as Ordinance No. 1, entitled "An Ordinance Providing Subdivision Regulation and Providing Penalties for Violation Thereof."
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> In May, 1972, [respondent] **E.M. Ramos and Sons, Inc**., applied for an authority to convert and develop its aforementioned 372-hectare property into a residential subdivision, attaching to the application detailed development plans and development proposals from Bancom Development Corporation and San Miguel Corporation. Acting thereon, the Municipal Council of Dasmariñas, Cavite passed on July 9, 1972 Municipal Ordinance No. 29-A (Ordinance No. 29-A, for brevity), approving [EMRASON's] application. Ordinance No. 29-A pertinently reads:
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> > *"Resolved, as it is hereby resolved, to approve the application for subdivision containing an area of Three Hundred Seventy-Two (372) Hectares situated in Barrios Bocal and Langkaan, named as Traveller's Life Homes.*

[3] *Rollo* (G.R. No. 131624), pp. 89-109; penned by Deputy Executive Secretary Renato C. Corona (now Chief Justice of this Court).

[4] *Id.* at 110-113.

Resolved that the Municipal Ordinance regarding subdivision regulations existing in this municipality shall be strictly followed by the subdivision."

Subsequently, [EMRASON] paid the fees, dues and licenses needed to proceed with property development.

It appears, however, that the actual implementation of the subdivision project suffered delay owing to the confluence of events. Among these was the fact that the property in question was then mortgaged to, and the titles thereto were in the possession of, the Overseas Bank of Manila, which during the period material was under liquidation.

On June 15, 1988, Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law or CARL, took effect, ushering in a new process of land classification, acquisition and distribution.

On September 23, 1988, the Municipal Mayor of Dasmariñas, Cavite addressed a letter to [EMRASON], stating in part, as follows:

"In reply to your letter of June 2, 1988, we wish to clarify that the Municipality of Dasmariñas, Cavite, has approved the development of your property situated in Barrios Bukal and Langkaan, Dasmariñas, Cavite, with a total area of 372 hectares, more or less, into residential, industrial, commercial and golf course project.

This conversion conforms with the approved Development Plan of the Municipality of Dasmariñas Cavite."

Then came the Aquino government's plan to convert the tenanted neighboring property of the National Development Company (NDC) into an industrial estate to be managed through a joint venture scheme by NDC and the Marubeni Corporation. Part of the overall conversion package called for providing the tenant-farmers, opting to remain at the NDC property, with three (3) hectares each. However, the size of the NDC property turned out to be insufficient for both the demands of the proposed industrial project as well as the government's commitment to the tenant-farmers. To address this commitment, the Department of Agrarian Reform (DAR) was thus tasked with acquiring additional lands from the nearby areas. The DAR earmarked for this purpose the subject property of [EMRASON].

On August 29, 1990, then DAR Secretary Benjamin Leong sent out the first of four batches of notices of acquisition, each of which drew protest from [EMRASON]. All told, these notices covered 303.38545 hectares of land situated at Barangay Langkaan, Dasmariñas, Cavite owned by [EMRASON].

In the meantime, [EMRASON] filed with the Department of Agrarian Reform Adjudication Board (DARAB), Region IV, Pasig, Metro Manila, separate petitions to nullify the first three sets of the above notices. Collectively docketed as DARAB Case No. IV-Ca-0084-92, these petitions were subsequently referred to the Office of the Regional Director, Region IV, which had jurisdiction thereon. In his referral action, the Provincial Agrarian Adjudicator directed the DAR Region IV, through its Operations Division, to conduct a hearing and/or investigation to determine whether or not the subject property is covered by the Comprehensive Agrarian Reform Program (CARP) and, if not, to cancel the notices of acquisition.

Forthwith, the DAR regional office conducted an on-site inspection of the subject property.

In the course of the hearing, during which [EMRASON] offered Exhibits "A" to "UU-2" as documentary evidence, [EMRASON] received another set of notices of acquisition. As to be expected, [EMRASON] again protested.

On August 28, 1992, the Legal Division of DAR, Region IV, through Hearing Officer Victor Baguilat, rendered a decision declaring as null and void all the notices of acquisitions, observing that the property covered thereby is, pursuant to Department of Justice (DOJ) Opinion No. 44, series of 1990, exempt from CARP. The dispositive portion of the decision reads, as follows:

> *"WHEREFORE, in the light of the foregoing x x x, considering that the notices of acquisition dated August 29, 1990 relative to the 39 hectares partly covered by Transfer Certificate of Title No. T-19298; notices of acquisition all dated April 3, 1991 relative to the 131.41975 hectares partly covered by Transfer Certificates of Title Nos. x x x; notices of acquisition all dated August 28, 1991 relative to the 56.9201 hectares covered by Transfer Certificates of Title Nos. x x x; and notices of acquisition all dated May 15, 1992 relative to the 76.0456 covered by Transfer Certificates of Title Nos. x x x, all located at Barangay Langkaan, Dasmariñas, Cavite*

and owned by petitioner E.M. RAMOS and SONS, INC. are null and void on the ground that the subject properties are exempted from CARP coverage pursuant to DOJ Opinion No. 44, Series of 1990, therefore, the aforesaid notices of acquisition be cancelled and revoked."

The DOJ Opinion adverted to, rendered by then Justice Secretary Franklin Drilon, clarified that lands already converted to non-agricultural uses before June 15, 1988 were no longer covered by CARP.

On September 3, 1992, the Region IV DAR Regional Director *motu propio* (sic) elevated the case to the Office of the Agrarian Reform Secretary, it being his view that Hearing Officer Baguilat's decision ran contrary to the department's official position "*to pursue the coverage of the same properties and its eventual distribution to qualified beneficiaries particularly the Langkaan farmers in fulfillment of the commitment of the government to deliver to them the balance of thirty-nine hectares . . .*".

On January 6, 1993, the herein respondent ***DAR Secretary Ernesto Garilao*** [(DAR Secretary Garilao)] issued an order, the decretal portion of which partly reads:

"WHEREFORE, in the interest of law and justice, an order is hereby rendered:

1. Affirming the Notices of Acquisition dated August 29, 1990, April 3, 1991, August 28, 1991 and May 15, 1992 covering 303.38545 hectares of the property owned by the E.M. RAMOS & SONS, INC., located at Barangay Langkaan, Dasmariñas, Cavite . . .;

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

3. Directing the DAR field officials concerned to pursue the coverage under RA 6657 of the properties of E.M. Ramos & Sons, Inc. for which subject Notices of Acquisition had been issued.

SO ORDERED."

Its motion for reconsideration of the aforesaid order having been denied by the [DAR Secretary Garilao] in his subsequent order of January 6, 1993, [EMRASON] appealed to the ***Office of the President*** where the recourse was docketed as ***O.P. Case No. 5461.***

On February 7, 1996, the ***Office of the President***, through herein respondent ***Deputy Executive Secretary Renato C. Corona*** [(Deputy Executive Secretary Corona)], rendered the herein assailed decision x x x, dismissing [EMRASON's] appeal on the strength of the following observation:

> *"To recapitulate, this Office holds that [EMRASON's] property has remained **AGRICULTURAL** in classification and therefore falls within the coverage of the CARP, on the basis of the following:*
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> *1. [EMRASON] failed to comply with the mandatory requirements and conditions of Municipal Ordinance Nos. 1 and 29-A, specifically, among others, the need for approval of the National Planning Commission through the Highway District Engineer, and the Bureau of Lands before final submission to the Municipal Council and Municipal Mayor;*
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> *2. [EMRASON] failed to comply with Administrative Order No. 152, dated December 16, 1968; and*
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> *3. The certification of the Human Settlements Regulatory Commission (HSRC) in 1981 and the Housing and Land Use Regulatory Board (HLRB) in 1992 that the property of [EMRASON] is agricultural".*

Undaunted, [EMRASON] interposed a motion for reconsideration, followed later by another motion whereunder it invited attention to legal doctrines involving land conversion recently enunciated by no less than the ***Office of the President*** itself.

On May 14, 1996, the [Deputy Executive Secretary Corona] came out with his second challenged issuance denying [EMRASON's] aforementioned motion for reconsideration x x x .[5]

From the denial of its Motion for Reconsideration by the OP, EMRASON filed a Petition for Review with the Court of Appeals, which was docketed as CA-G.R. SP No. 40950.

On July 3, 1996, the Court of Appeals issued a Temporary Restraining Order (TRO),[6] which enjoined then DAR Secretary

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[5] *Rollo* (G.R. No. 131481), pp. 22-27.

[6] CA *rollo*, p. 96; penned by Associate Justice Cancio C. Garcia with Associate Justices Romeo J. Callejo and Artemio G. Tuquero, concurring.

Ernesto Garilao and Deputy Executive Secretary Renato C. Corona[7] from implementing the OP Decision of February 7, 1996 and Resolution of May 14, 1996 until further orders from the court. On September 17, 1996, the appellate court issued a Resolution[8] granting the prayer of EMRASON for the issuance of a writ of preliminary injunction. The writ of preliminary injunction[9] was actually issued on September 30, 1996 after EMRASON posted the required bond of ₱500,000.00.

The DAR Secretary filed a Motion for Reconsideration of the Resolution dated September 17, 1996 of the Court of Appeals, with the prayer that the writ of preliminary injunction already issued be lifted, recalled and/or dissolved.

At this juncture, the DAR had already prepared Certificates of Land Ownership Award (CLOAs) to distribute the subject property to farmer-beneficiaries. However, the writ of preliminary injunction issued by the Court of Appeals enjoined the release of the CLOAs. Buklod, on behalf of the alleged 300 farmer-beneficiaries of the subject property, filed a Manifestation and Omnibus Motion, wherein it moved that it be allowed to intervene as an indispensable party in CA-G.R. SP No. 40950; that the writ of preliminary injunction be immediately dissolved, having been issued in violation of Section 55 of the CARL; and that the Petition for Review of EMRASON be dismissed since the appropriate remedy should have been a petition for *certiorari* before the Supreme Court.

On March 26, 1997, the Court of Appeals promulgated its assailed Decision.

The Court of Appeals allowed the intervention of Buklod because the latter's participation was "not being in any way prejudicial to the interest of the original parties, nor will such intervention change the factual legal complexion of the case."[10]

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[7] Now Chief Justice of the Supreme Court.

[8] CA *rollo*, pp. 107-109.

[9] *Id.* at 164-165.

[10] *Rollo* (G.R. No. 131481), p. 29.

The appellate court, however, affirmed the propriety of the remedy availed by EMRASON given that under Section 5 of Supreme Court Revised Administrative Circular No. 1-95 dated May 16, 1995, appeals from judgments or final orders of the OP or the DAR under the CARL shall be taken to the Court of Appeals, through a verified petition for review; and that under Section 3 of the same Administrative Circular, such a petition for review may raise questions of facts, law, or mixed questions of facts and law.

Ultimately, the Court of Appeals ruled in favor of EMRASON because the subject property was already converted/classified as residential by the Municipality of Dasmariñas prior to the effectivity of the CARL. The appellate court reasoned:

> For one, whether or not the Municipality of Dasmariñas, Cavite had in place in the early seventies a general subdivision plan is to us of no moment. The absence of such general plan at that time cannot be taken, for the nonce, against the [herein respondent EMRASON]. To our mind, the more weighty consideration is the accomplished fact that the municipality, conformably with its statutory-conferred local autonomy, had passed a subdivision measure, *i.e.*, Ordinance No. 1, and had approved in line thereto, through the medium of Ordinance No. 29-A, [EMRASON's] application for subdivision, or with like effect approved the conversion/classification of the lands in dispute as residential. Significantly, the Municipal Mayor of Dasmariñas, Cavite, in his letter of September 23, 1988 to [EMRASON], clarified that such conversion conforms with the approved development plan of the municipality.
>
> For another, the requirement prescribed by the cited Section 16[a] of Ordinance No. 1 relates to the approval in the first instance by the National Planning Commission of the final plat of the scheme of the subdivision, not the conversion from agricultural to residential itself. As [EMRASON] aptly puts it:
>
> > *"x x x the final plat or final plan, map or chart of the subdivision is not a condition sine qua non for the conversion x x x as the conversion was already done by the Municipal Council of Dasmariñas, Cavite. Municipal Ordinance No. 29-A*

merely required that the final plat, or final plan x x x of the subdivision be done in conformity with Municipal Ordinance No. 1, the same to be followed by the subdivision itself. [EMRASON] therefore did not have to undertake the immediate actual development of the subject parcel of lands as the same had already been converted and declared residential by law. x x x" (Petition, pp. 17 and 18).

[EMRASON's] pose has the merit of logic. As may be noted, Ordinance No. 29-A contained two (2) resolutory portions, each inter-related to, but nonetheless independent of, the other. The first resolution, reading —

"Resolved, as it is hereby resolved, to approve the application for subdivision containing an area of Three Hundred Seventy-Two (372) Hectares situated in Barrios Bocal and Langkaan, named as Travellers Life Homes"

approved the application for subdivision or the conversion of the 372-hectare area into residential, while the second, reading —

"Resolved that the Municipal Ordinance regarding subdivision regulations existing in this municipality shall be strictly followed by the subdivision"

provides that the subdivision owner/developer shall follow subdivision regulations. It will be noted further that the second resolution already referred to the [EMRASON's] property as "subdivision," suggesting that the Municipal Council already considered as of that moment [EMRASON's] area to be for residential use.

Another requirement which [EMRASON] allegedly failed to comply with is found in Administrative Order (A.O.) No. 152, series of 1968, which pertinently provides —

"1. All Municipal Boards or City Councils, and all Municipal Councils in cities and municipalities in which a subdivision ordinance is in force, shall submit three copies of every proposed subdivision plan for which approval is sought together with the subdivision ordinance, to the National Planning Commission for comment and recommendation."

This Court is at a loss to understand how [EMRASON] could be expected to heed a directive addressed to local government legislative bodies. From a perusal of the title of A.O. No. 152, it is at once obvious from whom it exacts compliance with its command, thus: "REQUIRING THE MUNICIPAL BOARDS OR CITY COUNCILS AND MUNICIPAL COUNCILS TO SUBMIT PROPOSED ORDINANCES AND SUBDIVISION PLANS TO THE NATIONAL PLANNING COMMISSION FOR COMMENT AND RECOMMENDATION, BEFORE TAKING ACTION ON THE SAME, AND TO FORWARD A COPY OF THEIR APPROVED SUBDIVISION ORDINANCES TO THE SAID COMMISSION."

To be sure, [EMRASON] cannot be made to bear the consequences for the non-compliance, if this be the case, by the Municipal Council of Dasmariñas, Cavite with what A.O. 152 required. A converse proposition would be antithetical to the sporting idea of fair play.[11]

As for the other requirements which EMRASON purportedly failed to comply with, the Court of Appeals held that these became obligatory only after the subject property was already converted to non-agricultural, to wit:

Foregoing considered, this Court holds that everything needed to validly effect the conversion of the disputed area to residential had been accomplished. The only conceivable step yet to be taken relates to the obtention of a conversion order from the DAR, or its predecessor, the Ministry of Agrarian Reform (MAR) under its rather intricate procedure established under Memorandum Circular No. 11-79. But then, this omission can hardly prejudice the [herein respondent EMRASON] for the DAR/MAR guidelines were promulgated only in 1979, at which time the conversion of [EMRASON's] property was already a *fait accompli.*

Like the conversion procedure set up under Memorandum Circular No. 11-79, the revised methodology under the CARL cannot also be made to apply retroactively to lands duly converted/classified as residential under the aegis of the Local Autonomy Act. For, as a rule, a statute is not intended to affect transactions which occurred before it becomes operational (Tolentino, **COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE**, Vol. I, 1983 ed.,

[11] *Id.* at 34-36.

p. 23). And as the landmark case of ***Natalia Realty, Inc. vs. Department of Agrarian Reform***, 225 SCRA 278, teaches:

> *"Indeed, lands not devoted to agricultural activity are outside the coverage of CARL. These include lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than respondent DAR . x x x.*
>
> *xxx xxx xxx*
>
> *Since the NATALIA lands were converted prior to 15 June 1988, respondent DAR is bound by such conversion. It was therefore error to include the underdeveloped portions x x x within the coverage of CARL."*

It may be so, as the assailed decision stated, that in ***Natalia*** the lands therein involved received a locational clearance from the Housing and Land Use Regulatory Board (HLRB, formerly the Human Settlement Regulatory Commission [HSRC], as residential or commercial, a factor [EMRASON] cannot assert in its favor. This dissimilarity, however, hardly provides a compelling justification not to apply the lessons of ***Natalia***. This is because the property involved in this case, unlike that in ***Natalia***, underwent classification/ conversion before the creation on May 13, 1976 of the HSRC, then known as the Human Settlements Regulatory Commission (P.D. No. 933). Furthermore, what is recognized as the HSRC's authority to classify and to approve subdivisions and comprehensive land use development plans of local governments devolved on that agency only upon its reorganization on February 7, 1981, with the issuance of Executive Order No. 648 known as the **Charter of the Human Settlements Regulatory Commission**. Section 5 of the same executive order invested the HSRC with the above classifying and approving authority. In fine, the property of [EMRASON] went into the process of conversion at the time when the intervention thereon of the HSRC, which was even then non-existent, was unnecessary. Shortly before the creation of the HSRC, it would appear that to provincial, city, or municipal councils/boards, as the case may be, belong the prerogative, albeit perhaps not exclusive, to classify private lands within their respective territorial jurisdiction and approve their conversion from agricultural to residential or other non-agricultural uses. To paraphrase the holding in *Patalinghug vs. Court of Appeals*, 229 SCRA 554, once a local government has, pursuant to its police

power, reclassified an area as residential, that determination ought to prevail and must be respected.[12]

The Court of Appeals further observed that the subject property has never been devoted to any agricultural activity and is, in fact, more suitable for non-agricultural purposes, thus:

> It is worthy to note that the CARL defines "*agricultural lands*" as ***"lands devoted to agricultural activity x x x and not classified as mineral, forest, residential, commercial or industrial lands"*** (Sec. 3[c]). Guided by this definition, it is clear that [herein respondent EMRASON's] area does not fall under the category of agricultural lands. For, let alone the reality that the property is not devoted to some agricultural activity, being in fact unirrigated, and, as implied in the decision of the DAR Hearing Officer Victor Baguilat, without duly instituted tenants, the same had been effectively classified as residential. The bare circumstance of its not being actually developed as subdivision or that it is underdeveloped would not alter the conclusion. For, according to ***Natalia***, what actually determines the applicability of the CARL to a given piece of land is its previous classification and not its current use or stages of development as non-agricultural property.
>
> As a pragmatic consideration, the disputed area, in terms of its location in relation to existing commercial/industrial sites and its major economic use, is more suitable for purposes other than agriculture. In this connection, this Court notes that the property is situated at the heart of the CALABARZON, and, as Annex "C" of the petition demonstrates, lies adjacent to huge industrial/commercial complexes. The San Miguel-Monterey meat plant, the NDC-Marubeni complex and the Reynolds Aluminum plant may be mentioned. For sure, the Sangguniang Panlalawigan of Cavite, obviously cognizant of the economic potential of certain areas in the Municipality of Dasmariñas has, by Resolution No. 105, series of 1988, declared defined tracts of lands in the Municipality of Dasmariñas as "industrial-residential-institutional mix." [13]

As a last point, the Court of Appeals justified its issuance of a writ of preliminary injunction enjoining the implementation

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[12] *Id.* at 36-37.

[13] *Id.* at 38.

of the OP Decision dated February 7, 1996 and Resolution dated May 14, 1996, *viz*.:

As a final consideration, we will address the [herein petitioners] **DAR Secretary's and Buklod's** joint concern regarding the propriety of the preliminary injunction issued in this case. They alleged that the issuance is violative of Section 55 of the CARL which reads:

> "SEC. 55. ***No Restraining Order or Preliminary Injunction.*** — No Court in the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the PARC or any of its duly authorized or designated agencies in any case, dispute, controversy arising from, necessary to, or in connection with the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform." (Underscoring added.)

As will be noted, the aforequoted section specifically mentions the Presidential Agrarian Reform Council (PARC) of which the DAR Secretary is the Vice Chairman, or any of its duly designated agencies as protected from an injunctive action of any court. These agencies include the PARC Executive Committee, the PARC Secretariat, which the DAR Secretary heads, and, on the local level, the different Agrarian Reform Action Committees (Secs. 41 to 45, R.A. No. 6657).

From the records, there is no indication that the [petitioner] **Agrarian Reform Secretary** acted *vis-à-vis* the present controversy for, or as an agency of, the PARC. Hence, he cannot rightfully invoke Section 55 of the CARL and avail himself of the protective mantle afforded by that provision. The PARC, it bears to stress, is a policy-formulating and coordinating body (Sec. 18, E.O. 229, July 22, 1987) without express adjudicatory mandate, unlike the DAR Secretary who, as department head, is *"vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive jurisdiction over all matters involving the implementation of agrarian reform"* (Sec. 50, R.A. 6657). Thus, it is easy to accept the proposition that the [petitioner] **Agrarian Reform Secretary** issued his challenged orders in the exercise of his quasi-judicial power as department head.[14]

In the end, the Court of Appeals decreed:

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[14] *Id*. at 40.

WHEREFORE, the instant petition for review is hereby **GRANTED**. Accordingly, the challenged decision dated February 7, 1996 and the resolution of May 14, 1996 of the Office of the President in O.P. Case No. 5461 are hereby **NULLIFIED, VACATED** and **SET ASIDE**, and the notices of acquisition issued by the Department of Agrarian Reform covering the 372-hectare property of the [herein respondent EMRASON] at Barangay Langkaan, Dasmariñas, Cavite declared **VOID**.

The writ of preliminary injunction issued by this Court on September 30, 1996 is hereby made permanent.[15]

Buklod and DAR filed their respective Motions for Reconsideration of the foregoing Decision but both Motions were denied by the Court of Appeals in a Resolution dated November 24, 1997.

Aggrieved, Buklod and DAR filed the instant Petitions, which were consolidated by this Court in a Resolution[16] dated August 19, 1998.

In **G.R. No. 131481**, Buklod raises the following arguments:

1] THE MUNICIPAL ORDINANCE INVOKED BY [EMRASON] AS CONVERSION OF THE PROPERTY IN QUESTION ENACTED ON JULY 9, 1972 BY THE MUNICIPAL COUNCIL OF DASMARIÑAS, CAVITE IS IMPOTENT BECAUSE THE MUNICIPAL ORDINANCE IMPOSED CONDITIONS WHICH [EMRASON] NEVER COMPLIED. NO COMPLIANCE NO CONVERSION.

2] AT THE TIME THE ALLEGED ORDINANCE WAS ENACTED, A LAND REFORM LAW WAS ALREADY IN EFFECT GRANTING SECURITY OF TENURE TO THE FARMERS SO THAT A LANDOWNER CANNOT ARBITRARILY CONVERT AN AGRICULTURAL LAND INTO A DIFFERENT CLASSIFICATION WITHOUT COMPLYING WITH LEGAL REQUIREMENTS (R.A. 3844).

3] A MERE MUNICIPAL ORDINANCE CANNOT NEGATE LAND REFORM RIGHTS GRANTED TO THE FARMERS BY

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[15] *Id.* at 41.

[16] *Id.* at 103.

LEGISLATIVE ENACTMENT UNDER R.A. 3844 AND SUBSEQUENT LAWS. LAND REFORM LAW BEING A SOCIAL LEGISLATION IS PARAMOUNT.

4] LAND REFORM IS A CONSTITUTIONAL MANDATE FOR THE BENEFIT OF THE LANDLESS FARMERS SO THAT THE LAND REFORM LAW SHOULD BE CONSTRUED AND APPLIED IN ORDER TO ATTAIN THE LEGISLATIVE INTENT OF RELIEVING THE FARMERS FROM THEIR POVERTY AND BONDAGE. THE COURT OF APPEALS IGNORED THIS CONSTITUTIONAL MANDATE TO FAVOR THE LANDLORD [EMRASON].

5] THE COURT OF APPEALS ISSUED A RESTRAINING ORDER/INJUNCTION AGAINST THE CLEAR PROHIBITION IN THE CARL (SEC. 55 RA 6657) AND SO FAR DEPARTED FROM THE USUAL COURSE OF BY REFUSING TO GRANT THE PETITIONER FARMERS A HEARING INSPITE OF THE PROCEDURE PRESCRIBED BY RA 7902 (SEC. 1).[17]

In **G.R. No. 131624**, the DAR ascribes the following errors on the part of the Court of Appeals:

I.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE MUNICIPALITY OF DASMARIÑAS, CAVITE, WAS AUTHORIZED, UNDER THE LOCAL AUTONOMY ACT, TO CLASSIFY AND/OR RECLASSIFY LANDS CONSIDERING THAT WHAT WAS CONFERRED THEREUNDER WAS ONLY ZONING AUTHORITY, THUS, RENDER THE EXERCISE THEREOF BY THE MUNICIPAL COUNCIL OF DASMARIÑAS, CAVITE, *ULTRA VIRES;*

II.

EVEN ASSUMING, *IN GRATIA ARGUMENTI*, THAT THE AUTHORITY TO CLASSIFY AND RECLASSIFY LANDS IS POSSESSED BY MUNICIPAL CORPORATIONS, STILL THE HONORABLE COURT OF APPEALS ERRED WHEN IT CONSIDERED THE ALLEGED PASSAGE OF ORDINANCE NO. 29-A OF THE MUNICIPAL COUNCIL OF DASMARIÑAS, CAVITE, AS A VALID MEASURE RECLASSIFYING SUBJECT AGRICULTURAL LAND TO NON-AGRICULTURAL USE CONSIDERING THAT THE SAID APPROVAL OF THE

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

SUBDIVISION, PER LETTER OF THE MUNICIPAL MAYOR, FAILED TO COMPLY WITH EXISTING RULES AND REGULATIONS ON THE MATTER AND, THEREFORE, NONCOMPLYING AND INEFFECTUAL; AND

III.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT APPLIED THE RULING OF THE HONORABLE COURT IN THE *NATALIA REALTY CASE* DUE TO SUBSTANTIAL DISSIMILARITY IN FACTUAL SETTING AND MILIEU.[18]

At the crux of the present controversy is the question of whether the subject property could be placed under the CARP.

DAR asserts that the subject property could be compulsorily acquired by the State from EMRASON and distributed to qualified farmer-beneficiaries under the CARP since it was still agricultural land when the CARL became effective on June 15, 1988. Ordinance Nos. 1 and 29-A, approved by the Municipality of Dasmariñas on July 13, 1971 and July 9, 1972, respectively, did not reclassify the subject property from agricultural to non-agricultural. The power to reclassify lands is an inherent power of the National Legislature under Section 9 of Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended, which, absent a specific delegation, could not be exercised by any local government unit (LGU). The Local Autonomy Act of 1959 — in effect when the Municipality of Dasmariñas approved Ordinance Nos. 1 and 29-A — merely delegated to cities and municipalities zoning authority, to be understood as the regulation of the uses of property in accordance with the existing character of the land and structures. It was only Section 20 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, which extended to cities and municipalities limited authority to reclassify agricultural lands.

DAR also argues that even conceding that cities and municipalities were already authorized in 1972 to issue an

[18] *Rollo* (G.R. No. 131624), pp. 16-17.

ordinance reclassifying lands from agricultural to non-agricultural, Ordinance No. 29-A of the Municipality of Dasmariñas was not valid since it failed to comply with Section 3 of the Local Autonomy Act of 1959, Section 16 (a) of Ordinance No. 1 of the Municipality of Dasmariñas, and Administrative Order No. 152 dated December 16, 1968, which all required review and approval of such an ordinance by the National Planning Commission (NPC). Subsequent developments further necessitated review and approval of Ordinance No. 29-A by the Human Settlements Regulatory Commission (HSRC), which later became the Housing and Land Use Regulatory Board (HLURB).

DAR further avers that the reliance by the Court of Appeals on *Natalia Realty, Inc. v. Department of Agrarian Reform* [19] (*Natalia Realty case*) is misplaced because the lands involved therein were converted from agricultural to residential use by Presidential Proclamation No. 1637, issued pursuant to the authority delegated to the President under Section 71, *et seq*., of the Public Land Act.[20]

Buklod adopts the foregoing arguments of DAR. In addition, it submits that prior to Ordinance Nos. 1 and 29-A, there were already laws implementing agrarian reform, particularly: (1) Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code, in effect since August 8, 1963, and subsequently amended by Republic Act No. 6389 on September 10, 1971, after which it became known as the Code of Agrarian Reforms; and (2) Presidential Decree No. 27, otherwise known as the Tenants Emancipation Decree, which took effect on

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[19] G.R. No. 103302, August 12, 1993, 225 SCRA 278.

[20] Section 72 of the Public Land Act, in particular, reads:

SEC. 72. The Secretary of Agriculture and Natural Resources, if he approves the recommendations of the Director of Lands, shall submit the matter to the President of the end that the latter may issue a proclamation reserving the land surveyed, or such part thereof as he may deem proper, as a town site, and a certified copy of such proclamation shall be sent to the Director of Lands and another to the Register of Deeds of the province in which the surveyed land lies.

November 19, 1972. Agricultural land could not be converted for the purpose of evading land reform for there were already laws granting farmer-tenants security of tenure, protection from ejectment without just cause, and vested rights to the land they work on.

Buklod contends that EMRASON failed to comply with Section 36 of the Code of Agrarian Reforms, which provided that the conversion of land should be implemented within one year, otherwise, the conversion is deemed in bad faith. Given the failure of EMRASON to comply with many other requirements for a valid conversion, the subject property has remained agricultural. Simply put, no compliance means no conversion. In fact, Buklod points out, the subject property is still declared as "agricultural" for real estate tax purposes. Consequently, EMRASON is now estopped from insisting that the subject property is actually "residential."

Furthermore, Buklod posits that land reform is a constitutional mandate which should be given paramount consideration. Pursuant to said constitutional mandate, the Legislature enacted the CARL. It is a basic legal principle that a legislative statute prevails over a mere municipal ordinance.

Finally, Buklod questions the issuance by the Court of Appeals of a writ of preliminary injunction enjoining the distribution of the subject property to the farmer-beneficiaries in violation of Section 55 of the CARL; as well as the refusal of the appellate court to hold a hearing despite Section 1 of Republic Act No. 7902, [21] prescribing the procedure for reception of evidence before the Court of Appeals. At such a hearing, Buklod intended to present evidence that the subject property is actually agricultural and that Buklod members have been working on said property for decades, qualifying them as farmer-beneficiaries.

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[21] An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the Purpose Section Nine of Batas Pambansa Blg. 129, as Amended, Known as the Judiciary Reorganization Act of 1980.

EMRASON, on the other hand, echoes the ruling of the Court of Appeals that the subject property is exempt from CARP because it had already been reclassified as residential with the approval of Ordinance No. 29-A by the Municipality of Dasmariñas on July 9, 1972. EMRASON cites *Ortigas & Co., Ltd. Partnership v. Feati Bank and Trust Co.*[22] (*Ortigas case*) where this Court ruled that a municipal council is empowered to adopt zoning and subdivision ordinances or regulations under Section 3 of the Local Autonomy Act of 1959.

Still relying on the *Ortigas case*, EMRASON avows that the Municipality of Dasmariñas, taking into account the conditions prevailing in the area, could validly zone and reclassify the subject property in the exercise of its police power in order to safeguard the health, safety, peace, good order, and general welfare of the people in the locality. EMRASON describes the whole area surrounding the subject property as residential subdivisions (*i.e.*, Don Gregorio, Metro Gate, Vine Village, and Cityland Greenbreeze 1 and 2 Subdivisions) and industrial estates (*i.e.*, Reynolds Aluminum Philippines, Inc. factory; NDC-Marubeni industrial complex, San Miguel Corporation-Monterey cattle and piggery farm and slaughterhouse), traversed by national highways (*i.e.*, Emilio Aguinaldo National Highway, Trece Martirez, Puerto Azul Road, and Governor's Drive). EMRASON mentions that on March 25, 1988, the *Sangguniang Panlalawigan* of the Province of Cavite passed Resolution No. 105 which declared the area where subject property is located as "industrial-residential-institutional mix."

EMRASON further maintains that Ordinance No. 29-A of the Municipality of Dasmariñas is valid. Ordinance No. 29-A is complete in itself, and there is no more need to comply with the alleged requisites which DAR and Buklod are insisting upon. EMRASON quotes from *Patalinghug v. Court of Appeals*[23] (*Patalinghug case*) that "once a local government has reclassified an area as commercial, that determination for zoning purposes must prevail."

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[22] 183 Phil. 176 (1979).

[23] G.R. No. 104786, January 27, 1994, 229 SCRA 554, 559.

EMRASON points out that Ordinance No. 29-A, reclassifying the subject property, was approved by the Municipality of Dasmariñas on July 9, 1972. Executive Order No. 648, otherwise known as the Charter of the Human Settlements Regulatory Commission (HSRC Charter) — which conferred upon the HSRC the power and duty to review, evaluate, and approve or disapprove comprehensive land use and development plans and zoning ordinances of LGUs — was issued only on February 7, 1981. The exercise by HSRC of such power could not be applied retroactively to this case without impairing vested rights of EMRASON. EMRASON disputes as well the absolute necessity of submitting Ordinance No. 29-A to the NPC for approval. Based on the language of Section 3 of the Local Autonomy Act of 1959, which used the word "may," review by the NPC of the local planning and zoning ordinances was merely permissive. EMRASON additionally posits that Ordinance No. 1 of the Municipality of Dasmariñas simply required approval by the NPC of the final plat or plan, map, or chart of the subdivision, and not of the reclassification and/or conversion by the Municipality of the subject property from agricultural to residential. As for Administrative Order No. 152 dated December 16, 1968, it was directed to and should have been complied with by the city and municipal boards and councils. Thus, EMRASON should not be made to suffer for the non-compliance by the Municipal Council of Dasmariñas with said administrative order.

EMRASON likewise reasons that since the subject property was already reclassified as residential with the mere approval of Ordinance No. 29-A by the Municipality of Dasmariñas, then EMRASON did not have to immediately undertake actual development of the subject property. Reclassification and/or conversion of a parcel of land are different from the implementation of the conversion.

EMRASON is resolute in its stance that the Court of Appeals correctly applied the *Natalia Realty case* to the present case since both have similar facts; the only difference being that the former involves a presidential fiat while the latter concerns a legislative fiat.

EMRASON denies that the Buklod members are farmer-tenants of the subject property. The subject property has no farmer-tenants because, as the Court of Appeals observed, the property is unirrigated and not devoted to any agricultural activity. The subject property was placed under the CARP only to accommodate the farmer-tenants of the NDC property who were displaced by the NDC-Marubeni Industrial Project. Moreover, the Buklod members are still undergoing a screening process before the DAR-Region IV, and are yet to be declared as qualified farmer-beneficiaries of the subject property. Hence, Buklod members failed to establish they already have vested right over the subject property.

EMRASON urges the Court not to consider issues belatedly raised by Buklod. It may be recalled that Buklod intervened in CA-G.R. SP No. 40950 just before the Court of Appeals rendered judgment in said case. When the appellate court promulgated its Decision on March 26, 1997 favoring EMRASON, Buklod filed a Motion for Reconsideration of said judgment, to which EMRASON, in turn, filed a Comment and Opposition. In its Reply to the aforementioned Comment and Opposition of EMRASON, Buklod raised new factual matters, specifically, that: (1) EMRASON has not even subdivided the title to the subject property 27 years after its purported reclassification/ conversion; (2) EMRASON never obtained a development permit nor mayor's permit to operate a business in Dasmariñas; and (3) the farmer-tenants represented by Buklod have continuously cultivated the subject property. There was no cogent or valid reason for the Court of Appeals to allow Buklod to present evidence to substantiate the foregoing allegations. The DAR Region IV Hearing Officer already conducted extensive hearings during which the farmers were duly represented. Likewise, Buklod raises for the first time in its Petition before this Court the argument that the Tenants Emancipation Decree prescribes a procedure for conversion which EMRASON failed to comply with.

Lastly, EMRASON defends the issuance by the Court of Appeals of a writ of preliminary injunction in CA-G.R. SP No. 40950. Section 55 of the CARL is inapplicable to the case at

bar because said provision only prohibits the issuance by a court of a TRO or writ of preliminary injunction "against the PARC or any of its duly authorized or designated agencies." As the Court of Appeals declared, the PARC is a policy-formulating and coordinating body. There is no indication whatsoever that the DAR Secretary was acting herein as an agent of the PARC. The DAR Secretary issued the orders of acquisition for the subject property in the exercise of his quasi-judicial powers as department head.

The Court, after consideration of the issues and arguments in the Petitions at bar, affirms the Court of Appeals and rules in favor of EMRASON.

CARP coverage limited to agricultural land

Section 4, Chapter II of the CARL, as amended,[24] particularly defines the coverage of the CARP, to wit:

SEC. 4. *Scope*. — The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, **all public and private agricultural lands** as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture: *Provided*, That landholdings of landowners with a total area of five (5) hectares and below shall not be covered for acquisition and distribution to qualified beneficiaries.

More specifically, the following lands are covered by the CARP:

(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest

[24] The latest amendment to the CARL is Republic Act No. 9700, entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as Amended, and Appropriating Funds Therefor[,]" or more commonly known as the CARPER Law, which took effect on July 1, 2009 and extended CARP implementation for another five years, or until June 30, 2014.

or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain;

(b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;

(c) All other lands owned by the Government devoted to or suitable for agriculture; and

(d) **All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.**

A comprehensive inventory system in consonance with the national land use plan shall be instituted by the Department of Agrarian Reform (DAR), in accordance with the Local Government Code, for the purpose of properly identifying and classifying farmlands within one (1) year from effectivity of this Act, without prejudice to the implementation of the land acquisition and distribution." (Emphases supplied.)

Section 3 (c), Chapter I of the CARL further narrows down the definition of *agricultural land* that is subject to CARP to "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land."

The CARL took effect on **June 15, 1988**. To be exempt from the CARP, the subject property should have already been reclassified as residential prior to said date.

The Local Autonomy Act of 1959

The Local Autonomy Act of 1959, precursor of the Local Government Code of 1991, provided:

SEC. 3. *Additional powers of provincial boards, municipal boards or city councils and municipal and regularly organized municipal district councils.* — x x x

x x x x x x x x x

Power to adopt zoning and planning ordinances. — Any provision of law to the contrary notwithstanding, Municipal Boards

or City Councils in cities, and Municipal Councils in municipalities are hereby authorized to **adopt zoning and subdivision ordinances or regulations** for their respective cities and municipalities subject to the approval of the City Mayor or Municipal Mayor, as the case may be. Cities and municipalities **may, however, consult the National Planning Commission** on matters pertaining to planning and zoning. (Emphases supplied.)

Pursuant to the foregoing provision, the Municipal Council of Dasmariñas approved **Ordinance No. 1** on **July 13, 1971**, which laid down the general subdivision regulations for the municipality; and **Resolution No. 29-A** on **July 9, 1972**, which approved the application for subdivision of the subject property.

The Court observes that the OP, the Court of Appeals, and even the parties themselves referred to Resolution No. 29-A as an ordinance. Although it may not be its official designation, calling Resolution No. 29-A as Ordinance No. 29-A is not completely inaccurate. In the *Ortigas & Co. case*, the Court found it immaterial that the then Municipal Council of Mandaluyong declared certain lots as part of the commercial and industrial zone through a resolution, rather than an ordinance, because:

> Section 3 of R.A. No. 2264, otherwise known as the Local Autonomy Act, empowers a Municipal Council "to adopt zoning and subdivision ordinances or *regulations*" for the municipality. Clearly, **the law does not restrict the exercise of the power through an ordinance**. Therefore, granting that Resolution No. 27 is not an ordinance, it certainly is a **regulatory measure within the intendment or ambit of the word "regulation"** under the provision. As a matter of fact the same section declares that the power exists "(A)ny provision of law to the contrary notwithstanding x x x ." [25] (Emphases supplied.)

Zoning and reclassification

Section 3 (c), Chapter I of the CARL provides that a parcel of land reclassified for non-agricultural uses prior to **June 15, 1988** shall no longer be considered agricultural land subject to CARP. The Court is now faced with the question of whether

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[25] *Ortigas & Co., Ltd. Partnership v. Feati Bank and Trust Co., supra* note 22 at 186-187.

Resolution No. 29-A of the Municipality of Dasmariñas dated **July 9, 1972**, which approved the subdivision of the subject property for residential purposes, had also reclassified the same from agricultural to residential.

Zoning classification is an exercise by the local government of police power, not the power of eminent domain. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines, and apportions a given political subdivision into specific land uses as present and future projection of needs. [26]

The Court gave a more extensive explanation of zoning in *Pampanga Bus Company, Inc. v. Municipality of Tarlac*,[27] thus:

> The appellant argues that Ordinance No. 1 is a zoning ordinance which the Municipal Council is authorized to adopt. McQuillin in his treaties on Municipal Corporations (Volume 8, 3rd *ed*.) says:
>
> > Zoning is governmental regulation of the uses of land and buildings according to districts or zones. It is comprehensive where it is governed by a single plan for the entire municipality and prevails throughout the municipality in accordance with that plan. It is partial or limited where it is applicable only to a certain part of the municipality or to certain uses. Fire limits, height districts and building regulations are forms of partial or limited zoning or use regulation that are antecedents of modern comprehensive zoning. (pp. 11-12.)
> >
> > The term "zoning," ordinarily used with the connotation of comprehensive or general zoning, refers to governmental regulation of the uses of land and buildings according to districts or zones. This regulation must and does utilize classification of uses within districts as well as classification of districts, inasmuch as it manifestly is impossible to deal specifically with each of the innumerable uses made of land and buildings. Accordingly, (zoning has been defined as the confining of certain classes of buildings and uses to certain localities, areas, districts or zones.) It has been stated that

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[26] *Sta. Rosa Realty Development Corporation v. Court of Appeals*, 419 Phil. 457, 476 (2001).

[27] 113 Phil. 789 (1961).

> zoning is the regulation by districts of building development and uses of property, and that the term "zoning" is not only capable of this definition but has acquired a technical and artificial meaning in accordance therewith. (Zoning is the separation of the municipality into districts and the regulation of buildings and structures within the districts so created, in accordance with their construction, and nature and extent of their use. It is a dedication of districts delimited to particular uses designed to subserve the general welfare.) Numerous other definitions of zoning more or less in accordance with these have been given in the cases. (pp. 27-28.)[28]

According to Section 1 (b) of Ordinance No. 1, "*[s]ubdivision* means the division of a tract or parcel of land into two or more lots, sites or other divisions for the purpose, whether immediate or future, o[f] a sale or building development. It includes resubdivision, and when appropriate to the context, relates to the process of subdividing as to the land of territory subdivided." Subdivision ordinances or regulations such as Resolution No. 29-A, in relation to Ordinance No. 1, constitute **partial or limited zoning,** for they are applicable to a specific property in the city or municipality to be devoted for a certain use.

Section 9 of the Public Land Act — cited by the DAR and Buklod as the purported delegation by the National Legislature of the power to reclassify — is immaterial to the instant cases. Said provision reads:

> SEC. 9. For the purpose of their administration and disposition, the **lands of the public domain alienable or open to disposition shall be classified**, according to the use or purposes to which such lands are destined, as follows:
>
> (a) Agricultural;
>
> (b) Residential, commercial, industrial, or for similar productive purposes;
>
> (c) Educational, charitable, or other similar purposes; and
>
> (d) Reservations for townsites and for public and quasi-public uses.

[28] *Id.* at 800-801.

The President, upon recommendation by the Secretary of Agriculture and Natural Resources, shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another. (Emphasis supplied.)

The power delegated to the President under the aforequoted provision of the Public Land Act is limited to the classification of **lands of the public domain that are alienable or open to disposition**. It finds no application in the present cases for the simple reason that the subject property involved herein is no longer part of the public domain. The subject property is already privately owned and accordingly covered by certificates of title.

The concept that concerns this Court in the instant cases is the *reclassification of agricultural lands*. In *Alarcon v. Court of Appeals*,[29] the Court had the occasion to define and distinguish *reclassification* from *conversion* as follows:

Conversion is the act of changing the current use of a piece of agricultural land into some other use as approved by the Department of Agrarian Reform. *Reclassification*, on the other hand, is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion. x x x.[30] (Italics supplied.)

Reclassification also includes the reversion of non-agricultural lands to agricultural use.[31]

Under the present Local Government Code, it is clear that the authority to reclassify agricultural lands primarily resides in the *sanggunian* of the city or municipality. Said provision reads in full:

Sec. 20. *Reclassification of Lands.* — (a) A city or municipality may, *through an ordinance passed by the sanggunian* after conducting public hearing for the purpose, *authorize the*

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[29] 453 Phil. 373 (2003).

[30] *Id.* at 382-383.

[31] DAR Administrative Order No. 1, series of 1999.

reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned: *Provided*, That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:

(1) For highly urbanized and independent component cities, fifteen percent (15%);

(2) For component cities and first to the third class municipalities, ten percent (10%); and

(3) For fourth to sixth class municipalities, five percent (5%): *Provided, further*, That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act Numbered Sixty-six hundred fifty-seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law," shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.

(b) The President may, when public interest so requires and upon recommendation of the National Economic and Development Authority, authorize a city or municipality to reclassify lands in excess of the limits set in the next preceding paragraph.

(c) The local government units shall, in conformity with existing laws, continue to **prepare their respective comprehensive land use plans enacted through zoning ordinances** which shall be the primary and dominant bases for the future use of land resources: *Provided*, That the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.

(d) When approval by a national agency is required for reclassification, such approval shall not be unreasonably withheld. Failure to act on a proper and complete application for reclassification within three (3) months from receipt of the same shall be deemed as approval thereof.

(e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657. (Emphases supplied.)

Prior to the Local Government Code of 1991, the Local Autonomy Act of 1959 was silent on the authority to reclassify agricultural lands. What the earlier statute expressly granted to city and municipal boards and councils, under Section 3 thereof, was the power to adopt zoning and subdivision ordinances, and regulations.

DAR and Buklod insist that zoning is merely the regulation of land use based on the **existing character** of the property and the structures thereon; and that zoning is a lesser power compared to reclassification so that the delegation of the former to the local government should not be deemed to include the latter.

Such arguments are easily refuted by reference to the definitions of zoning and reclassification earlier presented herein, which support a more extensive concept of zoning than that which DAR and BUKLOD assert.

By virtue of a *zoning ordinance*, the local legislature may arrange, prescribe, define, and apportion the land within its political jurisdiction into specific uses based not only on the **present**, but also on the **future** projection of needs. To limit zoning to the existing character of the property and the structures thereon would completely negate the power of the local legislature to plan land use in its city or municipality. Under such circumstance, zoning would involve no planning at all, only the rubber-stamping by the local legislature of the current use of the land.

Moreover, according to the definition of *reclassification*, the specified non-agricultural use of the land must be embodied in a land use plan, and the land use plan is enacted through a zoning ordinance. Thus, zoning and planning ordinances take precedence over reclassification. The reclassification of land use is dependent on the zoning and land use plan, not the other way around.

It may, therefore, be reasonably presumed that when city and municipal boards and councils approved an ordinance delineating an area or district in their cities or municipalities as residential, commercial, or industrial zone, pursuant to the power granted to them under Section 3 of the Local Autonomy Act of 1959, they were, at the same time, reclassifying any agricultural lands within the zone for non-agricultural use; hence, ensuring the implementation of and compliance with their zoning ordinances. The logic and practicality behind such a presumption is more evident when considering the approval by local legislative bodies of subdivision ordinances and regulations. The approval by city and municipal boards and councils of an application for subdivision through an ordinance should already be understood to include approval of the reclassification of the land, covered by said application, from agricultural to the intended non-agricultural use. Otherwise, the approval of the subdivision application would serve no practical effect; for as long as the property covered by the application remains classified as agricultural, it could not be subdivided and developed for non-agricultural use.

A liberal interpretation of the zoning power of city and municipal boards and councils, as to include the power to accordingly reclassify the lands within the zones, would be in accord with the avowed legislative intent behind the Local Autonomy Act of 1959, which was to increase the autonomy of local governments. Section 12 of the Local Autonomy Act of 1959 itself laid down rules for interpretation of the said statute:

SEC. 12. *Rules for the interpretation of the Local Autonomy Act.* —

1. **Implied power** of a province, a city or municipality shall be **liberally construed** in its favor. Any fair and reasonable doubt as to the existence of the power should be interpreted in favor of the local government and it shall be presumed to exist.

2. The **general welfare clause** shall be **liberally interpreted** in case of doubt so as to give more power to local governments in promoting the economic condition, social welfare and material progress of the people in the community.

3. Vested rights existing at the time of the promulgation of this law arising out of a contract between a province, city or municipality on one hand and a third party on the other, should be governed by the original terms and provisions of the same, and in no case would this act infringe existing rights.

Moreover, the regulation by local legislatures of land use in their respective territorial jurisdiction through zoning and reclassification is an exercise of police power. In *Binay v. Domingo*,[32] the Court recognized that police power need not always be expressly delegated, it may also be inferred:

> The police power is a governmental function, an inherent attribute of sovereignty, which was born with civilized government. It is founded largely on the maxims, "*Sic utere tuo et alienum non laedas*" *and* "*Salus populi est suprema lex*." Its fundamental purpose is securing the general welfare, comfort and convenience of the people.
>
> Police power is inherent in the state but not in municipal corporations (*Balacuit v. CFI of Agusan del Norte*, 163 SCRA 182). Before a municipal corporation may exercise such power, there must be a valid delegation of such power by the legislature which is the repository of the inherent powers of the State. **A valid delegation of police power may arise from express delegation, or be inferred from the mere fact of the creation of the municipal corporation; and as a general rule, municipal corporations may exercise police powers within the fair intent and purpose of their creation which are reasonably proper to give effect to the powers expressly granted, and statutes conferring powers on public corporations have been construed as empowering them to do the things essential to the enjoyment of life and desirable for the safety of the people.** (62 C.J.S., p. 277). The so-called inferred police powers of such corporations are as much delegated powers as are those conferred in express terms, the inference of their delegation growing out of the fact of the creation of the municipal corporation and the additional fact that the corporation can only fully accomplish the objects of its creation by exercising such powers. (*Crawfordsville vs. Braden*, 28 N.E. 849). Furthermore, **municipal corporations, as governmental agencies, must have such measures of the power as are necessary to enable them to perform their governmental functions.** The power is a continuing one, founded

[32] G.R. No. 92389, September 11, 1991, 201 SCRA 508.

on public necessity. (62 C.J.S. p. 273) Thus, not only does the State effectuate its purposes through the exercise of the police power but the municipality does also. (*U.S. v. Salaveria,* 39 Phil. 102).

Municipal governments exercise this power under the **general welfare clause**: pursuant thereto they are clothed with authority to "enact such ordinances and issue such regulations as may be necessary to carry out and discharge the responsibilities conferred upon it by law, and such as shall be necessary and proper to provide for the health, safety, comfort and convenience, maintain peace and order, improve public morals, promote the prosperity and general welfare of the municipality and the inhabitants thereof, and insure the protection of property therein." (Sections 91, 149, 177 and 208, BP 337). And under Section 7 of BP 337, "every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary and proper for governance such as to promote health and safety, enhance prosperity, improve morals, and maintain peace and order in the local government unit, and preserve the comfort and convenience of the inhabitants therein."

Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people. It is the most essential, insistent, and illimitable of powers. In a sense it is the greatest and most powerful attribute of the government. It is elastic and must be responsive to various social conditions. (*Sangalang, et al. vs. IAC,* 176 SCRA 719). On it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property, and it has been said to be the very foundation on which our social system rests. (16 C.J.S., p. 896) However, it is not confined within narrow circumstances of precedents resting on past conditions; it must follow the legal progress of a democratic way of life. (*Sangalang, et al. vs. IAC, supra*).

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In the case of *Sangalang vs. IAC, supra*, We ruled that police power is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensiveness. Its scope, over-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough

room for an efficient and flexible response to conditions and circumstances thus assuring the greatest benefits.

The police power of a municipal corporation is broad, and has been said to be commensurate with, but not to exceed, the duty to provide for the real needs of the people in their health, safety, comfort, and convenience as consistently as may be with private rights. It extends to all the great public needs, and, in a broad sense includes all legislation and almost every function of the municipal government. It covers a wide scope of subjects, and, while it is especially occupied with whatever affects the peace, security, health, morals, and general welfare of the community, it is not limited thereto, but is broadened to deal with conditions which exists so as to bring out of them the greatest welfare of the people by promoting public convenience or general prosperity, and to everything worthwhile for the preservation of comfort of the inhabitants of the corporation (62 C.J.S. Sec. 128). Thus, it is deemed inadvisable to attempt to frame any definition which shall absolutely indicate the limits of police power.[33] (Emphases supplied.)

Based on the preceding discussion, it cannot be said that the power to reclassify agricultural land was first delegated to the city and municipal legislative bodies under Section 26 of the Local Government Code of 1991. Said provision only articulates a power of local legislatures, which, previously, had only been implied or inferred.

Compliance with other requirements or conditions

Resolution No. 29-A is a valid ordinance, which, upon its approval on July 9, 1972, immediately effected the zoning and reclassifying of the subject property for residential use. It need not comply with any of the requirements or conditions which DAR and Buklod are insisting upon.

DAR and Buklod aver that Resolution No. 29-A was not reviewed and approved by the NPC, in violation of the line in Section 3 of the Local Autonomy Act of 1959, stating that "[c]ities and municipalities may, however, consult the National

[33] *Id.* at 513-515.

Planning Commission on matters pertaining to planning and zoning." Consideration must be given, however, to the use of the word "may" in the said sentence. Where the provision reads "may," this word shows that it is not mandatory but discretionary. It is an auxiliary verb indicating liberty, opportunity, permission and possibility.[34] The use of the word "may" in a statute denotes that it is directory in nature and generally permissive only. The "plain meaning rule" or *verba legis* in statutory construction is thus applicable in this case. Where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[35] Since consultation with the NPC was merely discretionary, then there were only two mandatory requirements for a valid zoning or subdivision ordinance or regulation under Section 3 of the Local Autonomy Act of 1959, namely, that (1) the ordinance or regulation be adopted by the city or municipal board or council; and (2) it be approved by the city or municipal mayor, both of which were complied with by Resolution No. 29-A.

Section 16(a) of Ordinance No. 1 of the Municipality of Dasmariñas likewise mentions the NPC, to wit:

> a. Final plat of subdivision. — As essential requirements before a subdivision is accepted for verification by the Bureau of Lands, the final plat of the scheme of the subdivision must comply with the provision of this ordinance. **Application for plat approval shall be submitted to the Municipal Mayor and shall be forwarded to the National Planning Commission thru the Highway District Engineer for comment and/or recommendations, before action is taken by the Municipal Council**. The final approval of the plat shall be made by the Municipal Mayor upon recommendation of the Municipal Council by means of a resolution. (Emphasis supplied.)

The aforementioned provision of Ordinance No. 1 refers to the **final plat** of the subdivision. The term plat includes "plat,

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[34] *Caltex (Philippines), Inc. v. Court of Appeals*, G.R. No. 97753, August 10, 1992, 212 SCRA 448, 463.

[35] *National Federation of Labor v. National Labor Relations Commission*, 383 Phil. 910, 917-918 (2000).

plan, plot or replot."[36] It must be distinguished from the application for subdivision.

The Court concurs with the analysis of the Court of Appeals that Resolution No. 29-A actually contains two resolutions. The first reads:

> Resolved, as it is hereby Resolved to approve the **application for subdivision** containing an area of Three Hundred Seventy-Two Hectares (372) situated in barrio Bocal and Langkaan, named as Travellers Life Homes.[37] (Emphasis supplied.)

It is manifest, even from just a plain reading of said resolution, that the application for subdivision covering the subject property was categorically and unconditionally approved by the Municipality of Dasmariñas. As a consequence of such approval, the subject property is immediately deemed zoned and reclassified as residential.

Meanwhile, the second resolution in Resolution No. 29-A states:

> Resolved, that this **municipal ordinance regarding subdivision regulations** existing in this municipality shall be strictly followed by the **subdivision**.[38] (Emphases supplied.)

Significantly, this second resolution already refers to a "subdivision," supporting the immediately executory nature of the first resolution. The municipal ordinance which the subdivision must follow is Ordinance No. 1, the general subdivision regulations of the Municipality of Dasmariñas. Most provisions of Ordinance No. 1 laid down the minimum standards for the streets, roadways, sidewalks, intersections, lots and blocks, and other improvements in the subdivision, with which the final plat must comply or conform. Irrefragably, the review of the final plat of the subdivision calls for a certain level of technical expertise; hence, the directive to the Municipal Mayor to refer the final plat to

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[36] Section 1 (d) of Ordinance No. 1.

[37] Exhibit "G", Exhibits Folder, p. 42.

[38] *Id.*

the NPC, through the Highway District Engineer, for comments and recommendation, before the same is approved by the Municipal Council, then the Mayor.

In relation to the preceding paragraph, Administrative Order No. 152 dated December 16, 1968 required city and municipal boards and councils to submit proposed subdivision ordinances and plans or forward approved subdivision ordinances to the NPC. The OP imposed such a requirement because "it has come to the attention of [the] Office that the minimum standards of such ordinances regarding design, servicing and streets, and open spaces for parks and other recreational purposes are not being complied with[.]" [39] Review by the NPC of the proposed subdivision plan was for the purpose of determining "if it conforms with the subdivision ordinance."[40]

It is apparent that Section 16(a) of Ordinance No. 1 and Administrative Ordinance No. 152 contained the same directive: that the final plat of the subdivision be reviewed by the NPC to determine its conformity with the minimum standards set in the subdivision ordinance of the municipality. A closer scrutiny will reveal that Section 16(a) of Ordinance No. 1 and Administrative Order No. 152 related to the duties and responsibilities of local government and NPC officials as regards the final plat of the subdivision. There is no evidence to establish that the concerned public officers herein did not follow the review process for the final plat as provided in Section 16 (a) of Ordinance No. 1 and Administrative Order No. 152 before approving the same. Under Section 3(m), Rule 131 of the Rules of Court, there is a presumption that official duty has been regularly performed. Thus, in the absence of evidence to the contrary, there is a presumption that public officers performed their official duties regularly and legally and in compliance with applicable laws, in good faith, and in the exercise of sound judgment.[41] And — just as the

[39] Office of the President Administrative Order No. 152, dated December 16, 1968.

[40] *Id*.

[41] *United BF Homeowners' Association, Inc. v. The (Municipal) City Mayor, Parañaque City*, G.R. No. 141010, February 7, 2007, 515 SCRA 1, 12.

Court of Appeals observed — even if it is established that the accountable public officials failed to comply with their duties and responsibilities under Section 16(a) of Ordinance No. 1 and Administrative Order No. 152, it would be contrary to the fundamental precepts of fair play to make EMRASON bear the consequences of such non-compliance.

Although the two resolutions in Resolution No. 29-A may be related to the same subdivision, they are independent and separate. Non-compliance with the second resolution may result in the delay or discontinuance of subdivision development, or even the imposition of the penalties[42] provided in Ordinance No. 1, but not the annulment or reversal of the first resolution and its consequences.

The Court again agrees with the Court of Appeals that Resolution No. 29-A need not be subjected to review and approval by the HSRC/HLURB. Resolution No. 29-A was approved by the Municipality of Dasmariñas on **July 9, 1972**, at which time, there was even no HSRC/HLURB to speak of.

The earliest predecessor of the HSRC, the Task Force on Human Settlements, was created through Executive Order No. 419 more than a year later on **September 19, 1973**. And even then, the Task Force had no power to review and approve zoning and subdivision ordinances and regulations.

It was only on **August 9, 1978**, with the issuance of Letter of Instructions No. 729, that local governments were required to submit their existing land use plans, zoning ordinances, enforcement systems, and procedures to the Ministry of Human Settlements for review and ratification.

[42] PENALTY. Violation of any provision or provisions of this ordinance shall upon conviction, be penalized by a fine of not more than TWO HUNDRED PESOS (₱200.00) or by imprisonment of not more than SIX MONTHS (6) or by both fine and imprisonment in the discretion of the court. Each day that the violation of this ordinance continues shall be deemed a separate offense, after the date of the court decision is rendered.

If the violation is committed by a firm, a corporation, partnership or any other juridical person, the manager managing partners of the person changed with the management, of such firm, corporation, partnership or juridical person shall be criminally reasonable.

The HSRC was eventually established on **February 7, 1981**. Section 5(b) of the HSRC Charter[43] contained the explicit mandate for the HSRC to:

> b. **Review, evaluate and approve or disapprove comprehensive land use development plans and zoning ordinances of local government**; and the zoning component of civil works and infrastructure projects of national, regional and local governments; **subdivisions**, condominiums or estate development projects including industrial estates, of both the public and private sectors and urban renewal plans, programs and projects: Provided, that the land use Development Plans and Zoning Ordinances of Local Governments herein subject to review, evaluation and approval of the commission shall respect the classification of public lands for forest purposes as certified by the Ministry of Natural Resources: Provided, further, that the classification of specific alienable and disposable lands by the Bureau of Lands shall be in accordance with the relevant zoning ordinance of Local government where it exists; and provided, finally, that in cities and municipalities where there are as yet no zoning ordinances, the Bureau of Lands may dispose of specific alienable and disposable lands in accordance with its own classification scheme subject to the condition that the classification of these lands may be subsequently change by the local governments in accordance with their particular zoning ordinances which may be promulgated later. (Emphases supplied.)

Neither the Ministry of Human Settlements nor the HSRC, however, could have exercised its power of review retroactively absent an express provision to that effect in Letter of Instructions No. 729 or the HSRC Charter, respectively. A sound cannon of statutory construction is that a statute operates prospectively only and never retroactively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication. Article 4 of the Civil Code provides that: "Laws shall have no retroactive effect, unless the contrary is provided." Hence, in order that a law may have

[43] Executive Order No. 648.

retroactive effect, it is necessary that an express provision to this effect be made in the law, otherwise nothing should be understood which is not embodied in the law. Furthermore, it must be borne in mind that a law is a rule established to guide our actions without no binding effect until it is enacted, wherefore, it has no application to past times but only to future time, and that is why it is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions.[44]

Subsequent zoning ordinances

Still by the authority vested upon it by Section 3 of the Local Autonomy Act, the *Sangguniang Bayan* of Dasmariñas subsequently enacted a Comprehensive Zoning Ordinance, ratified by the HLURB under Board Resolution No. 42-A-3 dated **February 11, 1981** (1981 Comprehensive Zoning Ordinance of Dasmariñas). Upon the request of the DAR, Engr. Alfredo Gil M. Tan, HLURB Regional Technical Coordinator, issued a certification [45] dated September 10, 1992 stating that per the 1981 Comprehensive Zoning Ordinance of Dasmariñas, the subject property was within the **agricultural zone**. Does this mean that the subject property reverted from residential to agricultural classification?

The Court answers in the negative. While the subject property may be physically located within an agricultural zone under the 1981 Comprehensive Zoning Ordinance of Dasmariñas, said property retained its residential classification.

According to Section 17, the Repealing Clause, of the 1981 Comprehensive Zoning Ordinance of Dasmariñas: "All other ordinances, rules or regulations in conflict with the provision of this Ordinance are hereby repealed: Provided, that **rights that have vested before the effectivity of this Ordinance shall not be impaired**."

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[44] *Lepanto Consolidated Mining Co. v. WMC Resources Int'l. Pty. Ltd.*, G.R. No. 162331, November 20, 2006, 507 SCRA 315, 328.

[45] DAR records, p. 273.

In *Ayog v. Cusi, Jr.*,[46] the Court expounded on vested right and its protection:

That vested right has to be respected. It could not be abrogated by the new Constitution. Section 2, Article XIII of the 1935 Constitution allows private corporations to purchase public agricultural lands not exceeding one thousand and twenty-four hectares. Petitioners' prohibition action is barred by the doctrine of vested rights in constitutional law.

> "A right is vested when the right to enjoyment has become the property of some particular person or persons as a present interest" (16 C.J.S. 1173). It is "the privilege to enjoy property legally vested, to enforce contracts, and enjoy the rights of property conferred by the existing law" (12 C.J.S. 955, Note 46, No. 6) or "some right or interest in property which has become fixed and established and is no longer open to doubt or controversy" (*Downs vs. Blount*, 170 Fed. 15, 20, cited in *Balboa vs. Farrales*, 51 Phil. 498, 502).

The due process clause prohibits the annihilation of vested rights. **"A state may not impair vested rights by legislative enactment, by the enactment or by the subsequent repeal of a municipal ordinance, or by a change in the constitution of the State, except in a legitimate exercise of the police power"** (16 C.J.S. 1177-78).

It has been observed that, generally, the term "vested right" expresses the concept of present fixed interest, which in right reason and natural justice should be protected against arbitrary State action, or an innately just and imperative right which an enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny (16 C.J.S. 1174, Note 71, No. 5, citing *Pennsylvania Greyhound Lines, Inc. vs. Rosenthal*, 192 Atl. 2nd 587).[47] (Emphasis supplied.)

It is true that protection of vested rights is not absolute and must yield to the exercise of police power:

A law enacted in the exercise of police power to regulate or govern certain activities or transactions could be given retroactive effect and may reasonably impair vested rights or contracts. Police power legislation is applicable not only to future contracts, but equally to

[46] 204 Phil. 126 (1982).

[47] *Id.* at 135.

those already in existence. Non-impairment of contracts or vested rights clauses will have to yield to the superior and legitimate exercise by the State of police power to promote the health, morals, peace, education, good order, safety, and general welfare of the people. x x x .[48]

Nonetheless, the *Sangguniang Bayan* of Dasmariñas in this case, in its exercise of police power through the enactment of the 1981 Comprehensive Zoning Ordinance, itself abided by the general rule and included in the very same ordinance an express commitment to honor rights that had already vested under previous ordinances, rules, and regulations. EMRASON acquired the vested right to use and develop the subject property as a residential subdivision on July 9, 1972 with the approval of Resolution No. 29-A by the Municipality of Dasmariñas. Such right cannot be impaired by the subsequent enactment of the 1981 Comprehensive Zoning Ordinance of Dasmariñas, in which the subject property was included in an agricultural zone. Hence, the Municipal Mayor of Dasmariñas had been continuously and consistently recognizing the subject property as a residential subdivision.[49]

Incidentally, EMRASON mentions Resolution No. 105, Defining and Declaring the Boundaries of Industrial and Residential Land Use Plan in the Municipalities of Imus and Parts of Dasmariñas, Carmona, Gen. Mariano Alvarez, Gen. Trias, Silang, Tanza, Naic, Rosario, and Trece Martires City, Province of Cavite, approved by the *Sangguniang Panlalawigan* of Cavite on March 25, 1988. The *Sangguniang Panlalawigan* determined that "the lands extending from the said designated industrial areas would have greater economic value for residential and institutional uses, and would serve the interest and welfare for the greatest good of the greatest number of people." [50]

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[48] *Ortigas & Co., Ltd. v. Court of Appeals*, 400 Phil. 615, 622-623 (2000).

[49] See the List of Subdivisions within the Jurisdiction of Dasmariñas, Cavite (Exhibits Folder, Exhibit "QQ," pp. 195-200) and Certification dated September 23, 1988 (Exhibits Folder, Exhibit "S", p. 116).

[50] Resolution No. 105, Office of Sangguniang Panlalawigan, Province of Cavite.

Resolution No. 105, approved by the HLURB in 1990, partly reads:

> Tracts of land in the Municipality of Carmona from the People's Technology Complex to parts of the Municipality of Silang, **parts of the Municipalities of Dasmariñas,** General Trias, Trece Martires City, Municipalities of Tanza and Naic forming the strip of land traversed by the Puerto Azul Road extending two kilometers more or less from each side of the road which **are hereby declared as industrial-residential-institutional mix**.[51] (Emphases supplied.)

There is no question that the subject property is located within the afore-described area. And even though Resolution No. 105 has no direct bearing on the classification of the subject property prior to the CARL — it taking effect only in 1990 after being approved by the HLURB — it is a confirmation that at present, the subject property and its surrounding areas are deemed by the Province of Cavite better suited and prioritized for industrial and residential development, than agricultural purposes.

CARP exemption

The Court reiterates that since July 9, 1972, upon approval of Resolution No. 29-A by the Municipality of Dasmariñas, the subject property had been reclassified from agricultural to residential. The tax declarations covering the subject property, classifying the same as agricultural, cannot prevail over Resolution No. 29-A. The following pronouncements of the Court in the *Patalinghug case* are of particular relevance herein:

> The reversal by the Court of Appeals of the trial court's decision was based on Tepoot's building being declared for taxation purposes as residential. It is our considered view, however, that a **tax declaration is not conclusive of the nature of the property for zoning purposes**. A property may have been declared by its owner as residential for real estate taxation purposes but it may well be within a commercial zone. A discrepancy may thus exist in the determination of the nature of property for real estate taxation purposes *vis-à-vis* the determination of a property for zoning purposes.
>
> x x x x x x x x x

[51] *Id*.

The trial court's determination that Mr. Tepoot's building is commercial and, therefore, Sec. 8 is inapplicable, is strengthened by the fact that the Sangguniang Panlungsod has declared the questioned area as commercial or C-2. Consequently, even if Tepoot's building was declared for taxation purposes as residential, **once a local government has reclassified an area as commercial, that determination for zoning purposes must prevail**. While the commercial character of the questioned vicinity has been declared thru the ordinance, private respondents have failed to present convincing arguments to substantiate their claim that Cabaguio Avenue, where the funeral parlor was constructed, was still a residential zone. Unquestionably, the operation of a funeral parlor constitutes a "commercial purpose," as gleaned from Ordinance No. 363.[52] (Emphases supplied.)

Since the subject property had been reclassified as residential land by virtue of Resolution No. 29-A dated July 9, 1972, it is no longer agricultural land by the time the CARL took effect on June 15, 1988 and is, therefore, exempt from the CARP.

This is not the first time that the Court made such a ruling.

In the *Natalia Realty case*, Presidential Proclamation No. 1637 dated **April 18, 1979** set aside land in the Municipalities of Antipolo, San Mateo, and Montalban, Province of Rizal, as townsite areas. The properties owned by Natalia Realty, Inc. (Natalia properties) were situated within the areas proclaimed as townsite reservation. The developer of the Natalia properties was granted the necessary clearances and permits by the HSRC for the development of a subdivision in the area. Thus, the Natalia properties later became the Antipolo Hills Subdivision. Following the effectivity of the CARL on June 15, 1988, the DAR placed the undeveloped portions of the Antipolo Hills Subdivision under the CARP. For having done so, the Court found that the DAR committed grave abuse of discretion, thus:

Section 4 of R.A. 6657 provides that the CARL shall "cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands." As to what constitutes "agricultural land,"

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[52] *Patalinghug v. Court of Appeals*, *supra* note 23 at 558-559.

it is referred to as "*land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land.*" The deliberations of the Constitutional Commission confirm this limitation. "Agricultural lands" are only those lands which are "arable and suitable agricultural lands" and "*do not include commercial, industrial and residential lands.*"

Based on the foregoing, it is clear that the undeveloped portions of the Antipolo Hills Subdivision cannot in any language be considered as "agricultural lands." **These lots were intended for residential use. They ceased to be agricultural lands upon approval of their inclusion in the Lungsod Silangan Reservation.** Even today, the areas in question continue to be developed as a low-cost housing subdivision, albeit at a snail's pace x x x. **The enormity of the resources needed for developing a subdivision may have delayed its completion but this does not detract from the fact that these lands are still residential lands and outside the ambit of the CARL.**

Indeed, lands not devoted to agricultural activity are outside the coverage of CARL. These include lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than respondent DAR. In its Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses, DAR itself defined "agricultural land" thus —

> "x x x *Agricultural land refers* to those devoted to agricultural activity as defined in R.A. 6657 and not classified as mineral or forest by the Department of Environment and Natural Resources (DENR) and its predecessor agencies, and *not classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board (HLURB) and its preceding competent authorities prior to 15 June 1988 for residential*, commercial or industrial use."

Since the NATALIA lands were converted prior to 15 June 1988, respondent DAR is bound by such conversion. It was therefore error to include the undeveloped portions of the Antipolo Hills Subdivision within, the coverage of CARL.

Be that as it may, the Secretary of Justice, responding to a query by the Secretary of Agrarian Reform, noted in an Opinion that lands covered by Presidential Proclamation No. 1637, *inter alia*, of which

the NATALIA lands are part, having been reserved for townsite purposes "to be developed as human settlements by the proper land and housing agency," are "not deemed 'agricultural lands' within the meaning and intent of Section 3 (c) of R.A. No. 6657." Not being deemed "agricultural lands," they are outside the coverage of CARL.[53] (Emphases supplied.)

That the land in the *Natalia Realty case* was reclassified as residential by a presidential proclamation, while the subject property herein was reclassified as residential by a local ordinance, will not preclude the application of the ruling of this Court in the former to the latter. The operative fact that places a parcel of land beyond the ambit of the CARL is its valid reclassification from agricultural to non-agricultural prior to the effectivity of the CARL on June 15, 1988, not by how or whose authority it was reclassified.

In *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*[54] (*Pasong Bayabas case*), the Court made the following findings:

Under Section 3(c) of Rep. Act No. 6657, agricultural lands refer to lands devoted to agriculture as conferred in the said law and not classified as industrial land. Agricultural lands are only those lands which are arable or suitable lands that do not include commercial, industrial and residential lands. Section 4(e) of the law provides that it covers all private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon. Rep. Act No. 6657 took effect only on June 15, 1988. **But long before the law tools effect, the property subject of the suit had already been reclassified and converted from agricultural to non-agricultural or residential land by the following administrative agencies**: (a) the Bureau of Lands, when it approved the subdivision plan of the property consisting of 728 subdivision lots; (b) the National Planning Commission which approved the subdivision plan subdivided by the LDC/CAI for the development of the property into a low-cost housing project; **(c) the Municipal Council of *Carmona, Cavite, when it approved Kapasiyahang Blg. 30* on May**

[53] *Natalia Realty, Inc. v. Department of Agrarian Reform*, *supra* note 19 at 282-284.

[54] 473 Phil. 64 (2004).

30, 1976; (d) Agrarian Reform Minister Conrado F. Estrella, on July 3, 1979, when he granted the application of the respondent for the development of the Hakone Housing Project with an area of 35.80 hectares upon the recommendation of the Agrarian Reform Team, Regional Director of Region IV, which found, after verification and investigation, that the property was not covered by P.D. No. 27, it being untenanted and not devoted to the production of *palay*/or corn and that the property was suitable for conversion to residential subdivision; (e) by the Ministry of Local Government and Community Development; (f) the Human Settlements Regulatory Commission which issued a location clearance, development permit, Certificate of Inspection and License to Sell to the LDC/private respondent; and, (g) the Housing and Land Use Regulatory Board which also issued to the respondent CAI/LDC a license to sell the subdivision lots.[55] (Emphases supplied.)

Noticeably, there were several government agencies which reclassified and converted the property from agricultural to non-agricultural in the *Pasong Bayabas case*. The CARL though does not specify which specific government agency should have done the reclassification. To be exempt from CARP, all that is needed is one valid reclassification of the land from agricultural to non-agricultural by a duly authorized government agency before June 15, 1988, when the CARL took effect. All similar actions as regards the land subsequently rendered by other government agencies shall merely serve as confirmation of the reclassification. The Court actually recognized in the *Pasong Bayabas case* the power of the local government to convert or reclassify lands through a zoning ordinance:

Section 3 of Rep. Act No. 2264, amending the Local Government Code, specifically empowers municipal and/or city councils to adopt zoning and subdivision ordinances or regulations in consultation with the National Planning Commission. A zoning ordinance prescribes, defines, and apportions a given political subdivision into specific land uses as present and future projection of needs. **The power of the local government to convert or reclassify lands to residential lands to non-agricultural lands reclassified is not subject to the approval of the Department of Agrarian Reform.** Section 65

[55] *Id*. at 92-93.

of Rep. Act No. 6657 relied upon by the petitioner applies only to applications by the landlord or the beneficiary for the conversion of lands previously placed under the agrarian reform law after the lapse of five years from its award. It does not apply to agricultural lands already converted as residential lands prior to the passage of Rep. Act No. 6657.[56] (Emphases supplied.)

At the very beginning of *Junio v. Garilao*,[57] the Court already declared that:

> Lands already classified and identified as commercial, industrial or residential before June 15, 1988 — the date of effectivity of the Comprehensive Agrarian Reform Law (CARL) — are outside the coverage of this law. Therefore, they no longer need any conversion clearance from the Department of Agrarian Reform (DAR).[58]

The Court then proceeded to uphold the authority of the City Council of Bacolod to reclassify as residential a parcel of land through Resolution No. 5153-A, series of 1976. The reclassification was later affirmed by the HSRC. Resultantly, the Court sustained the DAR Order dated September 13, 1994, exempting the same parcel of land from CARP Coverage.

The writ of preliminary injunction

Any objection of Buklod against the issuance by the Court of Appeals of a writ of preliminary injunction, enjoining then DAR Secretary Garilao and Deputy Executive Secretary Corona from implementing the OP Decision of February 7, 1996 and Resolution of May 14, 1996 during the pendency of CA-G.R. SP No. 40950, had been rendered moot and academic when the appellate court already promulgated its Decision in said case on March 26, 1997 which made the injunction permanent. As the Court held in *Kho v. Court of Appeals*:[59]

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[56] *Id.* at 94-95.

[57] 503 Phil. 154 (2005).

[58] *Id.* at 157.

[59] 429 Phil. 140 (2002).

We cannot likewise overlook the decision of the trial court in the case for final injunction and damages. The dispositive portion of said decision held that the petitioner does not have trademark rights on the name and container of the beauty cream product. The said decision on the merits of the trial court rendered the issuance of the writ of a preliminary injunction moot and academic notwithstanding the fact that the same has been appealed in the Court of Appeals. This is supported by our ruling in ***La Vista Association, Inc. v. Court of Appeals***, to wit:

> *Considering that preliminary injunction is a provisional remedy which may be granted at any time after the commencement of the action and before judgment when it is established that the plaintiff is entitled to the relief demanded and only when his complaint shows facts entitling such reliefs xxx and it appearing that the trial court had already granted the issuance of a final injunction in favor of petitioner in its decision rendered after trial on the merits xxx the Court resolved to Dismiss the instant petition having been rendered moot and academic. An injunction issued by the trial court after it has already made a clear pronouncement as to the plaintiff's right thereto, that is, after the same issue has been decided on the merits, the trial court having appreciated the evidence presented, is proper, notwithstanding the fact that the decision rendered is not yet final* x x x. Being an ancillary remedy, the proceedings for preliminary injunction cannot stand separately or proceed independently of the decision rendered on the merit of the main case for injunction. The merit of the main case having been already determined in favor of the applicant, the preliminary determination of its non-existence ceases to have any force and effect. (italics supplied)

La Vista categorically pronounced that the issuance of a final injunction renders any question on the preliminary injunctive order moot and academic despite the fact that the decision granting a final injunction is pending appeal. Conversely, a decision denying the applicant-plaintiff's right to a final injunction, although appealed, renders moot and academic any objection to the prior dissolution of a writ of preliminary injunction.[60]

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[60] *Id.* at 151-152.

Issues belatedly raised

Buklod sought to intervene in CA-G.R. SP No. 40950, then pending before the Court of Appeals, by filing a Manifestation and Omnibus Motion in which it argued only two points: (1) the writ of preliminary injunction be immediately dissolved for having been issued in violation of Section 55 of the CARL; and (2) that the Petition for Review of EMRASON be dismissed for being the wrong remedy.

It was only after the Court of Appeals rendered its Decision dated March 26, 1997 unfavorable to both DAR and Buklod did Buklod raise in its Motion for Reconsideration several other issues, both factual and legal,[61] directly assailing the exemption of the subject property from the CARP. The Court of Appeals

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[61] 1) UNDER THE LAW APPLICABLE AT THE TIME OF THE ALLEGED CONVERSION, [EMRASON] HAD ONE (1) YEAR WITHIN WHICH TO IMPLEMENT THE CONVERSION; OTHERWISE, THE CONVERSION IS DEEMED TO BE IN BAD FAITH (Sec. 36 Agricultural Land Reform Code, R.A. 3844);

2) BY VIRTUE OF THE AGRICULTURAL LAND REFORM CODE (R.A. 3844) WHICH TOOK EFFECT ON AUGUST 8, 1963, THE FARMERS CULTIVATING THE PROPERTY WERE GRANTED A LEGISLATIVE SECURITY OF TENURE AS AGRICULTURAL LESSEE (Sec. 7) WHICH CANNOT BE NEGATED BY A MERE MUNICIPAL ORDINANCE;

3) SINCE 1972 TO THE PRESENT, [EMRASON] DID NOT PERFORM ANY ACT TO IMPLEMENT THE ALLEGED CONVERSION OF THE PROPERTY INTO A RESIDENTIAL SUBDIVISION SUCH AS SUBDIVIDING THE TITLES IN ACCORDANCE WITH A SUBDIVISION PLAN; DECLARING THE PROPERTY AS RESIDENTIAL LOTS AND OBTAINING THE PROPER DOCUMENTATION FROM GOVERNMENT OFFICES;

4) [EMRASON] IS ESTOPPED FROM INVOKING THE ALLEGED CONVERSION IN 1972 BECAUSE IT CONTINUED TO USE THE FOR AGRICULTURAL ACTIVITY BY LEASING THE SAME FOR AGRICULTURAL PURPOSES AND PAYING REAL ESTATE TAX THEREON UNDER "AGRICULTURAL PROPERTY";

5) THE LEASEHOLD TENANCY UNDER R.A. 3844 IS MANDATORY SO THAT THE FARMERS REPRESENTED BY HEREIN INTERVENOR HAVE A VESTED RIGHT OVER THE PROPERTY (Sec. 4);

refused to consider said issues because they were raised by Buklod for the first time in its Motion for Reconsideration.

Buklod persistently raises the same issues before this Court, and the Court, once more, refuses to take cognizance of the same.

As a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration. Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[62] The issues were first raised only in the Motion for Reconsideration of the Decision of the Court of Appeals, thus, it is as if they were never duly raised in that court at all. Hence, this Court cannot now, for the first time on appeal, entertain these issues, for to do so would plainly violate the basic rule of fair play, justice and due process. The Court reiterates and emphasizes the well-settled rule that an issue raised for the first time on appeal and not raised timely in the proceedings in the lower court is barred by estoppel.[63]

Indeed, there are exceptions to the aforecited rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue

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6) GIVEN THE MANDATE OF THE 1987 CONSTITUTION FOR A MEANINGFUL LAND REFORM, IT IS INEVITABLE THAT THE PROPERTY IN QUESTION IS SUBJECT TO LAND REFORM;

7) FINDINGS OF FACT BY THE DAR IS CONCLUSIVE WHICH SHOULD NOT BE IGNORED IN THE ABSENCE OF COMPELLING REASONS, THE PRESENCE OF MORE THAN 300 FARMERS WITHIN THE PROPERTY IN QUESTION WHO HAVE CULTIVATED THE LAND FOR DECADES CLEARLY SHOWS THE IMPERATIVE NECESSITY OF GRANTING THE FARMERS THE SALUTARY EFFECTS OF LAND REFORM. (CA *rollo*, pp. 281-282).

[62] *Prudential Bank v. Lim*, G.R. No. 136371, November 11, 2005, 474 SCRA 485, 498.

[63] *Sanchez v. Court of Appeals*, 345 Phil. 155, 185-186 (1997).

not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.[64] Buklod, however, did not allege, much less argue, that its case falls under any of these exceptions.

Nonetheless, even when duly considered by this Court, the issues belatedly raised by Buklod are without merit.

Contrary to the contention of Buklod, there is no necessity to carry out the conversion of the subject property to a subdivision within one year, at the risk of said property reverting to agricultural classification.

Section 36(1) of the Agricultural Land Reform Code, in effect since **August 8, 1963**, provided:

SEC. 36. *Possession of Landholding; Exceptions.* — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: *Provided*, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: *Provided, further,* **That should the landholder** not cultivate the land himself for three years or **fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the**

[64] *Del Rosario v. Bonga*, 402 Phil. 949, 960 (2001).

land and recover damages for any loss incurred by him because of said dispossessions; xxx.(Emphasis supplied.)

On **September 10, 1971**, the Agricultural Land Reform Code was amended and it came to be known as the Code of Agrarian Reforms. After its amendment, Section 36(1) stated:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: *Provided*, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years.

At the time Resolution No. 29-A was enacted by the Municipality of Dasmariñas on **July 9, 1972**, the Code of Agrarian Reforms was already in effect. The amended Section 36(1) thereof no longer contained the one-year time frame within which conversion should be carried out.

More importantly, Section 36(1) of the Code of Agrarian Reforms would apply only if the land in question was subject of an agricultural leasehold, a fact that was not established in the proceedings below. It may do well for the Buklod members to remember that they filed their present Petition to seek award of ownership over portions of the subject property as qualified farmer-beneficiaries under the CARP; and not payment of disturbance compensation as agricultural lessees under the Code of Agrarian Reforms. The insistence by Buklod on the requisites under Section 36(1) of the Agricultural Land Reform Code/ Code of Agrarian Reforms only serves to muddle the issues rather than support its cause.

Buklod likewise invokes the vested rights of its members under the Agricultural Land Reform Code/Code of Agrarian Reforms and the Tenants Emancipation Decree, which preceded the CARP. Yet, for the Buklod members to be entitled to any of the rights and benefits under the said laws, it is incumbent upon them to prove first that they qualify as agricultural lessees or farm workers of the subject property, as defined in Section

166(2)[65] and (15)[66] of the Code of Agrarian Reforms; and/or they are tenant-farmers of private agricultural lands primarily devoted to rice and corn, under a system of share-crop or lease tenancy, and are members of a duly recognized farmer's cooperative, as required by the Tenants Emancipation Decree. None of these determinative facts were established by Buklod.

Buklod counters that it precisely moved for a hearing before the Court of Appeals so that it could present evidence to prove such facts, but the appellate court erroneously denied its motion.

The Court finds that the Court of Appeals did not err on this matter.

In the recent case of *Office of the Ombudsman v. Sison*,[67] the Court expounded on the rules on intervention:

> It is fundamental that the allowance or disallowance of a Motion to Intervene is addressed to the sound discretion of the court. The permissive tenor of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing the intervention, thus:
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> **SECTION 1.** *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success

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[65] SEC. 166. *Definition of Terms*. — As used in Chapter I of this Code:

x x x x x x x x x

(2) "Agricultural lessee" means a person who, by himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by, another with the latter's consent for purposes of production, for a price certain in money or in produce or both. It is distinguished from civil law lessee as understood in the Civil Code of the Philippines.

[66] SEC. 166. *Definition of Terms*. — As used in Chapter I of this Code:

x x x x x x x x x

(15) "Farm worker" includes any agricultural wage, salary or piece worker but is not limited to a farm worker of a particular farm employer unless this Code explicitly states otherwise and any individual whose work has ceased as consequence of, or in connection with, a current agrarian dispute or an unfair labor practice and who has not obtained a substantially equivalent and regular employment.

[67] G.R. No. 185954, February 16, 2010, 612 SCRA 702.

of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

SECTION 2. *Time to intervene.* — The motion to intervene **may be filed at any time before rendition of judgment by the trial court.** A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties. (Emphasis supplied.)

Simply, intervention is a procedure by which third persons, not originally parties to the suit but claiming an interest in the subject matter, come into the case in order to protect their right or interpose their claim. Its main purpose is to settle in one action and by a single judgment all conflicting claims of, or the whole controversy among, the persons involved.

To warrant intervention under Rule 19 of the Rules of Court, two requisites must concur: (1) the movant has a legal interest in the matter in litigation; and (2) intervention must not unduly delay or prejudice the adjudication of the rights of the parties, nor should the claim of the intervenor be capable of being properly decided in a separate proceeding. The interest, which entitles one to intervene, must involve the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.[68]

To apply the rules strictly, the motion of Buklod to intervene was filed too late. According to Section 2, Rule 19 of the Rules of Civil Procedure, "a motion to intervene may be filed at any time **before** rendition of judgment by the trial court." Judgment was already rendered in DARAB Case No. IV-Ca-0084-92 (the petition of EMRASON to nullify the notices of acquisition over the subject property), not only by the **DAR Hearing Officer**,

[68] *Id.* at 712-713.

who originally heard the case, but also the **DAR Secretary**, and then the **OP**, on appeal.

Buklod only sought to intervene when the case was already before the Court of Appeals. The appellate court, in the exercise of its discretion, still allowed the intervention of Buklod in CA-G.R. SP No. 40950 only because it was "not being in any way prejudicial to the interest of the original parties, **nor will such intervention change the factual legal complexion of the case.**"[69] The intervention of Buklod challenged only the remedy availed by EMRASON and the propriety of the preliminary injunction issued by the Court of Appeals, which were directly and adequately addressed by the appellate court in its Decision dated March 26, 1997.

The factual matters raised by Buklod in its Motion for Reconsideration of the March 26, 1997 Decision of the Court of Appeals, and which it sought to prove by evidence, inevitably changes "the factual legal complexion of the case." The allegations of Buklod that its members are tenant-farmers of the subject property who acquired vested rights under previous agrarian reform laws, go against the findings of the DAR Region IV Hearing Officer, adopted by the DAR Secretary, the OP, and Court of Appeals, that the subject property was being acquired under the CARP for distribution to the tenant-farmers of the neighboring NDC property, after a determination that the latter property was insufficient for the needs of both the NDC-Marubeni industrial estate and the tenant-farmers.

Furthermore, these new claims of Buklod are beyond the appellate jurisdiction of the Court of Appeals, being within the primary jurisdiction of the DAR. As Section 50 of the CARL, as amended, reads:

> SEC. 50. *Quasi-Judicial Powers of the DAR*. — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the

[69] *Rollo* (G.R. No. 131481), p. 29.

Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

In fact, records reveal that Buklod already sought remedy from the DARAB. DARAB Case No. IV-CA-0261, entitled *Buklod nang Magbubukid sa Lupaing Ramos, rep. by Edgardo Mendoza, et al. v. E.M. Ramos and Sons, Inc., et al.*, was pending at about the same time as DARAB Case No. IV-Ca-0084-92, the petition of EMRASON for nullification of the notices of acquisition covering the subject property. These two cases were initially consolidated before the DARAB Region IV. The DARAB Region IV eventually dismissed DARAB Case No. IV-Ca-0084-92 and referred the same to the DAR Region IV Office, which had jurisdiction over the case. Records failed to reveal the outcome of DARAB Case No. IV-CA-0261.

On a final note, this Court has stressed more than once that social justice — or any justice for that matter — is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, the Court is called upon to tilt the balance in favor of the poor to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to give preference to the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served for poor and rich alike, according to the mandate of the law.[70] Vigilance over the rights of the landowners is equally important because social justice cannot be invoked to trample on the rights of property owners, who under our Constitution and laws are also entitled to protection.[71]

WHEREFORE, the Petitions for Review filed by the Buklod Nang Magbubukid Sa Lupaing Ramos, Inc. in G.R. No. 131481 and the Department of Agrarian Reform in G.R. No. 131624 are hereby *DENIED*. The Decision dated March 26, 1997 and

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[70] *Gelos v. Court of Appeals*, G.R. No. 86186, May 8, 1992, 208 SCRA 608, 616.

[71] *Land Bank of the Philippines v. Court of Appeals*, 319 Phil. 246, 262 (1995).

the Resolution dated November 24, 1997 of the Court of Appeals in CA-G.R. SP No. 40950 are hereby *AFFIRMED*.

SO ORDERED.

Velasco, Jr. (Acting Chairperson), del Castillo, Perez, and *Mendoza,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 152033. March 16, 2011]

FILIPINAS SYNTHETIC FIBER CORPORATION, *petitioner, vs.* **WILFREDO DE LOS SANTOS, BENITO JOSE DE LOS SANTOS, MARIA ELENA DE LOS SANTOS and CARMINA *VDA. DE* DE LOS SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY FINAL AND CONCLUSIVE AND MAY NOT BE REVIEWED ON APPEAL; EXCEPTIONS.— Whether a person is negligent or not is a question of fact which this Court cannot pass upon in a petition for review on *certiorari*, as its jurisdiction is limited to reviewing errors of law. As a rule, factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal. The established exceptions are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary

[*] Per raffle dated July 19, 2010.

to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; UNLESS THERE IS PROOF TO THE CONTRARY, IT IS PRESUMED THAT A PERSON DRIVING A MOTOR VEHICLE HAS BEEN NEGLIGENT IF AT THE TIME OF THE MISHAP, HE WAS VIOLATING ANY TRAFFIC REGULATION; CASE AT BAR.— It was well established that Mejia was driving at a speed beyond the rate of speed required by law, specifically Section 35 of Republic Act No. (RA) 4136. Given the circumstances, the allowed rate of speed for Mejia's vehicle was 50 kilometers per hour, while the records show that he was driving at the speed of 70 kilometers per hour. Under the New Civil Code, unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. Apparently, in the present case, Mejia's violation of the traffic rules does not erase the presumption that he was the one negligent at the time of the collision. Even apart from statutory regulations as to speed, a motorist is nevertheless expected to exercise ordinary care and drive at a reasonable rate of speed commensurate with all the conditions encountered which will enable him to keep the vehicle under control and, whenever necessary, to put the vehicle to a full stop to avoid injury to others using the highway. To suggest that De los Santos was equally negligent based on that sole statement of the RTC is erroneous. The entire evidence presented must be considered as a whole. Incidentally, a close reading of the ruling of the CA would clearly show the negligence of Mejia.

3. ID.; ID.; ID.; ID.; THE LIABILITY OF THE EMPLOYER UNDER ARTICLE 2180 OF THE NEW CIVIL CODE IS DIRECT AND IMMEDIATE.— Under Article 2180 of the New Civil Code, when an injury is caused by negligence of the employee, there instantly arises a presumption of law that there was negligence on the

part of the master or employer either in the selection of the servant or employee, or in supervision over him after selection or both. The liability of the employer under Article 2180 is direct and immediate; it is not conditioned upon prior recourse against the negligent employee and a prior showing of the insolvency of such employee. Therefore, it is incumbent upon the private respondents (in this case, the petitioner) to prove that they exercised the diligence of a good father of a family in the selection and supervison of their employee.

4. ID.; ID.; DAMAGES; COMPENSATORY DAMAGES; EXPLAINED.— This Court, in its ruling, expounded on the nature of compensatory damages, thus: "Under Article 2199 of the New Civil Code, actual damages include all the natural and probable consequences of the act or omission complained of, classified as one for the loss of what a person already possesses (*daño emergente*) and the other, for the failure to receive, as a benefit, that which would have pertained to him (*lucro cesante*). x x x The burden of proof is on the party who would be defeated if no evidence would be presented on either side. The burden is to establish one's case by a preponderance of evidence which means that the evidence, as a whole, adduced by one side, is superior to that of the other. Actual damages are not presumed. The claimant must prove the actual amount of loss with a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable. Specific facts that could afford a basis for measuring whatever compensatory or actual damages are borne must be pointed out. Actual damages cannot be anchored on mere surmises, speculations or conjectures."

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres and Ibarra for petitioner.
Heidi G. Galos for respondents.

D E C I S I O N

PERALTA, *J.*:

This Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure assails the Decision[1] of the Court of Appeals (CA) dated August 15, 2001, affirming with modification, the Decision[2] dated February 14, 1994 of the Regional Trial Court (RTC), and the Resolution dated January 29, 2002 of the CA, denying petitioner's Motion for Reconsideration.

This all stems from a case for damages filed against the petitioner and one of its employees. The facts, as found by the RTC and the CA, are as follows:

On the night of September 30, 1984, Teresa Elena Legarda-de los Santos (Teresa Elena), the wife of respondent Wilfredo de los Santos (Wilfredo), performed at the Rizal Theater in Makati City, Metro Manila as a member of the cast for the musical play, Woman of the Year.

On that same night, at the request of Wilfredo, his brother Armando de los Santos (Armando), husband of respondent Carmina *Vda*. *de* de los Santos, went to the Rizal Theater to fetch Teresa Elena after the latter's performance. He drove a 1980 Mitsubishi Galant Sigma (Galant Sigma) with Plate No. NSL 559, a company car assigned to Wilfredo.

Two other members of the cast of Woman of the Year, namely, Annabel Vilches (Annabel) and Jerome Macuja, joined Teresa Elena in the Galant Sigma.

Around 11:30 p.m., while travelling along the Katipunan Road (White Plains), the Galant Sigma collided with the shuttle bus owned by petitioner and driven by Alfredo S. Mejia (Mejia), an employee of petitioner. The Galant Sigma was dragged about 12 meters from the point of impact, across the White Plains

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[1] Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Eugenio S. Labitoria and Eloy R. Bello, Jr., concurring; *rollo*, pp. 24-38.

[2] CA *rollo*, pp. 78-91.

Road landing near the perimeter fence of Camp Aguinaldo, where the Galant Sigma burst into flames and burned to death beyond recognition all four occupants of the car.

A criminal charge for reckless imprudence resulting in damage to property with multiple homicide was brought against Mejia, which was decided in favor of Mejia. The family of Annabel filed a civil case against petitioner and Mejia docketed as Civil Case No. Q-51382, which was raffled to Branch 82 of the RTC of Quezon City. Wilfredo and Carmina, joined by their minor children, also filed separate actions for damages against petitioner and Mejia. The said cases were eventually consolidated.

After trial on the merits, the RTC decided in favor of herein respondents. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing, this Court finds the herein plaintiffs in Civil Case Nos. Q-44498 and Q-45602, namely Wilfredo de los Santos, *et al.* and Carmina *Vda. de* de los Santos, *et al.*, respectively, to have duly proven their causes of action against Filipinas Synthetic Fiber Corporation and Alfredo S. Mejia, defendants in both cases, thru preponderance of evidence, hence, Judgment is hereby rendered ordering defendants, jointly and severally, to pay the herein plaintiffs in Civil Case No. Q-44498, (1) for actual damages, ₱29,550.00, with interest thereon at the legal rate until paid; (2) the amount of ₱4,769,525.00 as compensatory damages and unrealized income of Teresa Elena, which is one-half of the amount of ₱9,539,050.00, taking into consideration her status in life, and that during her lifetime she was not only spending for herself. The latter's average expenses would either be more or less than one-half of her gross income for the year; (3) ₱100,000.00 as moral damages to assuage the family of the deceased Teresa Elena for the loss of a love one who was charred beyond recognition; and (4) attorney's fees of ₱150,000.00. As to exemplary damages, the same cannot be granted for the reason that no one wanted this unfortunate accident to happen, which was a costly one.
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> For Civil Case No. Q-45602, the herein defendants are hereby ordered, jointly and severally, to pay the plaintiffs (1) ₱20,550.00 for actual damages, with interest thereon at the legal rate until the same is paid; (2) ₱444,555.00 as compensatory damages and unrealized income of the deceased Armando de los Santos, for the same reason

as the deceased Teresa Elena, who during his lifetime, Armando was not only spending for himself; (3) ₱100,000.00 as moral damages to assuage the loss of a love one who was burnt beyond recognition; and (4) ₱100,000.00 as attorney's fees. As to exemplary damages, the same could not be granted for the same reason as that in Civil Case No. Q-44498.

SO ORDERED.

After the denial of the motion for reconsideration, petitioner appealed to the CA, and the latter ruled:

WHEREFORE, the assailed February 14, 1994 Decision of the Regional Trial Court of Quezon City, Branch 100 is AFFIRMED, subject to modification that in Civil Case No. Q-44498 the compensatory damages and unrealized income of deceased Teresa Elena shall be ₱3,120,300.00, and in Civil Case No. Q-45602 the compensatory damages and unrealized income of deceased Armando shall be ₱509,649.00.

SO ORDERED.

The subsequent motion for reconsideration was also denied. Hence, the present petition wherein the petitioner assigned the following errors:

ASSIGNMENT OF ERRORS

I. THE HONORABLE COURT OF APPEALS ERRED IN FINDING THE PETITIONER MEJIA NEGLIGENT, SUCH NOT BEING SUPPORTED BY THE EVIDENCE ON RECORD.

II. THE HONORABLE COURT OF APPEALS' FINDING THAT PETITIONER FILSYN DID NOT EXERCISE THE DUE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES IS NOT SUPPORTED BY THE EVIDENCE ON RECORD.

III. THE DAMAGES AWARDED BY THE HONORABLE COURT OF APPEALS IS NOT IN ACCORD WITH THE EVIDENCE ON RECORD.

The respondents filed their Comment[3] dated June 7, 2002, while the petitioner filed its Reply[4] dated January 29, 2003. Subsequently, their respective memoranda[5] were filed.

The petition lacks merit.

Petitioner insists that the CA was not correct in ruling that Mejia was negligent. It argues that the said conclusion was not derived from the evidence adduced during the trial, which, upon further analysis, makes the nature of the issue presented to be factual.

Whether a person is negligent or not is a question of fact which this Court cannot pass upon in a petition for review on *certiorari*, as its jurisdiction is limited to reviewing errors of law.[6] As a rule, factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal. The established exceptions are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[7]

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[3] *Rollo*, pp. 48-52.

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

[5] *Id*. at 71-85 for the petitioner and 86-93 for the respondents.

[6] See *Estacion v. Bernardo*, G.R. No. 144723, February 27, 2006, 483 SCRA 222, 231, citing *Yambao v. Zuñiga*, 418 SCRA 266, 271 (2003).

[7] *Id*. at 231-232, citing *Child Learning Center Inc. v. Tagario*, 476 SCRA 236 (2005).

Not falling under any of the exceptions enumerated above, this Court must defer to the findings of the RTC and the CA.

Petitioner argues that the RTC admitted that De los Santos made a turn along White Plains Road without exercising the necessary care which could have prevented the accident from happening. It quoted the following portion of the RTC's decision:

> The Court is convinced that defendant Mejia was running real fast along EDSA when he saw a vehicle on the opposite side suddenly turn left towards White Plains.

According to petitioner, the sudden turn of the vehicle used by the victims should also be considered as negligence on the part of the driver of that same vehicle, thus, mitigating, if not absolving petitioner's liability. However, the said argument deserves scant consideration.

It was well established that Mejia was driving at a speed beyond the rate of speed required by law, specifically Section 35 of Republic Act No. (RA) 4136.[8] Given the circumstances,

[8] Section 35. *Restriction as to speed.* – x x x

(a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than is reasonable and proper, having due regard for the traffic, the width of the highway, and of any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such a speed as to endanger the life, limb and property of any person, nor at a speed greater than that will permit him to bring the vehicle to a stop within the assured clear distance ahead.

(b) Subject to the provisions of the preceding paragraph, the rate of speed of any motor vehicle shall not exceed the following:

MAXIMUM ALLOWABLE SPEEDS	Passengers Cars and Motorcycle	Motor trucks and buses
1. On open country roads, with no "blind corners" not closely bordered by habitations.	80 km. per hour	50 km. per hour
2. On "through streets" or boulevards, clear of traffic, with no "blind corners," when so designated.	40 km. per hour	30 km. per hour
3. On city and municipal streets, with light traffic, when not designated "through	30 km. per hour	30 km. per hour

the allowed rate of speed for Mejia's vehicle was 50 kilometers per hour, while the records show that he was driving at the speed of 70 kilometers per hour. Under the New Civil Code,[9] unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. Apparently, in the present case, Mejia's violation of the traffic rules does not erase the presumption that he was the one negligent at the time of the collision. Even apart from statutory regulations as to speed, a motorist is nevertheless expected to exercise ordinary care and drive at a reasonable rate of speed commensurate with all the conditions encountered[10] which will enable him to keep the vehicle under control and, whenever necessary, to put the vehicle to a full stop to avoid injury to others using the highway.[11] To suggest that De los Santos was equally negligent based on that sole statement of the RTC is erroneous. The entire evidence presented must be considered as a whole. Incidentally, a close reading of the ruling of the CA would clearly show the negligence of Mejia. A portion of the decision reads:

A closer study of the Police Accident Report, Investigation Report and the sketch of the accident would reveal nothing but that the shuttle bus was traveling at such a reckless speed that it collided with the car bearing the deceased. The impact was such that the bus landed astride the car, dragged the car across the right lane of White Plains Road, across the concrete island flower box in the center

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streets."

4. Through crowded streets, approaching intersections at "blind corners," passing school zones, passing other vehicles which are stationery, or for similar dangerous circumstances.	20 km. per hour	20 km. per hour

[9] Art. 2185.

[10] *Caminos, Jr. v. People*, G.R. No. 147437, May 8, 2009, 587 SCRA 348, 361, citing *Foster v. ConAgra Poultry Co.*, 670 So.2d 471.

[11] *Id.*, citing *Nunn v. Financial Indem. Co.*, 694 So.2d 630. *Duty of reasonable care includes duty to keep the vehicle under control and to maintain proper lookout for hazards.*

of White Plains Road, destroying the lamp post in the island until both vehicles landed by the petitioner fence of Camp Aguinaldo.

From those evidence, borne out by the records, there was proof more than preponderant to conclude that Mejia was traveling at an unlawful speed, hence, the negligent driver. We, therefore, cannot find any error on the part of the trial court in concluding that he (Mejia) was driving more than his claim of 70 kilometers per hour. Significantly, the claimed speed of Mejia is still unlawful, considering that Section 35 of RA 4136 states that the maximum allowable speed for trucks and buses must not exceed 50 kilometers per hour. We are, therefore, unpersuaded by the defendants-appellants' claim that it was the driver of [the] Galant Sigma who was negligent by not observing Sections 42(d) and 43(c) of RA 4136-A. Second sentence of Section 42 provides that the driver of any vehicle traveling at any unlawful speed shall forfeit any right of way which he might otherwise have. A person driving a vehicle is presumed negligent if at the time of the mishap, he was violating a traffic regulation. The excessive speed employed by Mejia was the proximate cause of the collision that led to the sudden death of Teresa Elena and Armando. If the defendants-appellants truly believe that the accident was caused by the negligence of the driver of the Galant Sigma, they should have presented Mejia to the witness stand. Being the driver, Mejia would have been in the best position to establish their thesis that he was negligent when the mishap happened. Under the RULES OF EVIDENCE (Section 3[e], Rule 131), such suppression gives rise to the presumption that his testimony would have been adverse, if presented. It must be stressed further that Mejia left the scene, not reporting the fatal accident to the authorities neither did he wait for the police to arrive. He only resurfaced on the day after the incident. This is a clear transgression of Section 55 of RA 4136-A which provides:

> SEC. 55 *Duty of driver in case of accident.* — In the [event] that any accident should occur as a result of the operation of a motor vehicle upon a highway, the driver shall stop immediately, and, if requested by any person present, shall show his driver's license, give his true name and address and also the true name and address of the owner of the motor vehicle.
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> No driver of a motor vehicle concerned in a vehicular accident shall leave the scene of the accident without aiding the victim, except under any of the following circumstances:

1. If he is in imminent danger of being seriously harmed by any person or persons by reason of the accident;

2. If he reports the accident to the nearest officer of the law; or

3. If he has to summon a physician or nurse to aid the victim.

x x x x x x x x x

Equally untenable is the defendants-appellants contention that it would be impossible for the shuttle bus which was traveling at 70 kilometers per hour to stop. In view of this assertion, we quote with favor the statement of Justice Feliciano in the Kapalaran case that the law seeks to stop and prevent the slaughter and maiming of people (whether passenger or not) and the destruction of property (whether freight or not) on our highways by buses, the very size and power of which seem often to inflame the minds of the drivers. To our mind, if a vehicle was travelling in an allowable speed, its driver would not have a difficulty in applying the brakes.

Anent the second issue raised, petitioner insists that it exercised the due diligence of a good father of a family in the selection and supervision of its employees. The RTC and the CA find otherwise.

Under Article 2180[12] of the New Civil Code, when an injury is caused by the negligence of the employee, there instantly arises a presumption of law that there was negligence on the part of the master or employer either in the selection of the

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[12] Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

servant or employee, or in supervision over him after selection or both. The liability of the employer under Article 2180 is direct and immediate; it is not conditioned upon prior recourse against the negligent employee and a prior showing of the insolvency of such employee. Therefore, it is incumbent upon the private respondents (in this case, the petitioner) to prove that they exercised the diligence of a good father of a family in the selection and supervision of their employee.[13]

Petitioner asserts that it had submitted and presented during trial, numerous documents in support of its claim that it had exercised the proper diligence in both the selection and supervision of its employees. Among those proofs are documents showing Mejia's proficiency and physical examinations, as well as his NBI clearances. The Employee Staff Head of the Human Resource Division of the petitioner also testified that Mejia was constantly under supervision and was given daily operational briefings. Nevertheless, the RTC and the CA were correct in finding those pieces of evidence presented by the petitioner insufficient.

In *Manliclic v. Calaunan*,[14] this Court ruled that:

> In the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records. In the supervision of employees, the employer must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for the breach thereof. To fend off vicarious liability, employers must submit concrete proof, including documentary evidence, that they complied with everything that was incumbent on them.

In *Metro Manila Transit Corporation v. Court of Appeals*, it was explained that:

> Due diligence in the supervision of employees on the other hand, includes the formulation of suitable rules and regulations for the guidance of employees and the issuance of proper instructions intended for the protection of the public and

[13] *Manliclic v. Calaunan*, G.R. No. 150157, January 25, 2007, 512 SCRA 642, 662-663, citing *Dulay v. Court of Appeals*, 313 Phil. 8, 23 (1995).

[14] *Id.*

> persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions.
>
> In order that the defense of due diligence in the selection and supervision of employees may be deemed sufficient and plausible, it is not enough to emptily invoke the existence of said company guidelines and policies on hiring and supervision. As the negligence of the employee gives rise to the presumption of negligence on the part of the employer, the latter has the burden of proving that it has been diligent not only in the selection of employees but also in the actual supervision of their work. The mere allegation of the existence of hiring procedures and supervisory policies, without anything more, is decidedly not sufficient to overcome such presumption.
>
> We emphatically reiterate our holding, as a warning to all employers, that "the formulation of various company policies on safety without showing that they were being complied with is not sufficient to exempt petitioner from liability arising from negligence of its employees. It is incumbent upon petitioner to show that in recruiting and employing the erring driver the recruitment procedures and company policies on efficiency and safety were followed." x x x.[15]

Applying the above ruling, the CA, therefore, committed no error in finding that the evidence presented by petitioner is wanting. Thus, the CA ruled:

> In the present case, Filsyn merely presented evidence on the alleged care it took in the selection or hiring of Mejia way back in 1974 or ten years before the fatal accident. Neither did Filsyn present any proof of the existence of the rules and regulations governing the conduct of its employees. It is significant to note that in employing

[15] *Id.* at 663-665, citing *Perla Compania de Seguros, Inc. v. Sarangaya III*, 474 SCRA 191, 202 (2005) and *Metro Manila Transit Corporation v. Court of Appeals,* 223 SCRA 521, 540-541 (1993).

Mejia, who is not a high school graduate, Filsyn waived its long-standing policy requirement of hiring only high school graduates. It insufficiently failed to explain the reason for such waiver other than their allegation of Mejia's maturity and skill for the job.

As revealed by the testimony of Rolando Landicho, Filsyn admitted that their shuttle buses were used to ferry Filsyn's employees for three shifts. It failed to show whether or not Mejia was on duty driving buses for all three shifts. On the other hand, the trial court found that Mejia, by the different shifts would have been on the job for more than eight hours. Fylsin did not even sufficiently prove that it exercised the required supervision of Mejia by ensuring rest periods, particularly for its night shift drivers who are working on a time when most of us are usually taking rest. As correctly argued by the plaintiffs-appellees, this is significant because the accident happened at 11:30 p.m., when the shuttle bus was under the control of a driver having no passenger at all. Despite, the lateness of the hour and the darkness of the surrounding area, the bus was travelling at a speed of 70 kilometers per hour.

In view of the absence of sufficient proof of its exercise of due diligence, Filsyn cannot escape its solidary liability as the owner of the wayward bus and the employer of the negligent driver of the wayward bus. x x x

As to the amount of the damages awarded by the CA, petitioner claims that it is not in accord with the evidence on record. It explained that the amounts used in computing for compensatory damages were based mainly on the assertions of the respondents as to the amount of salary being received by the two deceased at the time of their deaths.

This Court, in its ruling,[16] expounded on the nature of compensatory damages, thus:

Under Article 2199 of the New Civil Code, actual damages include all the natural and probable consequences of the act or omission complained of, classified as one for the loss of what a person already possesses *(daño emergente)* and the other, for the failure to receive, as a benefit, that which would have pertained to him (*lucro cesante)*.

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[16] *Marikina Auto Line Transport Corporation, et al. v. People, et al.*, G.R. No. 152040, March 31, 2006, 486 SCRA 284, 297-298.

As expostulated by the Court in *PNOC Shipping and Transport Corporation v. Court of Appeals*:[17]

> Under Article 2199 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty. In actions based on torts or quasi-delicts, actual damages include all the natural and probable consequences of the act or omission complained of. There are two kinds of actual or compensatory damages: one is the loss of what a person already possesses *(daño emergente)*, and the other is the failure to receive as a benefit that which would have pertained to him (*lucro cesante*).[18]

The burden of proof is on the party who would be defeated if no evidence would be presented on either side. The burden is to establish one's case by a preponderance of evidence which means that the evidence, as a whole, adduced by one side, is superior to that of the other. Actual damages are not presumed. The claimant must prove the actual amount of loss with a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable. Specific facts that could afford a basis for measuring whatever compensatory or actual damages are borne must be pointed out. Actual damages cannot be anchored on mere surmises, speculations or conjectures. As the Court declared:

> As stated at the outset, to enable an injured party to recover actual or compensatory damages, he is required to prove the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available. The burden of proof is on the party who would be defeated if no evidence would be presented on either side. He must establish his case by a preponderance of evidence which means that the evidence, as a whole, adduced by one side is superior to that of the other. In other words, damages cannot be presumed and courts, in making an award, must point out specific facts that could afford a basis for measuring whatever compensatory or actual damages are borne.[19]

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[17] 358 Phil. 38 (1998).

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

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

The records show that the CA did not err in awarding the said amounts, nor was there any mistake in its computation. The respondents were able to establish their case by a preponderance of evidence. However, the petitioner is correct when it stated that the award of ₱100,000.00 as moral damages is excessive. Jurisprudence has set the amount to ₱50,000.00.[20]

WHEREFORE, the Petition for Review is hereby *DENIED*. Consequently, the Decision of the Court of Appeals, dated August 15, 2001, is hereby *AFFIRMED* with the *MODIFICATION* that the moral damages be reduced to ₱50,000.00.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 157476. March 16, 2011]

VENANCIO GIVERO, EDGARDO GIVERO and FLORIDA GAYANES, *petitioners, vs.* **MAXIMO GIVERO and LORETO GIVERO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL UNDER RULE 45 OF THE RULES OF COURT; RESTRICTS THE REVIEW ONLY TO QUESTIONS OF LAW.— [W]hat the petitioners assail in this appeal is the evaluation of the

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[20] See *Metro Manila Transit Corporation v. CA,* G.R. No. 116617, with *Rosales, et al. v. Court of Appeals, et al.,* G.R. No. 126395, 359 Phil. 18 (1998).

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 933, dated January 24, 2011.

credibility of the testimonies of Luciano and Maria, Venancio's brother and sister, who affirmed their own participation in the oral partition by Teodorico. Furthermore, the petitioners insist that the respondents did not preponderantly establish the existence of the oral partition. The petitioners thereby raise factual issues. However, the Court may not review all over again the findings of fact of the RTC, especially as such findings were affirmed by the CA. This appeal is brought under Rule 45 of the Rules of Court, whose Section 1 restricts the review only to questions of law x x x.

2. ID.; ID.; ID.; ID.; FACTUAL FINDINGS OF TRIAL COURTS ARE GENERALLY ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT; EXCEPTIONS. — The restriction of the review to questions of law emanates from the Court's not being a trier of facts. As such, the Court cannot determine factual issues in appeals taken from the lower courts. As the consequence of the restriction, the Court accords high respect, if not conclusive effect, to the findings of fact by the RTC, when affirmed by CA, unless there exists an exceptional reason to disregard the findings of the fact, like the following, namely: (*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 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.

3. CIVIL LAW; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; CO-OWNERSHIP; THE IMPLEMENTATION OF THE ORAL PARTITION USING A DEED OF DONATION

IS CONSIDERED VALID IN CASE AT BAR. — [T]he contention of the petitioners, that the respondents were inconsistent and self-contradictory by reason of their insistence, on the one hand, on the donation of the property from Severina, and, on the other hand, on the oral partition by Teodorico, has no substance and merit. The supposed inconsistency and self-contradiction are imaginary, not real. In this regard, the CA rendered the following erudite and irrefutable explanation, to wit: "**Clearly, therefore, the fact that it was Severina who actually conveyed the properties to the said heirs of Rufino does not in anyway contradict the fact that the partition was actually made by Teodorico prior to his demise. The basis of their ownership to the property is indubitably the right vested on their said predecessor-in-interest at the time of Teodorico's death. The existence of the *Deed of Donation* is evidently a mere surplusage which does not affect the right of Rufino's heirs to the property.**" The foregoing explanation by the CA was appropriate. It recognized a practical solution to the suspended implementation of the oral partition. The use of the deed of donation to implement the oral partition was a matter of choice on the part of the parties to the transaction, for there might have been other feasible ways under our laws by which Severina as the family matriarch could have implemented the delivery of Rufino's share just as effectively and efficiently. What was important was that the just intention behind the delivery ensured the validity of the implementation. Thus, whether or not Severina had the right to transfer the share was a matter too inconsequential for consideration by the Court. In this instance, substance, not form, was held to prevail by the CA. Besides, we, as a Court of law, justice and equity, cannot permit prolonged unfairness and uncertainty to be suffered by the respondents and the family of their deceased brother Juan as the ultimate heirs of Rufino. The avoidance of that unfairness and uncertainty was visibly the reason for the intervention of their uncle Luciano and aunt Maria as witnesses testifying against Venancio, their own brother, to favor the respondents on the question of the oral partition. Plainly, therefore, the CA committed no reversible error.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Henry D. Diesta and *Claudette G. Ubaldo* for respondents.

R E S O L U T I O N

BERSAMIN, *J.*:

The petitioners appeal the adverse decision promulgated on October 4, 2002,[1] whereby the Court of Appeals (CA) affirmed the decision rendered against them on November 12, 1993 by the Regional Trial Court, Branch 55, in Irosin, Sorsogon (RTC).[2]

The dispute involves a portion of Lot No. 2618 of the Matnog Cadastre (with an area of 5,000 square meters, more or less) that the petitioners, particularly Venancio Givero, have claimed to belong to them, but which claim was denied by the respondents who have insisted that the whole of Lot No. 2618, consisting of 12,952 square meters, more or less, was the share of their late father Rufino Givero, a brother of Venancio, pursuant to the oral partition among 11 children (including Venancio and Rufino) made by the spouses Teodorico Givero and Severina Genavia.

The antecedents are culled from the findings of fact of the RTC, which the CA affirmed without modification.

The original owners of Lot No. 2618 were Teodorico and Severina who respectively died in 1917 and 1958. During their marriage, they acquired properties located in Barangay Balocawe and Barangay Gadgaron, both in the Municipality of Matnog, Sorsogon. They had 11 children, namely; Calixta, Timoteo, Eustaquia, Dorotea, Mamerto, Venancio, Luciano, Ines, Gabriel, Maria, and Rufino, all surnamed Givero. In his lifetime, Teodorico

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[1] *Rollo*, pp. 85-97; penned by Associate Justice Mercedes Gozo-Dadole (retired), and concurred in by Associate Justice Salvado J. Valdez, Jr. (retired and deceased) and Associate Justice Sergio L. Pestaño (retired and deceased).

[2] *Id.*, pp. 49-53; penned by Judge Ireneo B. Escandor.

orally partitioned the properties among their children by pointing to them their respective shares. According to Luciano and Maria, who both testified at the trial, the grown-up children received and occupied the shares assigned to them, but the rest could receive their shares only after Teodorico's death in 1917, with Severina delivering their shares. The last to receive his share was Rufino Givero, the youngest child.

The properties situated in Barangay Balocawe were shared by six brothers and sisters, namely: Venancio, Gabriel, Luciano, Calixta, Eustaquia and Dorotea. The properties found in Barangay Gadgaron were shared by the remaining five brothers and sisters. The Barangay Gadgaron properties were divided into two by the highway going towards the direction of the *poblacion* of Matnog, Sorsogon. The portion found on the left side of the highway going towards the direction of the *poblacion* was the share of Rufino, and the portions on the right side were allocated to Mamerto, Timoteo, Ines, and Maria. Thus, all the children of Teodorico and Severina came into full possession of their perspective shares in accordance with the oral partition made by Teodorico during his lifetime.

The property in question was part of Lot No. 2618 partitioned to Rufino. The respondents (plaintiffs below) were the children of Rufino who had died in 1942, survived at his death by his wife Remedios and their three sons, namely: Juan, Maximo, and Loreto. Juan, being already deceased, was survived by his wife and children. Rufino and Remedios, with their children, had occupied Lot No. 2618 until the Japanese occupation, when they relocated to the *poblacion* of Matnog. Although Rufino, being a soldier, had been away during the war, Remedios periodically visited the property. In 1945, after the war had ended, she and her children returned to and stayed on Lot No. 2618. In 1952, she let Venancio build a house on Lot No. 2618 for the use of his children who were then going to school in the *poblacion* of Matnog, considering that Lot No. 2618 was nearer to the *poblacion* than Venancio's house in Barangay Balocawe.

In March 1982, however, Venancio started to assert ownership of the disputed portion of Lot No. 2618 by declaring it in his name for taxation purposes, and erecting a barbed wire fence around it. His actuations impelled the respondents to commence on October 15, 1987 in the RTC this action for quieting of title to and recovery of real property and damages against the petitioners.

The respondents alleged in their complaint that Lot No. 2618 had been delivered to them as Rufino's share in the estate of Teodorico through a deed of donation executed by Severina in their favor as Rufino's heirs, thereby making them the *pro indiviso* owners; that they had been in continuous, peaceful, public, and adverse possession of the property for 45 years; that the defendants (namely, petitioners Venancio, his daughter Florida Givero-Gayanes and a relative Edgardo Givero) had been only permitted by Remedios to build a small house of light materials on a portion of Lot No. 2618; and that later on, Venancio, without any right, had enclosed the 5,000-square meter portion with barbed wire, and had declared the portion under his name for taxation purposes.[3]

In their answer, the petitioners maintained that Teodorico and Severina had not partitioned their estate among their 11 children; that the Barangay Balocawe properties of Teodorico and Severina had been levied and auctioned for realty tax delinquency; that Venancio had become the owner of the Barangay Balocawe properties by virtue of redemption, but had given shares to his brothers and sisters out of magnanimity, retaining only a portion corresponding to the amount he had paid for the redemption; that Venancio had retained a share in the Barangay Gadgaron properties, which was the portion in dispute, because that portion had been his rightful share in the estate of his father; that Venancio had allowed the respondents to stay on the properties because they were his nephews; that the deed of donation executed by Severina after the death of Teodorico in favor of the respondents through their mother was void because Severina was not the real owner but a mere usufructuary under

[3] *Id.,* pp. 87-88.

the provisions of the old *Civil Code*; and that at the most, the respondents would be entitled to only 1/11 portion of the Barangay Gadgaron properties.[4]

In its decision, the RTC held in favor of the respondents, explaining:

> Having disposed of the legal issues on the validity of the oral partition of the estate of Teodorico Givero and Severina Genavia, let us proceed to the factual issue on the claim of the defendant Venancio Givero that the portion of the property in question occupied by him and his co-defendants belonged to him as his rightful share in the estate of his father which he started to occupy and possess as owner in 1952.
>
> There are proven facts in this case which belie this claim of Venancio Givero. His brother Luciano and sister Maria, who have no reason to perjure against their brother Venancio were positive in their testimony that the property in question is the share of their brother Rufino and that the share of Venancio is found in Balocawe. This testimony of witnesses Maria and Luciano is corroborated by the judicial admission made by Venancio Givero in his answer that the Balocawe properties were divided among some of his brothers and sisters, retaining for himself 7,580 sq. meters under Title No. P-9542. His payment of the tax delinquency of said property, granting the same is true, did not make him the owner of said property. The properties in Balocawe remained under co-ownership and his right is limited to compel his other co-heirs to contribute to the preservation of the thing owned in common. (Art. 395, Old Civil Code). Venancio Givero was aware of this as shown by the fact that he partitioned the Balocawe properties among his other co-owners. Again, he claims that he had been in open, adverse, and public possession of this portion of the property in question since 1952. However, on April 20, 1980, Myrna Hallig Manalo, a granddaughter of Venancio, bought 225 sq. meters of the land in question within the area claimed by Venancio Givero (Exh. "2") from Remedios *vda. de* Givero with the conformity of the plaintiffs. If indeed his claim of ownership since 1952 was adverse, open and public, why was this fact not known to the members of his family even in the year 1980? But the most telling evidence against this claim of ownership by Venancio Givero is the unrebutted testimony of plaintiff Maximo

[4] *Id.*, pp. 88-89.

Givero to the effect that this property claimed by Venancio Givero is within the original area of 12,952 in the Deed of Donation Exh. "A". Thus:

q. What is the actual area claimed by the defendant?

a. ½ hectare actually occupied by the defendant.

q. Is this from the original area from 12,952 sq. meters or outside?

a. It is within that area.

(TSN April 6, 1989 p. 15)

In his testimony, Venancio Givero admitted that the share of his brother Rufino, was given to his widow, Remedios *vda. de* Givero in the form of a donation. And in fact, when this donation was made in 1956 (Exh. "A"), Venancio Givero was a witness to said transaction. Having participated in the delivery of the share of Rufino Givero to his heirs and knowing the metes and bounds of said property, he is estopped from claiming ownership of any portion of that property. (Arts. 1431, 1432, and 1433, NCC).

From the testimonies of Remedios *vda. de* Givero and Maximo Givero, it is clear that this property which corresponds to the share of Rufino Givero when cadastrally surveyed was designated as Lot No. 2618 and the area increased to 21,736 sq. meters. This is the property which belong to the plaintiffs Maximo Givero and Loreto Givero as well as the heirs of their deceased brother, Juan Givero. From the evidence presented, it appears that some portions of this property had been sold by Remedios *vda. de* Givero with the consent of the plaintiffs. The sales made are valid and not null and void as claimed by the defendants.

There are sufficient evidences showing that the defendant Venancio Givero through the execution of a Deed of Ratification and Confirmation of Ownership (Exh. "11") was able to declare in his name for taxation purposes a portion of the property in question (Exh. "12"). The issuance of said tax declaration No. 13-178 in the name of Venancio Givero as owner, cast a cloud on the title of the plaintiffs and their other co-heirs. This is an error which should be corrected by having this tax declaration and other subsequent tax declarations that may have been issued, cancelled by the Office of the Provincial Assessor. Because of these acts of the defendants, the plaintiffs were forced to bring this case to Court and should be

entitled to attorney's fees and other litigation expenses. (Art. 2208 (11) NCC).[5]

and decreeing, *viz*:

> WHEREFORE, the Court renders judgment:
>
> 1. Finding the plaintiffs the owner of Lot No. 2618, of the Matnog cadastre, the property in question;
>
> 2. Ordering the defendants to vacate the premises and to remove whatever improvements they may have introduced on said property; and perpetually enjoining them from further molesting the plaintiffs in the possession of the property in question.
>
> 3. Ordering the defendants jointly and severally to pay the plaintiffs as damages the amount of ₱5,000.00 representing attorney's fees and other litigation expenses.
>
> 4. Ordering the Office of the Provincial Assessor to cancel TD No. 13-178 in the name of Venancio Givero, entered in the real property roll for 1982 and for this purpose the plaintiffs are ordered to furnish said office a copy of this Decision for the guidance and compliance of that office.
>
> SO ORDERED.[6]

On appeal, the petitioners urged that the donation by Severina in favor of Rufino's heirs contradicted the respondents' claim that an oral partition of Teodorico's estate had taken place during Teodorico's lifetime, for there would have been no need for the donation had such partition *inter vivos* really taken place. Thus, the petitioners concluded that the respondents' right to the disputed portion was solely based on the deed of donation that was void due to the donor not being the owner of the property.[7]

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[5] *Id.*, pp. 51-53.

[6] *Id.*, p. 53.

[7] *Id.*, p. 92.

On October 4, 2002, the CA affirmed the decision of the RTC.

Hence, this appeal.

The petitioners submit that the respondents did not preponderantly establish that the oral partition by Teodorico had actually taken place; that had the partition been really made, there would have been no need for Severina to still convey the disputed portion through donation; that the CA's finding that the Barangay Balocawe properties had remained under co-ownership discredited its pronouncement on the validity of the oral partition by Teodorico.[8]

The petition for review lacks merit.

Firstly, what the petitioners assail in this appeal is the evaluation of the credibility of the testimonies of Luciano and Maria, Venancio's brother and sister, who affirmed their own participation in the oral partition by Teodorico. Furthermore, the petitioners insist that the respondents did not preponderantly establish the existence of the oral partition.

The petitioners thereby raise factual issues. However, the Court may not review all over again the findings of fact of the RTC, especially as such findings were affirmed by the CA. This appeal is brought under Rule 45 of the *Rules of Court*,[9] whose Section 1 restricts the review only to questions of law, *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)[10]

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[8] *Id.* p. 27.

[9] *D.M. Wenceslao and Associates, Inc. v. Readycon Trading and Construction Corporation*, G.R. No. 154106, June 29, 2004, 433 SCRA 251.

[10] The rule, already amended by A.M. No. 07-7-12-SC, effective December 27, 2007, now reads:

The restriction of the review to questions of law emanates from the Court's not being a trier of facts. As such, the Court cannot determine factual issues in appeals taken from the lower courts. As the consequence of the restriction, the Court accords high respect, if not conclusive effect, to the findings of fact by the RTC, when affirmed by the CA,[11] unless there exists an exceptional reason to disregard the findings of fact, like the following, namely:[12]

(*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;

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.

[11] *Senoja v. People*, G.R. No. 160341, October 19, 2004, 440 SCRA 695.

[12] *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.

(*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.

None of the exceptions has any application herein. Besides, the findings of fact upheld by the CA are entirely consistent with the established facts.

And, secondly, the contention of the petitioners, that the respondents were inconsistent and self-contradictory by reason of their insistence, on the one hand, on the donation of the property from Severina, and, on the other hand, on the oral partition by Teodorico, has no substance and merit.

The supposed inconsistency and self-contradiction are imaginary, not real. In this regard, the CA rendered the following erudite and irrefutable explanation, to wit:

In the case at bar, it is clear from the testimonies of Maria and Luciano Givero, sister and brother, respectively, of appellant Venancio Givero, that the properties were assigned to each of the 11 children even prior to their father's death, with their parents pointing to them their respective shares. With respect to the shares of the younger children, however, it appears from Maria's testimony that the properties were administered by their mother, Severina, while they were not yet old enough to handle the same. This was the reason why Severina appeared to be the one who delivered and conveyed to the other children their shares to the inheritance, which included the share of the youngest son, Rufino, which share was actually delivered to the latter's heirs as he predeceased Severina. **Clearly, therefore, the fact that it was Severina who actually conveyed the properties to the said heirs of Rufino does not in anyway**

contradict the fact that the partition was actually made by Teodorico prior to his demise. The basis of their ownership to the property is indubitably the right vested on their said predecessor-in-interest at the time of Teodorico's death. The existence of the *Deed of Donation* is evidently a mere surplusage which does not affect the right of Rufino's heirs to the property.[13]

The foregoing explanation by the CA was appropriate. It recognized a practical solution to the suspended implementation of the oral partition. The use of the deed of donation to implement the oral partition was a matter of choice on the part of the parties to the transaction, for there might have been other feasible ways under our laws by which Severina as the family matriarch could have implemented the delivery of Rufino's share just as effectively and efficiently. What was important was that the just intention behind the delivery ensured the validity of the implementation. Thus, whether or not Severina had the right to transfer the share was a matter too inconsequential for consideration by the Court. In this instance, substance, not form, was held to prevail by the CA. Besides, we, as a Court of law, justice and equity, cannot permit prolonged unfairness and uncertainty to be suffered by the respondents and the family of their deceased brother Juan as the ultimate heirs of Rufino. The avoidance of that unfairness and uncertainty was visibly the reason for the intervention of their uncle Luciano and aunt Maria as witnesses testifying against Venancio, their own brother, to favor the respondents on the question of the oral partition. Plainly, therefore, the CA committed no reversible error.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the decision promulgated on October 4, 2002.

Costs of suit to be paid by the petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Abad,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

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[13] *Rollo,* p. 95 (bold emphasis supplied).

[*] In lieu of Justice A. D. Brion who is on leave per Special Order No. 940 dated February 7, 2011.

THIRD DIVISION

[G.R. No. 168651. March 16, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDITH RAMOS ABAT,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS.— The acts committed by the accused constituted illegal recruitment in large scale, whose essential elements are the following: (*a*) The accused engages in acts of recruitment and placement of workers defined under Article 13 (b) of the *Labor Code* or in any prohibited activities under Article 43 of the *Labor Code*; (*b*) The accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of license or an authority to recruit and deploy workers, either locally or overseas; and (*c*) The accused commits the unlawful acts against three or more persons individually or as a group.

2. ID.; ILLEGAL RECRUITMENT; IT IS THE LACK OF THE NECESSARY LICENSE OR AUTHORITY TO RECRUIT AND DEPLOY WORKERS, EITHER LOCALLY OR OVERSEAS, THAT RENDERS THE RECRUITMENT ACTIVITY UNLAWFUL OR CRIMINAL.— It is the lack of the necessary license or authority to recruit and deploy workers, either locally or overseas, that renders the recruitment activity unlawful or criminal. To prove illegal recruitment, therefore, the State must show that the accused gave the complainants the distinct impression that she had the power or ability to deploy the complainants abroad in a manner that they were convinced to part with their money for that end.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EVALUATION THEREON BY A TRIAL JUDGE IS GENERALLY ACCORDED GREAT RESPECT.— The urging of the accused that the Court should review her case due to the conflicting versions of the parties is unwarranted. The determination of which of the different versions was to be believed is fundamentally an issue of credibility whose resolution belonged to the domain of the trial judge who had

observed the deportment and manner of the witnesses at the time of their testimony. The Court naturally accords great respect to the trial judge's evaluation of the credibility of witnesses, because the trial judge was in the best position to assess the credibility of witnesses and their testimonies by reason of his unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. With more reason do we hold so herein, for the CA, as the reviewing tribunal, affirmed the RTC, as the trial court. The accused bore the ensuing obligation to demonstrate to our satisfaction that the CA had overlooked, misconstrued, or misinterpreted facts and circumstances of substance that, if considered, would change the outcome. Alas, she did not do so.

4. ID.; ID.; WITNESSES; QUALITY OF WITNESSES, NOT THEIR QUANTITY, IS CONSIDERED IN JUDICIAL ADJUDICATIONS.— Nor should we pay heed to the contention of the accused that the version of the State weakened because only four out of the nine named complainants had actually testified in court against her. That contention ignores that in judicial adjudications, courts do not count but weigh witnesses; thus, quality of witnesses, not their quantity, is considered.

5. CRIMINAL LAW; ILLEGAL RECRUITMENT; THE ABSENCE OF RECEIPTS EVIDENCING PAYMENT DOES NOT DEFEAT A CRIMINAL PROSECUTION FOR ILLEGAL RECRUITMENT.— [T]he failure of the State to present receipts proving that the payments by the complainants was in consideration of their recruitment to Taiwan does not negate the guilt of the accused. This argument is not novel and unprecedented, for the Court has already ruled that the absence of receipts evidencing payment does not defeat a criminal prosecution for illegal recruitment. x x x Consequently, as long as the State established through credible testimonial evidence that the accused had engaged in illegal recruitment, her conviction was justified. That is what we find herein.

6. ID.; ILLEGAL RECRUITMENT IN LARGE SCALE; PENALTY.— Both lower courts correctly found that the accused's acts fell squarely under Article 13 (b) of the *Labor Code* due to the number of her victims being at least four. Hence, the penalty

of life imprisonment and fine of ₱ 100,000.00 as prescribed under Article 39 (a) of the *Labor Code* was proper.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BERSAMIN, *J.*:

Faced with the real prospect of spending the remainder of her natural life behind bars, the accused appeals the decision promulgated on April 29, 2005,[1] whereby the Court of Appeals (CA) affirmed her conviction beyond reasonable doubt of the crime of large scale illegal recruitment as defined by Article 13(b) and penalized by Article 39(a), both of the *Labor Code*, handed down by the Regional Trial Court (RTC), Branch 42, in Dagupan City, sentencing her to suffer life imprisonment and to pay a fine of ₱100,000.00, and ordering her to reimburse to the four complainants the respective amounts they had paid to the accused on their recruitment.[2]

The accused was arraigned and tried under the information dated March 5, 2001, which alleged:

That sometime in the months of November and December 2000 in the Municipality of Calasiao, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not being a licensee or holder of authority, did then and there, willfully (sic), unlawfully and feloniously undertake and perform recruitment activities in large scale by recruiting MARIA CORAZON AGAS GARCIA, JOCELYN GEMINIANO FLORES, SONNY YABOT *y* ANTONIO, BALTAZAR ARGEL *y* VALLEDOR, LETECIA RINONOS MARCELO, PABLITO S. GALUMAN, TARCILA

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[1] *Rollo*, pp. 3-13; penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justice Portia Aliño-Hormachuelos and Associate Justice Vicente Q. Roxas.

[2] CA *Rollo*, pp. 24-40; penned by Judge Luis M. Fontanilla.

M. UMAGAT, CAROLINE U. CALIX, PERCY C. FUERTES, to a supposed job abroad, particularly in Taiwan, for a fee, without first securing the necessary license or permit to do the same.

CONTRARY TO PD 442 as amended by PD 2018.

In her appeal, the accused denies having any participation in the recruitment of the nine named complainants for employment in Taiwan, asserting that the CA erred in thus affirming her conviction despite the totality of evidence pointing to no other conclusion than her innocence. She urges the review of the CA's ruling on the credibility of the witnesses in view of the two opposing versions of the facts involved.

In support of her appeal, she argues that the sums she exacted and received from the complainants represented only the reimbursement of the expenses incurred during her trips upon the advice of Sister Araceli, a faith healer, that took her and the complainants to Cebu City, Iligan City, Ozamis City and Cagayan de Oro City, not in consideration of the employment in Taiwan supposedly offered to the complainants; that for her not to be reimbursed would be most unfair because she had defrayed the expenses for the trips with the complainants with her husband's money; that the failure of the complainants to produce receipts showing that she had collected money from them in connection with her assurances of their employment in Taiwan was fatal to the State's case against her; and that although only four of the nine named complainants had appeared and testified in court, the Prosecution did not explain why the five other complainants had desisted from testifying against her.

After having examined the records, however, we reject the accused's denial of having any part in the recruitment of the complainants and affirm the decision of the CA. We affirm her conviction,

Article 13(b) of the *Labor Code*, defines "recruitment and placement" as referring:

xxx to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract

services, promising or advertising for employment, locally or abroad, whether for profit or not; Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

Article 38 of the *Labor Code* specifically defines what activities or acts constitute illegal recruitment and illegal recruitment *by a syndicate* or *in large scale*, *viz*:

Article 38. *Illegal recruitment.* — (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority, shall be deemed illegal and punishable under Article 39 of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

(c) The Secretary of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Secretary shall order the search of the office or premises and seizure of documents, paraphernalia, properties and other implements used in illegal recruitment activities and the closure of companies, establishments and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.

The acts committed by the accused constituted illegal recruitment in large scale, whose essential elements are the following:

(a) The accused engages in acts of recruitment and placement of workers defined under Article 13(b) of the *Labor Code* or in any prohibited activities under Article 43 of the *Labor Code*;

(b) The accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of license or an authority to recruit and deploy workers, either locally or overseas; and

(c) The accused commits the unlawful acts against three or more persons individually or as a group.[3]

It is the lack of the necessary license or authority to recruit and deploy workers, either locally or overseas, that renders the recruitment activity unlawful or criminal.[4] To prove illegal recruitment, therefore, the State must show that the accused gave the complainants the distinct impression that she had the power or ability to deploy the complainants abroad in a manner that they were convinced to part with their money for that end.

In addition to her admission that she did not have any license or authority from the Department of Labor and Employment (DOLE) to recruit and deploy workers, either locally or overseas, the explicit certification issued on January 10, 2001 by Atty. Adonis Peralta, the DOLE District Officer in Dagupan City, attesting that the accused did not possess any permit to recruit workers for overseas employment in Pangasinan, including the cities of Dagupan, San Carlos, Urdaneta and Alaminos, confirmed her lack of the license or authority required by law.[5]

Our review shows that the State competently established that the accused, despite having no license or authority to recruit and deploy workers, either locally or overseas, had represented to the complainants that she could secure their employment in Taiwan either as factory workers or as computer operators at

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[3] *People v. Mañozca*, G.R. No. 109779, March 13, 1997, 269 SCRA 513, 523.

[4] *People v. Señoron*, G.R. No. 119160, January 30, 1997, 267 SCRA 278, 286.

[5] *Records*, p. 16.

a monthly salary of NT$45,000.00 each; and that the complainants had relied on her representation and given her the amounts she had demanded in the expectation of their placement. We note that in order to make her representation more convincing, she had also told the complainants about her being related to the Philippine Ambassador to Taiwan, as well as to President Ramos and President Estrada.

The accused admitted having received various sums of money from the complainants, who had given the sums either in cash or by depositing in the bank account of her husband, but denied that such sums were in consideration of their recruitment, claiming instead that the sums were reimbursements for the expenses incurred during the trips to Cebu City, Iligan City, Ozamis City and Cagayan de Oro City in the company of the complainants.[6] She insisted that the complainants, resenting her demand for reimbursements, then brought the charge for illegal recruitment against her to get even. The CA disbelieved her denial, however, and pointed out that:

> Although private complainants do not deny that they did not spend a single centavo for all the expenses they have incurred during such trips, it appears from their combined testimonies that they were led to believe that the payments they have made were in consideration of their application to work in Taiwan and not for their outings.[7]

We uphold the CA's appreciation of the situation. The accused's allegation about this accusation emanating from the complainants' resentment could only be bereft of substance. For one, the fact that, as the RTC found, two of the complainants (*i.e.*, Ma. Corazon A. Garcia and Jocelyn Flores) did not even join the trips[8] entirely belied the allegation. Besides, although the complainants who had joined her in the trips had admittedly spent not a single centavo for the trips, their testimonies unerringly pointed nonetheless to the singular conclusion that she had led them to believe that what they were paying for was their promised overseas employment, not the trips. Such testimonies, which positively

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[6] TSN, February 6, 2002, pp. 2-15; *Rollo*, p. 11

[7] CA *Rollo*, p. 128.

[8] *Id.* at p. 37.

and unequivocally described her illegal activities of recruitment, prevailed over her denial, which was nothing but self-serving negative evidence.[9] Indeed, it was further shown that the accused had communicated to the complainants the dates of their departure for Taiwan after receiving the various sums she had demanded, which was further proof of her promise to deploy them in Taiwan.

The urging of the accused that the Court should review her case due to the conflicting versions of the parties is unwarranted. The determination of which of the different versions was to be believed is fundamentally an issue of credibility whose resolution belonged to the domain of the trial judge who had observed the deportment and manner of the witnesses at the time of their testimony.[10] The Court naturally accords great respect to the trial judge's evaluation of the credibility of witnesses, because the trial judge was in the best position to assess the credibility of witnesses and their testimonies by reason of his unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination.[11] With more reason do we hold so herein, for the CA, as the reviewing tribunal, affirmed the RTC, as the trial court.[12] The accused bore the ensuing obligation to demonstrate to our satisfaction that the CA had overlooked, misconstrued, or misinterpreted facts and circumstances of substance that, if considered, would change the outcome. Alas, she did not do so.

Nor should we pay heed to the contention of the accused that the version of the State weakened because only four out of the nine named complainants had actually testified in court against her. That contention ignores that in judicial adjudications,

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[9] *People v. Madronio*, G.R. No. 137587, July 29, 2003, 407 SCRA 337.

[10] *People v. Meris*, G.R. Nos. 117145-50 & 117447, March 28, 2000, 329 SCRA 33.

[11] *YHT Realty Corporation, et al. v. Court of Appeals*, G.R. No. 126780, February 17, 2005, 451 SCRA 638.

[12] *Castillo v. Court of Appeals*, G.R. No. 106472, August 7, 1996, 260 SCRA 374.

[13] *Rivera v. People*, G.R. No. 138553, June 30, 2005, 462 SCRA 350, 362.

courts do not count but weigh witnesses; thus, quality of witnesses, not their quantity, is considered.[13]

Finally, the failure of the State to present receipts proving that the payments by the complainants was in consideration of their recruitment to Taiwan does not negate the guilt of the accused. This argument is not novel and unprecedented, for the Court has already ruled that the absence of receipts evidencing payment does not defeat a criminal prosecution for illegal recruitment. According to *People v. Pabalan*:[14]

> xxx the absence of receipts in a criminal case for illegal recruitment does not warrant the acquittal of the accused and is not fatal to the case of the prosecution. As long as the witnesses had positively shown through their respective testimonies that the accused is the one involved in the prohibited recruitment, he may be convicted of the offense despite the want of receipts.
>
> The Statute of Frauds and the rules of evidence do not require the presentation of receipts in order to prove the existence of recruitment agreement and the procurement of fees in illegal recruitment cases. The amounts may consequently be proved by the testimony of witnesses.[15]

Consequently, as long as the State established through credible testimonial evidence that the accused had engaged in illegal recruitment, her conviction was justified.[16] That is what we find herein.

On the penalty for illegal recruitment in large scale, Article 39 of the *Labor Code* relevantly states:

> Article 39. *Penalties*. — (a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (₱100,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein;
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> x x x x x x x x x

[14] G.R. Nos. 115350 and 117819-21, September 30, 1996, 262 SCRA 574.

[15] See also *People v. Villas*, G.R. No. 112180, August 15, 1997, 277 SCRA 391, 407.

[16] *People v. Saley*, G.R. No. 121179, July 2, 1998, 291 SCRA 715.

Both lower courts correctly found that the accused's acts fell squarely under Article 13(b) of the *Labor Code* due to the number of her victims being at least four. Hence, the penalty of life imprisonment and fine of ₱100,000.00 as prescribed under Article 39 (a) of the *Labor Code* was proper.

WHEREFORE, the Court affirms the decision of the Court of Appeals promulgated on April 29, 2005.

SO ORDERED.

Carpio Morales (Chairperson), Abad,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 169103. March 16, 2011]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MANILA BANKERS' LIFE INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; DOCUMENTARY STAMP TAX; A TAX ON DOCUMENTS, INSTRUMENTS, LOAN AGREEMENTS, AND PAPERS EVIDENCING THE ACCEPTANCE, ASSIGNMENT, SALE OR TRANSFER OF AN OBLIGATION RIGHT OR PROPERTY INCIDENT THERETO.— Documentary stamp tax is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. It is in the nature of an excise

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[*] In lieu of Justice A. D. Brion who is on leave per Special Order No. 940 dated February 7, 2011.

tax because it is imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business distinct and separate from the business itself.

2. ID.; ID.; ELUCIDATED.— To elucidate, documentary stamp tax is levied on the exercise of certain privileges granted by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of these privileges, the exercise of which are subject to documentary stamp tax, are leases of lands, mortgages, pledges, trusts and conveyances of real property. Documentary stamp tax is thus imposed on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. The documentary stamp tax must be paid upon the issuance of these instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. Accordingly, the documentary stamp tax on insurance policies, though imposed on the document itself, is actually levied on the privilege to conduct insurance business. Under Section 173, the documentary stamp tax becomes due and payable at the time the insurance policy is issued, with the tax based on the amount insured by the policy as provided for in Section 183.

3. ID.; ID.; STAMP TAX ON LIFE INSURANCE POLICIES; THE INCREASES IN THE SUM ASSURED BROUGHT ABOUT BY THE GUARANTEED CONTINUITY CLAUSE IN CASE AT BAR IS NOT SUBJECT TO DOCUMENTARY STAMP TAX AS INSURANCE MADE UPON THE LIVES OF THE INSURED.— In the case at bar, the clause in contention is the "Guaranteed Continuity Clause" in respondent's Money Plus Plan x x x. The only things guaranteed in the respondent's continuity clause were: the continuity of the policy until the stated expiry date as long as the premiums were paid within the allowed time; the non-change in premiums for the duration of the 20-year policy term; and the option to continue such policy after the 20-year period, subject to certain requirements. In fact, even the continuity of the policy after its term was not guaranteed as the decision to renew it belonged to the insured, subject to certain conditions. Any increase in the sum assured, as a result of the clause, had to survive a new

agreement between the respondent and the insured. The increase in the life insurance coverage was only corollary to the new premium rate imposed based upon the insured's age at the time the continuity clause was availed of. It was not automatic, was never guaranteed, and was certainly neither definite nor determinable at the time the policy was issued. Therefore, the increases in the sum assured brought about by the guaranteed continuity clause cannot be subject to documentary stamp tax under Section 183 **as insurance made upon the lives of the insured**. However, it is clear from the text of the guaranteed continuity clause that what the respondent was actually offering in its Money Plus Plan was the option to **renew** the policy, after the expiration of its original term. Consequently, the acceptance of this offer would give rise to the renewal of the original policy.

4. ID.; ID.; ID.; THE AVAILMENT OF THE OPTION IN THE GUARANTEED CONTINUITY CLAUSE IN CASE AT BAR WILL EFFECTIVELY RENEW THE MONEY PLUS PLAN POLICY WHICH IS SUBJECT TO THE IMPOSITION OF DOCUMENTARY STAMP TAX AS AN INSURANCE RENEWED UPON THE LIFE OF THE INSURED.— The provision which specifically applies to renewals of life insurance policies is Section 183 x x x. Section 183 is a substantial reproduction of the earlier documentary stamp tax provision, Section 1449(j) of the Administrative Code of 1917. Regulations No. 26, or The Revised Documentary Stamp Tax Regulations, provided the implementing rules to the provisions on documentary stamp tax under the Administrative Code of 1917. Section 54 of the Regulations, in reference to what is now Section 183, explicitly stated that the documentary stamp tax imposed under that section is also collectible upon renewals of life insurance policies. x x x. To argue that there was no new legal relationship created by the availment of the guaranteed continuity clause would mean that any option to renew, integrated in the original agreement or contract, would not in reality be a renewal but only a discharge of a pre-existing obligation. The truth of the matter is that the guaranteed continuity clause only gave the insured the right to renew his life insurance policy which had a fixed term of twenty years. And although the policy would still continue with essentially the same terms and conditions, the fact is, its maturity date, coverage, and premium rate would have changed. We cannot agree with the CTA in its

holding that "the renewal, is in effect treated as an increase in the sum assured since no new insurance policy was issued." The renewal was not meant to restore the original terms of an old agreement, but instead it was meant to extend the life of an existing agreement, with some of the contract's terms modified. This renewal was still subject to the acceptance and to the conditions of both the insured and the respondent. This is entirely different from a simple mutual agreement between the insurer and the insured, to increase the coverage of an existing and effective life insurance policy. It is clear that the availment of the option in the guaranteed continuity clause will effectively renew the Money Plus Plan policy, which is indisputably subject to the imposition of documentary stamp tax under Section 183 **as an insurance renewed upon the life of the insured**.

5. ID.; ID.; ID.; GROUP LIFE INSURANCE; WHENEVER AN ENROLLMENT CARD IS REGISTERED AND ATTACHED TO AN EXISTING MASTER POLICY IN CASE AT BAR, THE PRIVILEGE TO CONDUCT THE BUSINESS OF INSURANCE IS EXERCISED AND THIS IS SUBJECT TO DOCUMENTARY STAMP TAX AS INSURANCE MADE UPON A LIFE.— When a group insurance is taken out, a group master policy is issued with the coverage and premium rate based on the number of the members covered at that time. In the case of a company group insurance plan, the premiums paid on the issuance of the master policy cover only those employees enrolled at the time such master policy was issued. When the employer hires additional employees during the life of the policy, the additional employees may be covered by the same group insurance already taken out without any need for the issuance of a new policy. x x x [I]t would be instructive to take another look at Section 183: On all policies of insurance or **other instruments by whatever name the same may be called**, whereby any insurance shall be made or renewed upon any life or lives. x x x Whenever a master policy admits of another member, another life is insured and covered. This means that the respondent, by approving the addition of another member to its existing master policy, is once more exercising its privilege to conduct the business of insurance, because it is yet again insuring a life. It does not matter that it did not issue another policy to effect this change, the fact remains that insurance on another life is made and the relationship of

insurer and insured is created between the respondent and the additional member of that master policy. In the respondent's case, its group insurance plan is embodied in a contract which includes not only the master policy, but all documents subsequently attached to the master policy. Among these documents are the Enrollment Cards accomplished by the employees when they applied for membership in the group insurance plan. The Enrollment Card of a new employee, once registered in the Schedule of Benefits and attached to the master policy, becomes evidence of such employee's membership in the group insurance plan, and his right to receive the benefits therein. Everytime the respondent registers and attaches an Enrollment Card to an existing master policy, it exercises its privilege to conduct its business of insurance and this is patently subject to documentary stamp tax **as insurance made upon a life** under Section 183.

6. ID.; TAXES; THE LIFEBLOOD OF THE GOVERNMENT.— Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty. Taxes are the lifeblood of the government and their prompt and certain availability is an imperious need. It is through taxes that government agencies are able to operate and with which the State executes its functions for the welfare of its constituents. It is for this reason that we cannot let the petitioner's oversight bar the government's rightful claim.

7. ID.; DOCUMENTARY STAMP TAX; STAMP TAX ON LIFE INSURANCE POLICIES; DOCUMENTARY STAMP TAX IS LEVIED ON EVERY DOCUMENT WHICH ESTABLISHES THAT INSURANCE IS MADE OR RENEWED UPON A LIFE.— This Court would like to make it clear that the assessment for deficiency documentary stamp tax is being upheld not because the additional premium payments or an agreement to change the sum assured during the effectivity of an insurance plan are subject to documentary stamp tax, but because documentary stamp tax is levied on every document which establishes that insurance was made or renewed upon a life.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Puyat Jacinto & Santos for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by the Commissioner of Internal Revenue (CIR) of the April 29, 2005 Decision[2] and July 27, 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 70600, which upheld the April 4, 2002 Decision[4] of the Court of Tax Appeals (CTA) in CTA Case No. 6189.

The facts as found by the CTA and Court of Appeals are undisputed.

Respondent Manila Bankers' Life Insurance Corporation is a duly organized domestic corporation primarily engaged in the life insurance business.[5]

On May 28, 1999, petitioner Commissioner of Internal Revenue issued Letter of Authority No. 000020705[6] authorizing a special team of Revenue Officers to examine the books of accounts and other accounting records of respondent for taxable year "1997 & unverified prior years."[7]

On December 14, 1999, based on the findings of the Revenue Officers, the petitioner issued a Preliminary Assessment Notice[8] against the respondent for its deficiency internal revenue taxes for the year 1997. The respondent agreed to all the assessments issued against it except to the amount of ₱2,351,680.90

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

[2] *Rollo*, pp. 54-62; penned by Associate Justice Godardo A. Jacinto with Associate Justices Bienvenido L. Reyes and Rosalinda Asuncion-Vicente, concurring.

[3] *Id.* at 64-71.

[4] *Id.* at 96-107.

[5] *Id.* at 79.

[6] *Id.* at 72.

[7] *Id*.

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

representing deficiency documentary stamp taxes on its policy premiums and penalties.[9]

Thus, on January 4, 2000, the petitioner issued against the respondent a Formal Letter of Demand[10] with the corresponding Assessment Notices attached,[11] one of which was **Assessment Notice No. ST-DST2-97-0054-2000**[12] pertaining to the documentary stamp taxes due on respondent's policy premiums:

Documentary Stamp Tax on Policy Premiums

Assessment No. ST-DST2-97-0054-2000

Tax Due	3,954,955.00
Less: Tax Paid	2,308,505.74
Tax Deficiency	1,646,449.26
Add: 20% Int./a	680,231.64
Recommended Compromise Penalty-Late Payment	25,000.00
Total Amount Due	2,351,680.90[13]

The tax deficiency was computed by including the increases in the life insurance coverage or the sum assured by some of respondent's life insurance plans[14]:

	ISSUED	INCREASED
ORDINARY	₱648,127,000.00	₱ 74,755,000.00
GROUP	114,936,000.00	744,164,000.00
TOTAL	₱763,063,000.00	₱ 818,919,000.00
GRAND TOTAL/TAX BASE		₱1,581,982,000.00
TAX RATE		₱0.50/200.00

[9] CA *rollo*, p. 37.

[10] *Rollo*, pp. 75-76.

[11] CA *rollo*, pp. 54-57.

[12] *Id.* at 58.

[13] *Rollo*, p. 76.

[14] CA *rollo*, p. 128.

TAX DUE		₱ 3,954,955.00
LESS: TAX PAID		₱ 2,308,505.74
DEFICIENCY DST	- BASIC	₱ 1,646,499.26
	- 20% INTEREST	680,231.64
	- SURCHARGE	25,000.00
TOTAL ASSESSMENT		₱ 2,351,680.90[15]

The amount of ₱818,919,000.00 comprises the increases in the sum assured for the respondent's ordinary insurance – the "Money Plus Plan" (₱74,755,000.00), and group insurance (₱744,164,000.00).[16]

On February 3, 2000, the respondent filed its Letter of Protest[17] with the Bureau of Internal Revenue (BIR) contesting the assessment for deficiency documentary stamp tax on its insurance policy premiums. Despite submission of documents on April 3, 2000,[18] as required by the BIR in its March 20, 2000[19] letter, the respondent's Protest was not acted upon by the BIR within the 180-day period given to it by Section 228 of the 1997 National Internal Revenue Code (NIRC) within which to rule on the protest. Hence, on October 26, 2000, the respondent filed a Petition for Review with the CTA for the cancellation of Assessment Notice No. ST-DST2-97-0054-2000. The respondent invoked the CTA's March 30, 1993 ruling in the similar case of *Lincoln Philippine Life Insurance Company, Inc. (now Jardine-CMA Life Insurance Company, Inc.) v. Commissioner of Internal Revenue*,[20] wherein the CTA held that the tax base to be used in computing the documentary stamp tax is the value at the time the instrument is issued because the documentary stamp tax is levied and paid only once, which is at the time the taxable document is issued.

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[15] *Rollo*, p. 82.

[16] *Id.* at 145.

[17] CA *rollo*, p. 64.

[18] *Id.* at 117.

[19] *Id.* at 65.

[20] CTA Case No. 4583; *rollo*, p. 84.

On April 4, 2002, the CTA granted the respondents' Petition with the dispositive portion as follows:

> WHEREFORE, in the light of all the foregoing, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **CANCEL** and **WITHDRAW Assessment Notice No. ST-DST2-97-0054-2000** dated January 4, 2000 in the amount of ₱2,351,680.90 representing deficiency documentary stamp taxes for the taxable year 1997.[21]

The CTA, applying the Tax Code Provisions then in force, held that:

> [T]he documentary stamp tax on life insurance policies is imposed only once based on the amount insured at the time of actual issuance of such policies. The documentary stamp tax which is in the nature of an excise tax is imposed on the document as originally issued. Therefore, any subsequent increase in the insurance coverage resulting from policies which have been subjected to the documentary stamp tax at the time of their issuance, is no longer subject to the documentary stamp tax.[22]

Aggrieved by the decision, the petitioner went to the Court of Appeals on a Petition for Review[23] docketed as CA-G.R. SP No. 70600 on the ground that:

> THE TAX COURT ERRED IN RULING THAT INCREASES IN THE COVERAGE OR THE SUM ASSURED BY AN EXISTING INSURANCE POLICY IS NOT SUBJECT TO THE DOCUMENTARY STAMP TAX. (DST).[24]

On April 29, 2005, the Court of Appeals sustained the cancellation of Assessment Notice No. ST-DST2-97-0054-2000 in its Decision, the decretal portion of which reads:

> WHEREFORE, all considered and finding no merit in the herein appeal, judgment is hereby rendered upholding the April 4, 2002, CTA Decision in CTA Case No. 6189 entitled "*Manila Bankers' Life*

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[21] *Rollo*, p. 106.

[22] *Id.* at 104.

[23] *Id.* at 108-122.

[24] *Id.* at 115.

Insurance Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent."[25]

The Court of Appeals, in upholding the decision of the CTA, said that the subject of the documentary stamp tax is the issuance of the instrument representing the creation, change or cessation of a legal relationship.[26] It further held that because the legal status or nature of the relationship embodied in the document has no bearing at all on the tax, the fulfillment of suspensive conditions incorporated in the respondent's policies, as claimed by the petitioner, would still not give rise to new documentary stamp tax payments.[27]

The petitioner asked for reconsideration of the above Decision and cited this Court's March 19, 2002 Decision in *Commissioner of Internal Revenue v. Lincoln Philippine Life Insurance Company, Inc.*,[28] the very same case the respondent invoked before the CTA. The petitioner argued that in *Lincoln*, this Court reversed both the CTA and the Court of Appeals and sustained the validity of the deficiency documentary stamp tax imposed on the increase in the sum insured even though no new policy was issued because the increase, by reason of the "Automatic Increase Clause," was already definite at the time the policy was issued.

On July 27, 2005, the Court of Appeals sustained its ruling, and stated that the *Lincoln Case* was not applicable because the increase in the sum assured in Lincoln's insurance policy was definite and determinable at the time such policy was issued as the automatic increase clause, which allowed for the increase, formed an integral part of the policy; whereas in the respondent's case, "the tax base of the disputed deficiency assessment was not [a] definite or determinable increase in the sum assured."[29]

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[25] *Id.* at 61.

[26] *Id.* at 60.

[27] *Id.*

[28] 429 Phil. 154 (2002).

[29] *Rollo,* p. 66.

The petitioner is now before us praying for the nullification of the Court of Appeals' April 29, 2005 Decision and July 27, 2005 Resolution and to have the assessment for deficiency documentary stamp tax on respondent's policy premiums, plus 25% surcharge for late payment and 20% annual interest, sustained[30] on the following arguments:

A.

THE APPLICABLE PROVISIONS OF THE NIRC AT THE TIME THE ASSESSMENT FOR DEFICIENCY DOCUMENTARY STAMP TAX WAS ISSUED PROVIDE THAT DOCUMENTARY STAMP TAX IS COLLECTIBLE NOT ONLY ON THE ORIGINAL POLICY BUT ALSO UPON RENEWAL OR CONTINUANCE THEREOF.

B.

THE AMOUNT INSURED BY THE POLICY AT THE TIME OF ITS ISSUANCE NECESSARILY INCLUDED THE ADDITIONAL SUM AS A RESULT OF THE EXERCISE OF THE OPTION UNDER THE "GUARANTEED CONTINUITY" CLAUSE IN RESPONDENT'S INSURANCE POLICIES.

C.

THE "GUARANTEED CONTINUITY" CLAUSE OFFERS TO THE INSURED AN OPTION TO AVAIL OF THE RIGHT TO RENEW OR CONTINUE THE POLICY. IF AND WHEN THE INSURED AVAILS OF SUCH OPTION AND SUCH GUARANTEED CONTINUITY CLAUSE TAKES EFFECT, THE INSURER IS LIABLE FOR DEFICIENCY DOCUMENTARY STAMP TAX CORRESPONDING TO THE INCREASE OF THE INSURANCE COVERAGE.

D.

SECTION 198 OF THE 1997 NIRC CLEARLY STATES THAT THE DOCUMENTARY STAMP TAX IS IMPOSABLE UPON RENEWAL OR CONTINUANCE OF ANY POLICY OF INSURANCE OR THE RENEWAL OR CONTINUANCE OF ANY CONTRACT BY ALTERING OR OTHERWISE, AT THE SAME RATE AS THAT IMPOSED ON THE ORIGINAL INSTRUMENT.[31]

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

[31] *Id.* at 27-29.

As can be gleaned from the facts, the deficiency documentary stamp tax was assessed on the increases in the life insurance coverage of two kinds of policies: the "Money Plus Plan," which is an ordinary term life insurance policy; and the group life insurance policy. The increases in the coverage of the life insurance policies were brought about by the premium payments made subsequent to the issuance of the policies. The Money Plus Plan is a 20-year term ordinary life insurance plan with a "Guaranteed Continuity Clause" which allowed the policy holder to continue the policy after the 20-year term subject to certain conditions. Under the plan, the policy holders paid their premiums in five separate periods, with the premium payments, after the first period premiums, to be made only upon reaching a certain age. The succeeding premium payments translated to increases in the sum assured. Thus, the petitioner believed that since the documentary stamp tax was affixed on the policy based only on the first period premiums, then the succeeding premium payments should likewise be subject to documentary stamp tax. In the case of respondent's group insurance, the deficiency documentary stamp tax was imposed on the premiums for the additional members to already existing and effective master policies. The petitioner concluded that any additional member to the group of employees, who were already insured under the existing mother policy, should similarly be subjected to documentary stamp tax.[32]

The resolution of this case hinges on the validity of the imposition of documentary stamp tax on increases in the coverage or sum assured by existing life insurance policies, even without the issuance of new policies.

In view of the fact that the assessment for deficiency documentary stamp tax covered the taxable year 1997, the relevant and applicable legal provisions are those found in the 1977 National Internal Revenue Code (Tax Code) as amended,[33] to wit:

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[32] CA *rollo*, pp. 128-129.

[33] Republic Act No. 8424 or the Tax Reform Act of 1997 became effective only on January 1, 1998.

Section 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. — Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same **wherever the document is made, signed, issued, accepted, or transferred** when the obligation or right arises from Philippine sources or the property is situated in the Philippines, **and the same time such act is done or transaction had**: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.[34]

Section 183. Stamp Tax on Life Insurance Policies. — On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a documentary stamp tax of fifty centavos on each two hundred pesos or fractional part thereof, **of the amount insured by any such policy**.[35] (Emphases ours.)

Documentary stamp tax is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto.[36] It is in the nature of an excise tax because it is imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise

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[34] Presidential Decree No. 1158 as renumbered and amended by Section 32 of Presidential Decree No. 1994, November 5, 1985; Section 23 of Executive Order No. 273, July 25, 1987; and Section 1 of Republic Act No. 7660, December 23, 1993.

[35] Presidential Decree No. 1158 as amended by Section 29 of Annex of Presidential Decree No. 1457, June 11, 1978; Section 27 of Presidential Decree No. 1959, October 10, 1984; Section 45 of Presidential Decree No. 1994, November 5, 1985; and Section 23 of Executive Order No. 273, July 25, 1987.

[36] *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253, 263.

upon the facilities used in the transaction of the business distinct and separate from the business itself.[37]

To elucidate, documentary stamp tax is levied on the exercise of certain privileges granted by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of these privileges, the exercise of which are subject to documentary stamp tax, are leases of lands, mortgages, pledges, trusts and conveyances of real property. Documentary stamp tax is thus imposed on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. The documentary stamp tax must be paid upon the issuance of these instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable.[38]

Accordingly, the documentary stamp tax on insurance policies, though imposed on the document itself, is actually levied on the privilege to conduct insurance business. Under Section 173, the documentary stamp tax becomes due and payable at the time the insurance policy is issued, with the tax based on the amount insured by the policy as provided for in Section 183.

Documentary Stamp Tax on the "Money Plus Plan"

The petitioner would have us reverse both the CTA and the Court of Appeals based on our decision in *Commissioner of Internal Revenue v. Lincoln Philippine Life Insurance Company, Inc.*[39]

The *Lincoln* case has been invoked by both parties in different stages of this case. The respondent relied on the CTA's ruling

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[37] *Lincoln Philippine Life Insurance Company, Inc. (Now Jardine-CMG Life Insurance Co. Inc.) v. Court of Appeals*, 354 Phil. 896, 904 (1998).

[38] *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 372-373 (1999).

[39] *Supra* note 28.

in the *Lincoln* case when it elevated its protest there; and when we reversed the CTA's ruling therein, the petitioner called the Court of Appeals' attention to it, and prayed for a decision upholding the assessment for deficiency documentary stamp tax just like in the *Lincoln* case.

It is therefore necessary to briefly discuss the *Lincoln case* to determine its applicability, if any, to the case now before us. Prior to 1984, *Lincoln Philippine Life Insurance Company, Inc. (Lincoln)* had been issuing its "Junior Estate Builder Policy," a special kind of life insurance policy because of a clause which provided for an automatic increase in the amount of life insurance coverage upon attainment of a certain age by the insured without the need of a new policy. As *Lincoln* paid documentary stamp taxes only on the initial sum assured, the CIR issued a deficiency documentary stamp tax assessment for the year 1984, the year the clause took effect. Both the CTA and the Court of Appeals found no basis for the deficiency assessment. As discussed above, however, this Court reversed both lower courts and sustained the CIR's assessment.

This Court ruled that the increase in the sum assured brought about by the "automatic increase" clause incorporated in *Lincoln's* Junior Estate Builder Policy was still subject to documentary stamp tax, notwithstanding that no new policy was issued, because the date of the effectivity of the increase, as well as its amount, were already definite and determinable at the time the policy was issued. As such, the tax base under Section 183, which is "the amount fixed in the policy," is "the figure written on its face and whatever increases will take effect in the future by reason of the 'automatic increase clause.'"[40] This Court added that the automatic increase clause was "in the nature of a conditional obligation under Article 1181,[41] by which the increase of the insurance coverage shall depend upon the happening of the event which constitutes the obligation."[42]

[40] *Commissioner of Internal Revenue v. Lincoln Philippine Life Insurance Company, Inc., supra* note 28.

[41] New Civil Code.

[42] *Commissioner of Internal Revenue v. Lincoln Philippine Life Insurance Company, Inc., supra* note 28 at 161-162.

Since the *Lincoln* case, wherein the then CIR's arguments for the BIR are very similar to the petitioner's arguments herein, was decided in favor of the BIR, the petitioner is now relying on our ruling therein to support his position in this case. Although the two cases are similar in many ways, they must be distinguished by the nature of the respective "clauses" in the life insurance policies involved, where we note a major difference. In *Lincoln*, the relevant clause is the "Automatic Increase Clause" which provided for the automatic increase in the amount of life insurance coverage upon the attainment of a certain age by the insured, without any need for another contract. In the case at bar, the clause in contention is the "Guaranteed Continuity Clause" in respondent's Money Plus Plan, which reads:

GUARANTEED CONTINUITY

We guarantee the continuity of this Policy until the Expiry Date stated in the Schedule provided that the effective premium is consecutively paid when due or within the 31-day Grace Period.

We shall not have the right to change premiums on your Policy during the 20-year Policy term.

At the end of each twenty-year period, and provided that you have not attained age 55, you may renew your Policy for a further twenty-year period. To renew, you must submit proof of insurability acceptable to MBLIC and pay the premium due based on attained age according to the rates prevailing at the time of renewal.[43]

A simple reading of respondent's guaranteed continuity clause will show that it is significantly different from the "automatic increase clause" in *Lincoln*. The only things guaranteed in the respondent's continuity clause were: the continuity of the policy until the stated expiry date as long as the premiums were paid within the allowed time; the non-change in premiums for the duration of the 20-year policy term; and the option to continue such policy after the 20-year period, subject to certain requirements. In fact, even the continuity of the policy after its term was not guaranteed as the decision to renew it belonged to the insured, subject to certain conditions. Any increase in

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

the sum assured, as a result of the clause, had to survive a new agreement between the respondent and the insured. The increase in the life insurance coverage was only corollary to the new premium rate imposed based upon the insured's age at the time the continuity clause was availed of. It was not automatic, was never guaranteed, and was certainly neither definite nor determinable at the time the policy was issued.

Therefore, the increases in the sum assured brought about by the guaranteed continuity clause cannot be subject to documentary stamp tax under Section 183 **as insurance made upon the lives of the insured**.

However, it is clear from the text of the guaranteed continuity clause that what the respondent was actually offering in its Money Plus Plan was the option to **renew** the policy, after the expiration of its original term. Consequently, the acceptance of this offer would give rise to the renewal of the original policy.

The petitioner avers that these life insurance policy renewals make the respondent liable for deficiency documentary stamp tax under Section 198.

Section 198 of the old Tax Code reads:

Section 198. Stamp Tax on Assignments and Renewals of Certain Instruments. – Upon each and every assignment or transfer of any mortgage, lease or policy of insurance, or the renewal or continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness by altering or otherwise, there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument.[44]

Section 198 speaks of assignments and renewals. In the case of insurance policies, this section applies only when such policy was assigned or transferred. The provision which specifically applies to renewals of life insurance policies is Section 183:

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[44] Presidential Decree No. 1158 as renumbered by Section 45 of Presidential Decree No. 1994, November 5, 1985 and Section 23 of Executive Order No. 273, July 25, 1987.

Section 183. Stamp Tax on Life Insurance Policies. — On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be **made or renewed** upon any life or lives, there shall be collected a documentary stamp tax of fifty centavos on each two hundred pesos or fractional part thereof, of the amount insured by any such policy. (Emphasis ours.)

Section 183 is a substantial reproduction of the earlier documentary stamp tax provision, Section 1449(j) of the Administrative Code of 1917. Regulations No. 26, or The Revised Documentary Stamp Tax Regulations,[45] provided the implementing rules to the provisions on documentary stamp tax under the Administrative Code of 1917. Section 54 of the Regulations, in reference to what is now Section 183, explicitly stated that the documentary stamp tax imposed under that section is also collectible upon renewals of life insurance policies, *viz*:

> Section 54. Tax also due on renewals. – The tax under this section is collectible not only on the original policy or contract of insurance but also upon the renewal of the policy or contract of insurance.

To argue that there was no new legal relationship created by the availment of the guaranteed continuity clause would mean that any option to renew, integrated in the original agreement or contract, would not in reality be a renewal but only a discharge of a pre-existing obligation. The truth of the matter is that the guaranteed continuity clause only gave the insured the right to renew his life insurance policy which had a fixed term of twenty years. And although the policy would still continue with essentially the same terms and conditions, the fact is, its maturity date, coverage, and premium rate would have changed. We cannot agree with the CTA in its holding that "the renewal, is in effect treated as an increase in the sum assured since no new insurance policy was issued."[46] The

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[45] March 26, 1924. Amended by Regulations No. 77 (August 8, 1933); Revenue Regulations Nos. 4-68, (August 16, 1967); 1-72 (January 28, 1972); 3-75 (May 27, 1975); and Presidential Decree Nos. 1158 (June 3, 1977) and 1457. See also Presidential Decree No. 1959 (October 15, 1984), re omnibus amendments to the Tax Code.

[46] *Rollo*, p. 106.

renewal was not meant to restore the original terms of an old agreement, but instead it was meant to extend the life of an existing agreement, with some of the contract's terms modified. This renewal was still subject to the acceptance and to the conditions of both the insured and the respondent. This is entirely different from a simple mutual agreement between the insurer and the insured, to increase the coverage of an existing and effective life insurance policy.

It is clear that the availment of the option in the guaranteed continuity clause will effectively renew the Money Plus Plan policy, which is indisputably subject to the imposition of documentary stamp tax under Section 183 **as an insurance renewed upon the life of the insured**.

Documentary Stamp Tax on Group Life Insurance

The petitioner is also asking this Court to sustain his deficiency documentary stamp tax assessment on the additional premiums earned by the respondent in its group life insurance policies.

This Court, in *Pineda v. Court of Appeals*[47] has had the chance to discuss the concept of "group insurance," to wit:

> In its original and most common form, group insurance provides life or health insurance coverage for the employees of one employer.
>
> The coverage terms for group insurance are usually stated in a master agreement or policy that is issued by the insurer to a representative of the group or to an administrator of the insurance program, such as an employer. The employer acts as a functionary in the collection and payment of premiums and in performing related duties. Likewise falling within the ambit of administration of a group policy is the disbursement of insurance payments by the employer to the employees. Most policies, such as the one in this case, require an employee to pay a portion of the premium, which the employer deducts from wages while the remainder is paid by the employer. This is known as a contributory plan as compared to a non-contributory plan where the premiums are solely paid by the employer.

[47] G.R. No. 105562, September 27, 1993, 226 SCRA 754.

Although the employer may be the titular or named insured, the insurance is actually related to the life and health of the employee. Indeed, the employee is in the position of a real party to the master policy, and even in a non-contributory plan, the payment by the employer of the entire premium is a part of the total compensation paid for the services of the employee. Put differently, the labor of the employees is the true source of the benefits, which are a form of additional compensation to them.[48] (Emphasis ours.)

When a group insurance plan is taken out, a group master policy is issued with the coverage and premium rate based on the number of the members covered at that time. In the case of a company group insurance plan, the premiums paid on the issuance of the master policy cover only those employees enrolled at the time such master policy was issued. When the employer hires additional employees during the life of the policy, the additional employees may be covered by the same group insurance already taken out without any need for the issuance of a new policy.

The respondent claims that since the additional premiums represented the additional members of the same existing group insurance policy, then under our tax laws, no additional documentary stamp tax should be imposed since the appropriate documentary stamp tax had already been paid upon the issuance of the master policy. The respondent asserts that since the documentary stamp tax, by its nature, is paid at the time of the issuance of the policy, "then there can be no other imposition on the same, regardless of any change in the number of employees covered by the existing group insurance."[49]

To resolve this issue, it would be instructive to take another look at Section 183: On all policies of insurance or **other instruments by whatever name the same may be called,** whereby any insurance shall be made or renewed upon any life or lives.

The phrase "other instruments" as also found in the earlier version of Section 183, *i.e.,* Section 1449(j) of the Administrative Code of 1917, was explained in Regulations No. 26, to wit:

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[48] *Id.* at 765-766.

[49] *Rollo,* p. 230.

Section 52. "Other instruments" defined. – The term "other instruments" includes **any instrument by whatever name the same is called whereby insurance is made or renewed**, *i.e.*, **by which the relationship of insurer and insured is created or evidenced**, whether it be a letter of acceptance, cablegrams, letters, binders, covering notes, or memoranda. (Emphasis ours.)

Whenever a master policy admits of another member, another life is insured and covered. This means that the respondent, by approving the addition of another member to its existing master policy, is once more exercising its privilege to conduct the business of insurance, because it is yet again insuring a life. It does not matter that it did not issue another policy to effect this change, the fact remains that insurance on another life is made and the relationship of insurer and insured is created between the respondent and the additional member of that master policy. In the respondent's case, its group insurance plan is embodied in a contract which includes not only the master policy, but all documents subsequently attached to the master policy.[50] Among these documents are the Enrollment Cards accomplished by the employees when they applied for membership in the group insurance plan. The Enrollment Card of a new employee, once registered in the Schedule of Benefits and attached to the master policy, becomes evidence of such employee's membership in the group insurance plan, and his right to receive the benefits therein. Everytime the respondent registers and attaches an Enrollment Card to an existing master policy, it exercises its privilege to conduct its business of insurance and this is patently subject to documentary stamp tax **as insurance made upon a life** under Section 183.

The respondent would like this Court to ignore the petitioner's argument that renewals of insurance policies are also subject to documentary stamp tax for being raised for the first time. This Court was faced with the same dilemma in *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*,[51] when the petitioner also raised

[50] CA *rollo*, p. 107.

[51] 243 Phil. 703 (1988).

an issue therein for the first time in the Supreme Court. In addressing the procedural lapse, we said:

> As clearly ruled by Us "To allow a litigant to assume a different posture when he comes before the court and challenges the position he had accepted at the administrative level," would be to sanction a procedure whereby the Court - which is supposed to review administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum. Thus it is well settled that under the same underlying principle of prior exhaustion of administrative remedies, on the judicial level, issues not raised in the lower court cannot generally be raised for the first time on appeal. x x x.[52]

However, in the same case, we also held that:

> Nonetheless it is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. **The errors of certain administrative officers should never be allowed to jeopardize the government's financial position**.[53] (Emphasis ours.)

Along with police power and eminent domain, taxation is one of the three basic and necessary attributes of sovereignty.[54] Taxes are the lifeblood of the government and their prompt and certain availability is an imperious need. It is through taxes that government agencies are able to operate and with which the State executes its functions for the welfare of its constituents.[55] It is for this reason that we cannot let the petitioner's oversight bar the government's rightful claim.

This Court would like to make it clear that the assessment for deficiency documentary stamp tax is being upheld not because the additional premium payments or an agreement to change

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[52] *Id.* at 709.

[53] *Id*.

[54] *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*, G.R. No. 133834, August 28, 2006, 499 SCRA 664, 667-668.

[55] *Proton Pilipinas Corporation v. Republic of the Philippines, represented by the Bureau of Customs*, G.R. No. 165027, October 12, 2006, 504 SCRA 528, 547-548.

the sum assured during the effectivity of an insurance plan are subject to documentary stamp tax, but because documentary stamp tax is levied on every document which establishes that insurance was made or renewed upon a life.

WHEREFORE, the petition is *GRANTED*. The April 29, 2005 Decision and the July 27, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 70600 are hereby *SET ASIDE*. Respondent Manila Bankers' Life Insurance Corp. is hereby ordered to pay petitioner Commissioner of Internal Revenue the deficiency documentary stamp tax in the amount of ₱1,646,449.26, plus the delinquency penalties of 25% surcharge on the amount due and 20% annual interest from January 5, 2000 until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 169599. March 16, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **JUANITO MANIMTIM, JULIO UMALI, represented by AURORA U. JUMARANG, SPOUSES EDILBERTO BAÑANOLA and SOFIA BAÑANOLA, ZENAIDA MALABANAN, MARCELINO MENDOZA, DEMETRIO BARRIENTOS, FLORITA CUADRA, and FRANCISCA MANIMTIM,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION

DECREE); APPLICATION FOR REGISTRATION OF TITLE UNDER SECTION 14(1); REQUISITES.— [A]pplicants for registration of title under Section 14(1) [of P.D. No. 1529] must sufficiently establish: (*1*) that the subject land forms part of the disposable and alienable lands of the public domain; (*2*) that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and (*3*) that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier. These the respondents must prove by no less than clear, positive and convincing evidence.

2. ID.; ID.; ID.; ID.; NOT COMPLIED WITH IN CASE AT BAR.— In case at bench, the respondents failed to establish that the subject lots were disposable and alienable lands. Although respondents attached a photocopy of a certification dated August 16, 1988 from the District Land Officer, LMS, DENR, attesting that the subject lots were not covered by any public land applications or patents, and another certification dated August 23, 1988 from the Office of the District Forester, Forest Management Bureau, DENR, attesting that the subject lots have been verified, certified and declared to be within the alienable or disposable land of Tagaytay City on April 5, 1978, they were not able to present the originals of the attached certifications as evidence during the trial. Neither were they able to present the officers who issued the certifications to authenticate them. x x x Hence, there is no proof that the subject lots are disposable and alienable lands. Moreover, the records failed to show that the respondents by themselves or through their predecessors-in-interest have been in open, exclusive, continuous, and notorious possession and occupation of the subject lands, under a bona fide claim of ownership since June 12, 1945 or earlier. The respondents presented the testimonies of Juanito Manimtim (*Juanito*), Edilberto Bañanola, Jacinto Umali, Eliseo Ganuelas, Isabelo Umali, and Engr. Vivencio Valerio and tax declarations to prove possession and occupation over the subject lots. These declarations and documents, however, do not suffice to prove their qualifications and compliance with the requirements.

3. ID.; ID.; GENERAL STATEMENTS THAT ARE MERE CONCLUSIONS OF LAW AND NOT FACTUAL PROOF

OF POSSESSION ARE UNAVAILING AND CANNOT SUFFICE.— Juanito failed to substantiate his general statement that his great grandparents were in possession of the subject lots for a period of over 40 years. He failed to give specific details on the actual occupancy by his predecessors-in-interest of the subject lots or mode of acquisition of ownership for the period of possession required by law. It is a rule that general statements that are mere conclusions of law and not factual proof of possession are unavailing and cannot suffice. An applicant in a land registration case cannot just harp on mere conclusions of law to embellish the application but must impress thereto the facts and circumstances evidencing the alleged ownership and possession of the land.

4. ID.; ID.; TAX DECLARATIONS AND RECEIPTS ARE MERELY *INDICIA* OF A CLAIM OF OWNERSHIP.— Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership.

5. REMEDIAL LAW; ACTIONS; ESTOPPEL; THE STATE CANNOT BE ESTOPPED BY THE OMISSION, MISTAKE OR ERROR OF ITS OFFICIALS OR AGENTS.— [T]he fact that the public prosecutor of Tagaytay City did not contest the respondents' possession of the subject property is of no moment. The absence of opposition from government agencies is of no controlling significance because the State cannot be estopped by the omission, mistake or error of its officials or agents.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Andolana Law Firm for respondents.

D E C I S I O N

MENDOZA, *J.*:

Assailed in this petition is the September 5, 2005 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CV No. 74720, which reversed and set aside the February 15, 2000 Amended Judgment[2] of the Regional Trial Court, Branch 18, Tagaytay City *(RTC)*, and reinstated the March 31, 1997 Judgment[3] granting the respondents' application for registration of Lot 3857 but deferring the approval of the application for Lot 3858.

The Facts

Records show that on December 3, 1991, Juanito Manimtim, Julio Umali, Spouses Edilberto Bañanola and Sofia Bañanola, Zenaida Malabanan, Marcelino Mendoza, Demetrio Barrientos, Florita Cuadra, and Francisca Manimtim *(respondents)* filed with the RTC two applications for registration and confirmation of their title over two (2) parcels of land, designated as Lot 3857 (Ap-04-006225) with an area of 38,213 square meters and Lot 3858 (Ap-04-006227) with an area of 9,520 square meters, located in Barangay Sungay, Tagaytay City.

Julio Umali died while the case was pending and he was substituted by his heirs namely: Guillermo, Jose, Gerardo, Meynardo, Jacinto, and Ernesto, all surnamed Umali, and Aurora Umali-Jumarang.

The respondents alleged that they are the owners *pro indiviso* and in fee simple of the subject parcels of land; that they have acquired the subject parcels of land by purchase or assignment of rights; and that they have been in actual, open, public, and continuous possession of the subject land under claim of title exclusive of any other rights and adverse to all

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[1] *Rollo*, pp. 29-50. Penned by Associate Justice Vicente Q. Roxas with Associate Justice Portia Aliño-Hormachuelos and Associate Justice Juan Q. Enriquez, Jr., concurring.

[2] CA *rollo*, pp. 81-92.

[3] *Id.* at 75-80.

other claimants by themselves and through their predecessors-in-interest since time immemorial.

In support of their applications, the respondents submitted blueprint plans of Lot 3857 and Lot 3858, technical descriptions, certifications in lieu of lost geodetic engineer's certificates, declarations of real property tax, official receipts of payment of taxes, real property tax certifications, and deeds of absolute sale.

The RTC set the initial hearing of the case on May 20, 1992 after compliance with all the requirements of the law regarding publication, mailing and posting.

On February 19, 1992, the Republic of the Philippines, through the Office of the Solicitor General *(OSG)*, opposed the respondents' twin application on the following grounds:

1] Neither the applicants nor their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land in question since June 12, 1945 or prior thereto;

2] The muniments of title, that is, tax declaration and tax receipts, attached to or alleged in the application, do not constitute competent and sufficient evidence of a bona fide acquisition of the land applied for registration;

3] This is a claim of ownership on the basis of a Spanish title or grant, which has been barred as a mode of proving acquisition; and

4] The land is part of the public domain belonging to the Republic of the Philippines, which is not subject to private appropriation.[4]

On May 15, 1992, the Land Registration Authority *(LRA)* transmitted to the RTC a report dated April 29, 1992 stating that there were discrepancies in Plans Ap-04-006225 (Lot 3857) and Ap-04-006227 (Lot 3858) and referred the matter to the Land Management Sector *(LMS)*, now called the Land

[4] *Rollo,* p. 32.

Management Bureau of the Department of Environment and Natural Resources *(DENR)*, for verification and correction.

On May 20, 1992, Moldex Realty, Inc. *(MOLDEX)* opposed the applications on the ground that it is the registered owner of a parcel of land designated as Lot 4, Psu-108624 and technically described in Transfer Certificate of Title *(TCT)* No. T-20118 and that the metes and bounds of Lot 3857 and Lot 3858 overlapped its lot by about 14,088 square meters. MOLDEX, therefore, prayed that the overlapping portion be excluded from the applications.

On June 30, 1993, the respondents and MOLDEX filed a joint motion requesting the RTC to appoint a team of commissioners composed of a government representative from the Survey Division, LMS, DENR; Engr. Vivencio L. Valerio, representing the respondents; and Engr. Romeo Durante, representing MOLDEX, to conduct an actual ground verification and relocation survey to assist the RTC in resolving the controversy on the location and position of the subject lots. On that same day, the RTC granted the joint motion and directed the team of commissioners to submit its findings within 15 days after the termination of the ground verification and relocation survey.

On January 19, 1995, Robert C. Pangyarihan, the Chief of Survey Division, LMS, DENR, transmitted to the RTC the report of Engr. Alexander L. Jacob *(Engr. Jacob)*, based on the verification and relocation survey he conducted in the presence of the respondents and MOLDEX, which found an encroachment or overlapping on Lot 4, Psu-108624. The report stated the following findings and recommendations:

3.5. Lot 4, Psu-108624 is an older approved survey previously decreed and, therefore, it is the survey which was encroached upon or overlapped by Lot 1, Psu-176181;Lot 1, Psu-176182; and Lot 1 & 2 Psu-176184.

4. RECOMMENDATIONS

4.1 In view of the foregoing findings of encroachment on decreed survey, the portions labeled as "A" "B" "C" and "D" should be segregated from Lot 1, Psu-176181; Lot 1 & 2, 176184; and Lot 1 & 2 Psu-176182; respectively, which process involves the

amendment of said plans to be submitted for approval by the Regional Office.

4.2 It is further recommended that the point of reference or "tie point" of Lot 1, Psu-176181, Lot 1, Psu-176182, Lot 1, Psu-176182 and Lot 3, Psu-176181 be changed to BLLM No. 5, Tagaytay Cadastre, the said amendment being warranted by the findings of this verification survey thru direct traverse connection of the corner boundaries of said lots from BLLM No. 5 which is relatively near to subject lots.[5]

On March 31, 1997, the RTC handed down its Judgment granting the respondents' application for registration of Lot 3857 of Plan Ap-04-006227 but deferred the approval of registration of Lot 3858 pending the segregation of 4,243 square meter portion thereof which was found to belong to MOLDEX.

On April 29, 1997, the respondents filed a motion for partial new trial on the following grounds:

1] Newly discovered evidence explaining that when they were in the process of amending plan Ap-04-006227 of Lot 3858, they found out that the sketch plan that was furnished to them by the LRA, upon their request, showed no overlapping between their property and that of MOLDEX; and

2] Insufficiency of evidence because the plan prepared by Engr. Jacob, which was the basis of his report, was not signed by the respondents or their representatives and the LRA was not informed of these developments.

On October 27, 1997, Director Felino M. Cortez *(Director Cortez)* of the LRA Department of Registration transmitted a supplementary report to the RTC dated October 1, 1997, which found that Lot 3858 did not encroach on MOLDEX's property. Likewise, the supplementary report made the following recommendations:

1. To approve the correction made by the Lands Management Sector on the boundaries of Lot 3858, Cad. 355 along lines 2-3 and 9-1 which is Lot 4-B, Psu-105624 Amd. as mentioned in paragraph 2 hereof; and

[5] *Id.* at 33-34.

2. The judgment dated March 31, 1997 with respect to Lot 3858, Cad. 355 item #2 of the dispositive portion be amended accordingly.[6]

On January 29, 1998, MOLDEX filed an opposition to the respondents' motion for partial new trial for lack of a supporting affidavit of the witness by whom such evidence would be given or a duly authenticated document which was supposed to be introduced in evidence as required by Section 2, Rule 37 of the Revised Rules of Court.

On September 3, 1998, the RTC granted the respondents' motion for partial new trial.

On February 15, 2000, the RTC, after due hearing and pleadings submitted by the parties, rendered an Amended Judgment by also approving the application for the confirmation and registration of Lot 3858 of Plan Ap-04-006227, Cad. 355, Tagaytay Cadastre, Barangay Sungay, Tagaytay City.

The OSG and MOLDEX filed their respective appeals with the CA based on the following

ASSIGNMENT OF ERRORS

For MOLDEX:

THE TRIAL COURT GRAVELY ERRED IN APPROVING THE APPLICATION FOR REGISTRATION OF LOT 3858 DESPITE FINDINGS OF ENCROACHMENT BASED ON ACTUAL GROUND VERIFICATION SURVEY CONDUCTED PURSUANT TO ITS OWN ORDER.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE SUPPLEMENTARY REPORT DATED 1 OCTOBER 1997 ISSUED BY THE LRA THRU DIRECTOR FELINO CORTEZ.

THE TRIAL COURT GRAVELY ERRED IN SETTING ASIDE THE REPORT ON THE ACTUAL GROUND VERIFICATION SURVEY PREPARED BY ENGR. ALEXANDER JACOB DESPITE COMPLETE ABSENCE OF ANY EVIDENCE TO CONTRADICT ITS VERACITY AND CORRECTNESS.

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[6] *Id.* at 38.

THE TRIAL COURT GRAVELY ERRED IN RULING THAT DENIAL OF THE REGISTRATION FOR LOT 3858 WILL VIOLATE SECTION 19, PARAGRAPH 2 OF P.D. 1529.

For the OSG:

THE TRIAL COURT ERRED IN GRANTING THE APPLICATION FOR REGISTRATION OF ORIGINAL TITLE FOR FAILURE OF THE APPELLEES TO SUBMIT IN EVIDENCE THE ORIGINAL TRACING CLOTH PLAN OR SEPIA OF THE LAND APPLIED FOR.

THE TRIAL COURT ERRED IN FINDING THAT APPELLEES, BY THEMSELVES AND THROUGH THEIR PREDECESSORS-IN-INTEREST, HAVE BEEN IN POSSESSION OF THE DISPUTED LANDS IN THE CONCEPT OF OWNER, OPENLY AND ADVERSELY FOR THE PERIOD REQUIRED BY LAW.

On September 5, 2005, the CA reversed and set aside the February 15, 2000 Amended Judgment of the RTC and reinstated its earlier March 31, 1997 Judgment. The dispositive portion of the CA Decision reads:

> WHEREFORE, the February 15, 2000 Amended Judgment of the Regional Trial Court of Tagaytay City, Branch 18 is hereby REVERSED and SET ASIDE and in its stead, the earlier March 31, 1997 Judgment is hereby REINSTATED whereby registration as to LOT 3857 is hereby APPROVED while registration as to LOT 3858 is hereby DENIED until such time that the encroachment on the land of MOLDEX REALTY, INC. is separated and removed.

The CA held, among others, that the January 19, 1995 Report made by Engr. Jacob of the LMS, DENR was more reliable than the supplementary report dated October 1, 1997 of Director Cortez of the Department of Registration, LRA. The CA reasoned out that the January 19, 1995 Report which found that Lot 3858 encroached on the property of MOLDEX was based on an actual field verification and actual relocation survey ordered by the RTC upon joint motion of the parties. On the other hand, the supplementary report dated October 1, 1997 which found no encroachment was only based on an unreliable "table survey" of existing data and plans which were actually not verified in the field.

The CA likewise ruled that although the respondents failed to submit in evidence the original tracing cloth plan or sepia of the subject lots (Lots 3857 and 3858), these were sufficiently identified with the presentation of the blueprint copy of Plans Ap-04-006225 and Ap-04-006227 and the technical descriptions duly certified by the Land Management Bureau.

Hence, the OSG filed this petition.

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REINSTATING THE MARCH 31, 1997 DECISION OF THE REGIONAL TRIAL COURT WHICH APPROVED THE APPLICATION FOR REGISTRATION OF LOT 3857 BUT DEFERRED THE APPROVAL OF REGISTRATION OF LOT 3858.

The OSG argues that the respondents have not shown a registrable right over Lot 3857. According to the OSG, respondents' evidence is insufficient to establish their alleged possession over Lot 3857 to warrant its registration in their names. Despite their claim that their predecessors-in-interest have been in possession of Lot 3857 for over 40 years at the time of their application for registration in December 1991, it appears that their possession only started in 1951 which falls short of the legal date requirement of possession, that is, since June 12, 1945 or earlier. The respondents simply made a general statement that their possession and that of their predecessors-in-interest have been adverse, continuous, open, public, peaceful and in the concept of an owner for the required number of years. Their general statements simply lack supporting evidence.

The OSG further contends that the respondents' claim over the subject lots suffer from the following infirmities, to wit:

1] The alleged deed of absolute sale upon which Juanito Manimtim *(Juanito)* anchors his claim over the lot is a mere xerox copy and mentions only an area of 6,225 square meters and not 11,577.44 square meters as claimed by him.

2] The signature appearing in the deed of sale as allegedly belonging to Julio Umali as vendor is actually that of his daughter, Aurora, who, as far as Juanito knows, was not authorized to sign for and in behalf of her father.

3] Likewise, in the case of Edilberto Bañanola, the alleged deed of absolute sale upon which he banks his claim on the subject land is a mere xerox copy.

4] Jacinto and Isabelo Umali, claiming that they inherited the land they seek to be registered in their names, have not adduced any evidence to substantiate this claim.

5) As to Eliseo Granuelas, representing Zenaida Malabanan, he failed to present any instrument to substantiate her claim that her parents bought the claimed property from Julio Umali.

On the other hand, the respondents aver that the petition violates Section 2, Rule 45 of the Rules of Court because the CA decision dated September 5, 2005 is not yet final in view of the unresolved issues raised in their motion for reconsideration dated September 27, 2005. The respondents likewise claim that the RTC decision dated February 15, 2000 refers only to Lot 3858, Plan Ap-04006227 and that it was promulgated in accordance with the fundamental requirements in the land registration of Commonwealth Act No. 141 and Presidential Decree *(P.D.)* No. 1529.

They further argue that the OSG, represented by the City Prosecutor of Tagaytay, did not raise the issues, currently put forward by the OSG, in all the hearings before the RTC. Neither did the OSG contest the respondents' possession of Lot 3858 and 3857. In fact, Lot 3858, Plan Ap-04-006227, together with the other adjoining lots, is originally listed in the original copy of the tracing cloth of Tagaytay Cadastre Map as those belonging to the respondents' grandmother, Agapito Magsumbol, and/or Julio Umali.

Finally, the respondents aver that insofar as Lot No. 3857 is concerned, Original Certificate of Title No. 0-741 was issued in their names pursuant to the decision dated March 31, 1997

and that the derivative transfer certificates of title were already registered in their names in compliance with the order for the issuance of the decree dated December 14, 1998 issued by the Land Registration Court in LRC No. TG-399.

In reply, the OSG asserts that the issue raised by the respondents has been rendered moot with the denial by the CA of their motion for reconsideration in its resolution dated March 13, 2006. The OSG further claims that under the Regalian Doctrine, all lands of whatever classification belong to the state. Hence, the respondents have the burden to show, even in the absence of an opposition, that they are the absolute owners of the subject lots or that they have continuously possessed the same under claim of ownership since June 12, 1945.

The Court's Ruling

In its September 5, 2005 Decision, the CA ruled in favor of the respondents by approving their application for registration of Lot 3857 but denying their application for registration of Lot 3858 until such time that the encroachment on the land of MOLDEX would have been separated and removed. The CA, however, did not rule on the second and more important issue of whether the respondents were qualified for registration of title.

After going over the records, the Court agrees with the OSG that the respondents indeed failed to sufficiently prove that they are entitled to the registration of the subject lands.

Sec. 14(1) of P.D. No. 1529[7] in relation to Section 48(b) of Commonwealth Act 141, as amended by Section 4 of P.D. No. 1073,[8] provides:

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[7] Amending and Codifying the Laws Relative to Registration of Property and for other Purposes.

[8] Extending the Period of Filing Applications for Administrative Legalization (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to Alienable and Disposable Lands in the Public Domain under Chapter VII and Chapter VIII of Commonwealth Act No. 141, as amended, for eleven (11) years commencing on January 1, 1977.

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.

x x x x x x x x x

Section 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 [now Regional Trial Court] 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:

x x x x x x x x x

(b) Those who by themselves or through their predecessors-in-interest have been 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, **since June 12, 1945, or earlier**, immediately preceding the filing of the application for confirmation of title 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. [Emphasis supplied]

Based on these legal parameters, applicants for registration of title under Section 14(1) must sufficiently establish: (*1*) that the subject land forms part of the disposable and alienable lands of the public domain; (*2*) that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and (*3*) that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.[9]

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[9] *Republic of the Philippines v. Ching*, G.R. No. 186166, October 20, 2010.

These the respondents must prove by no less than clear, positive and convincing evidence.[10]

In the case at bench, the respondents failed to establish that the subject lots were disposable and alienable lands.

Although respondents attached a photocopy of a certification[11] dated August 16, 1988 from the District Land Officer, LMS, DENR, attesting that the subject lots were not covered by any public land applications or patents, and another certification[12] dated August 23, 1988 from the Office of the District Forester, Forest Management Bureau, DENR, attesting that the subject lots have been verified, certified and declared to be within the alienable or disposable land of Tagaytay City on April 5, 1978, they were not able to present the originals of the attached certifications as evidence during the trial. Neither were they able to present the officers who issued the certifications to authenticate them.

A careful scrutiny of the respondents' Offer of Evidence[13] would show that only the following were offered as evidence:

1) blue print plans of AP-04-006225 and AP-04-006227
2) technical descriptions of Lot 3857 and 3858
3) surveyor's certificates for Lot 3857 and 3858
4) photo-copy of the deed of sale dated September 17, 1971
5) jurisdictional requirements of posting and publication
6) tax declarations
7) tax receipts

Hence, there is no proof that the subject lots are disposable and alienable lands.

Moreover, the records failed to show that the respondents by themselves or through their predecessors-in-interest have been in open, exclusive, continuous, and notorious possession

[10] *Republic of the Philippines v. Dela Paz,* G.R. No. 171631, November 15, 2010.

[11] Records, p. 62.

[12] *Id.* at 63.

[13] *Id.* at 105-112.

and occupation of the subject lands, under a *bona fide* claim of ownership since June 12, 1945 or earlier.

The respondents presented the testimonies of Juanito Manimtim *(Juanito)*, Edilberto Bañanola, Jacinto Umali, Eliseo Ganuelas, Isabelo Umali, and Engr. Vivencio Valerio and tax declarations to prove possession and occupation over the subject lots. These declarations and documents, however, do not suffice to prove their qualifications and compliance with the requirements.

Juanito testified, among others, that he is a co-owner of the subject lots[14] and that his ownership covers about 11,577.14 square meters of the subject lots;[15] that he acquired his possession through a deed of absolute sale[16] dated September 17, 1971 from Julio Umali *(Julio)*;[17] that the 11,577.14 square meter property has been covered by three (3) tax declarations;[18] and that his great grandparents were in possession of the subject lots for a period of 40 years.[19]

Juanito, however, could not show a duplicate original copy of the deed of sale dated September 17, 1991. Moreover, a closer look at the deed of absolute sale dated September 17, 1991 would show that, for and in consideration of the amount of ₱10,000.00, the sale covered only an area of 6,225 square meters of Lot 1, Plan Psu-176181 (Lot 3858) and not 11,577.44 square meters as claimed. Juanito explained that only the 6,225 square meter portion (Tax Declaration No. 018-0928)[20] was covered by the subject deed of absolute sale while the two (2) other portions (Tax Declaration No. 018-0673 and Tax Declaration No. 018-0748 covering 2,676.40 square meters each)[21] were

[14] TSN, October 16, 1992, pp. 4-5.

[15] TSN, October 16, 1992, p. 8.

[16] Exh. "J", Records, p. 113.

[17] TSN, October 16, 1992, p. 11.

[18] TSN, October 16, 1992, pp. 8-10.

[19] TSN, October 16, 1992, p. 11.

[20] Records, p. 10.

[21] *Id.* at 22-23.

not covered by any deed of sale because Julio knew that these other portions were already owned by him (Juanito).[22] So, no deed of sale was executed between the two of them after he paid Julio the price for the portions covered by Tax Declaration No. 018-0673 and Tax Declaration No. 018-0748.[23] He was not able to show, however, any other document that would support his claim over the portions beyond 6,225 square meters.

In any event, Juanito failed to substantiate his general statement that his great grandparents were in possession of the subject lots for a period of over 40 years. He failed to give specific details on the actual occupancy by his predecessors-in-interest of the subject lots or mode of acquisition of ownership for the period of possession required by law. It is a rule that general statements that are mere conclusions of law and not factual proof of possession are unavailing and cannot suffice. An applicant in a land registration case cannot just harp on mere conclusions of law to embellish the application but must impress thereto the facts and circumstances evidencing the alleged ownership and possession of the land.[24]

Like Juanito, the testimonies of Edilberto Bañanola, Jacinto Umali, Eliseo Ganuelas, and Isabelo Umali were all unsubstantiated general statements.

Edilberto Bañanola *(Edilberto)* claims that he owns a portion of Lot 3857 based on Tax Declaration No. GR-018-1058-R[25] covering 5,025 square meters and Tax Declaration No. GR-018-1059-R[26] covering 6,225 square meters.[27] According to him, he bought the subject property from Hilarion Maglabe and Juanito Remulla through a deed of absolute sale[28] dated

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[22] TSN, November 6, 1992, p. 7.

[23] TSN, November 6, 1992, p. 21.

[24] *Republic of the Philippines v. Dela Paz*, *supra* note 10.

[25] Records, p. 117.

[26] *Id.* at 118.

[27] TSN, November 11, 1992, pp. 3-4.

[28] Records, pp. 119-121.

February 6, 1978.[29] To prove the same, he presented several tax declarations[30] in the names of Hilarion Maglabe and Juanito Remulla. He further asserts that he has been in actual, continuous and uninterrupted possession of the subject property since he purchased it in 1978.[31]

Like Juanito, however, Edilberto failed to present a duplicate original copy of the deed of sale dated February 6, 1978 and validate his claim that he himself and his predecessors-in-interest have been in open, exclusive, continuous, and notorious possession and occupation of the subject land, under a *bona fide* claim of ownership since June 12, 1945 or earlier.

As for Jacinto Umali and Eliseo Ganuelas, they likewise failed to authenticate their claim of acquisition through inheritance and acquisition through purchase, respectively.

Apparently, the respondents' best evidence to prove possession and ownership over the subject property were the tax declarations issued in their names. Unfortunately, these tax declarations together with their unsubstantiated general statements and mere xerox copies of deeds of sale are not enough to prove their rightful claim. Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership.[32]

Finally, the fact that the public prosecutor of Tagaytay City did not contest the respondents' possession of the subject property is of no moment. The absence of opposition from government agencies is of no controlling significance because the State cannot

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[29] TSN, November 11, 1992, p. 5.

[30] Records, pp. 124-132.

[31] TSN, November 11, 1992, p. 11.

[32] *Republic of the Philippines v. Dela Paz*, *supra* note 10.

be estopped by the omission, mistake or error of its officials or agents.[33]

WHEREFORE, the petition is *GRANTED*. Accordingly, the September 5, 2005 Decision of the Court of Appeals in CA-G.R. CV No. 74720 is hereby *REVERSED* and *SET ASIDE* and another judgment entered denying the application for land registration of the subject properties.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169717. March 16, 2011]

SAMAHANG MANGGAGAWA SA CHARTER CHEMICAL SOLIDARITY OF UNIONS IN THE PHILIPPINES FOR EMPOWERMENT AND REFORMS (SMCC-SUPER), ZACARRIAS JERRY VICTORIO — Union President, *petitioner, vs.* **CHARTER CHEMICAL AND COATING CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; LABOR ORGANIZATIONS; CHARTERING AND CREATION OF A LOCAL CHARTER; CHARTER CERTIFICATE; NEED NOT BE EXECUTED UNDER OATH IN CASE AT BAR.— [T]he *Sama-samang Pahayag ng Pagsapi*

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[33] *Republic of the Philippines v. Lao*, 453 Phil. 189 (2003).

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

at Authorization and *Listahan ng mga Dumalo sa Pangkalahatang Pulong at mga Sumang-ayon at Nagratipika sa Saligang Batas* are not among the documents that need to be submitted to the Regional Office or Bureau of Labor Relations in order to register a labor organization. As to the charter certificate, the above-quoted rule indicates that it should be executed under oath. Petitioner union concedes and the records confirm that its charter certificate was not executed under oath. However, in *San Miguel Corporation (Mandaue Packaging Products Plants) v. Mandaue Packing Products Plants-San Miguel Corporation Monthlies Rank-and-File Union-FFW (MPPP-SMPP-SMAMRFU-FFW)*, which was decided under the auspices of D.O. No. 9, Series of 1997, we ruled – "In *San Miguel Foods-Cebu B-Meg Feed Plant v. Hon. Laguesma*, 331 Phil. 356 (1996), the Court ruled that it was **not necessary** for the charter certificate to be certified and attested by the local/chapter officers. *Id*. **While this ruling was based on the interpretation of the previous Implementing Rules provisions which were supplanted by the 1997 amendments**, we believe that **the same doctrine obtains in this case**. Considering that the charter certificate is prepared and issued by the national union and not the local/chapter, **it does not make sense to have the local/chapter's officers** x x x **certify or attest to a document which they had no hand in the preparation of**." In accordance with this ruling, petitioner union's charter certificate need not be executed under oath. Consequently, it validly acquired the status of a legitimate labor organization upon submission of (1) its charter certificate, (2) the names of its officers, their addresses, and its principal office, and (3) its constitution and by-laws—the last two requirements having been executed under oath by the proper union officials as borne out by the records.

2. ID.; ID.; ID.; ID.; THE INCLUSION OF SUPERVISORY EMPLOYEES IN A LABOR ORGANIZATION TO REPRESENT THE BARGAINING UNIT OF RANK-AND-FILE EMPLOYEES DOES NOT DIVEST IT OF ITS STATUS AS A LEGITIMATE LABOR ORGANIZATION.— [W]e note that petitioner union questions the factual findings of the Med-Arbiter, as upheld by the appellate court, that 12 of its members, consisting of batchman, mill operator and leadman, are supervisory employees. However, petitioner union failed to present any rebuttal evidence in the proceedings below after respondent company submitted in evidence the job descriptions of the aforesaid employees.

The job descriptions indicate that the aforesaid employees exercise recommendatory managerial actions which are not merely routinary but require the use of independent judgment, hence, falling within the definition of supervisory employees under Article 212(m) of the Labor Code. For this reason, we are constrained to agree with the Med-Arbiter, as upheld by the appellate court, that petitioner union consisted of both rank-and-file and supervisory employees. Nonetheless, the inclusion of the aforesaid supervisory employees in petitioner union does not divest it of its status as a legitimate labor organization. The appellate court's reliance on *Toyota* is misplaced in view of this Court's subsequent ruling in *Republic v. Kawashima Textile Mfg., Philippines, Inc.* (hereinafter *Kawashima*). In *Kawashima*, we explained at length how and why the *Toyota* doctrine no longer holds sway under the altered state of the law and rules applicable to this case x x x. The applicable law and rules in the instant case are the same as those in *Kawashima* because the present petition for certification election was filed in 1999 when D.O. No. 9, series of 1997, was still in effect. Hence, *Kawashima* applies with equal force here. As a result, petitioner union was not divested of its status as a legitimate labor organization even if some of its members were supervisory employees; it had the right to file the subject petition for certification election.

3. ID.; ID.; ID.; ID.; CERTIFICATION ELECTIONS; THE LEGAL PERSONALITY OF A UNION CANNOT BE COLLATERALLY ATTACKED IN THE CERTIFICATION ELECTION PROCEEDINGS.— Petitioner union correctly argues that its legal personality cannot be collaterally attacked in the certification election proceedings. As we explained in *Kawashima*: "Except when it is requested to bargain collectively, an employer is a mere bystander to any petition for certification election; such proceeding is non-adversarial and merely investigative, for the purpose thereof is to determine which organization will represent the employees in their collective bargaining with the employer. The choice of their representative is the exclusive concern of the employees; the employer cannot have any partisan interest therein; it cannot interfere with, much less oppose, the process by filing a motion to dismiss or an appeal from it; not even a mere allegation that some employees participating in a petition for certification election are actually managerial employees will lend an

> employer legal personality to block the certification election. The employer's only right in the proceeding is to be notified or informed thereof. The amendments to the Labor Code and its implementing rules have buttressed that policy even more."

APPEARANCES OF COUNSEL

Josefina D. David for petitioner.
King Capuchino Tan and Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The right to file a petition for certification election is accorded to a labor organization provided that it complies with the requirements of law for proper registration. The inclusion of supervisory employees in a labor organization seeking to represent the bargaining unit of rank-and-file employees does not divest it of its status as a legitimate labor organization. We apply these principles to this case.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's March 15, 2005 Decision[1] in CA-G.R. SP No. 58203, which annulled and set aside the January 13, 2000 Decision[2] of the Department of Labor and Employment (DOLE) in OS-A-6-53-99 (NCR-OD-M-9902-019) and the September 16, 2005 Resolution[3] denying petitioner union's motion for reconsideration.

Factual Antecedents

On February 19, 1999, *Samahang Manggagawa sa* Charter Chemical Solidarity of Unions in the Philippines for Empowerment and Reforms (petitioner union) filed a petition for certification

[1] *Rollo*, pp. 29-36; penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Elvi John S. Asuncion and Hakim S. Abdulwahid.

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

[3] *Id.* at 38.

election among the regular rank-and-file employees of Charter Chemical and Coating Corporation (respondent company) with the Mediation Arbitration Unit of the DOLE, National Capital Region.

On April 14, 1999, respondent company filed an Answer with Motion to Dismiss[4] on the ground that petitioner union is not a legitimate labor organization because of (1) failure to comply with the documentation requirements set by law, and (2) the inclusion of supervisory employees within petitioner union.[5]

Med-Arbiter's Ruling

On April 30, 1999, Med-Arbiter Tomas F. Falconitin issued a Decision[6] dismissing the petition for certification election. The Med-Arbiter ruled that petitioner union is not a legitimate labor organization because the Charter Certificate, "*Sama-samang Pahayag ng Pagsapi at* Authorization," and "*Listahan ng mga Dumalo sa Pangkalahatang Pulong at mga Sumang-ayon at Nagratipika sa Saligang Batas*" were not executed under oath and certified by the union secretary and attested to by the union president as required by Section 235 of the Labor Code[7] in relation to Section 1, Rule VI of Department Order (D.O.) No. 9, series of 1997. The union registration was, thus, fatally defective.

The Med-Arbiter further held that the list of membership of petitioner union consisted of 12 batchman, mill operator and leadman who performed supervisory functions. Under Article 245 of the Labor Code, said supervisory employees are prohibited from joining petitioner union which seeks to represent the rank-and-file employees of respondent company.

As a result, not being a legitimate labor organization, petitioner union has no right to file a petition for certification election for the purpose of collective bargaining.

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[4] *Id.* at 214-223.

[5] *Id.* at 215-220.

[6] *Id.* at 40-50.

[7] PRESIDENTIAL DECREE NO. 442, as amended.

Department of Labor and Employment's Ruling

On July 16, 1999, the DOLE initially issued a Decision[8] in favor of respondent company dismissing petitioner union's appeal on the ground that the latter's petition for certification election was filed out of time. Although the DOLE ruled, contrary to the findings of the Med-Arbiter, that the charter certificate need not be verified and that there was no independent evidence presented to establish respondent company's claim that some members of petitioner union were holding supervisory positions, the DOLE sustained the dismissal of the petition for certification after it took judicial notice that another union, *i.e., Pinagisang Lakas Manggagawa sa* Charter Chemical and Coating Corporation, previously filed a petition for certification election on January 16, 1998. The Decision granting the said petition became final and executory on September 16, 1998 and was remanded for immediate implementation. Under Section 7, Rule XI of D.O. No. 9, series of 1997, a motion for intervention involving a certification election in an unorganized establishment should be filed prior to the finality of the decision calling for a certification election. Considering that petitioner union filed its petition only on February 14, 1999, the same was filed out of time.

On motion for reconsideration, however, the DOLE reversed its earlier ruling. In its January 13, 2000 Decision, the DOLE found that a review of the records indicates that no certification election was previously conducted in respondent company. On the contrary, the prior certification election filed by *Pinagisang Lakas Manggagawa sa* Charter Chemical and Coating Corporation was, likewise, denied by the Med-Arbiter and, on appeal, was dismissed by the DOLE for being filed out of time. Hence, there was no obstacle to the grant of petitioner union's petition for certification election, *viz*:

> WHEREFORE, the motion for reconsideration is hereby **GRANTED** and the decision of this Office dated 16 July 1999 is **MODIFIED** to allow the certification election among the regular rank-and-file employees of Charter Chemical and Coating Corporation with the following choices:

[8] *Rollo,* pp. 52-54.

1. Samahang Manggagawa sa Charter Chemical-Solidarity of Unions in the Philippines for Empowerment and Reform (SMCC-SUPER); and

2. No Union.

Let the records of this case be remanded to the Regional Office of origin for the immediate conduct of a certification election, subject to the usual pre-election conference.

SO DECIDED.[9]

Court of Appeal's Ruling

On March 15, 2005, the CA promulgated the assailed Decision, *viz*:

WHEREFORE, the petition is hereby **GRANTED**. The assailed Decision and Resolution dated January 13, 2000 and February 17, 2000 are hereby [**ANNULLED**] and **SET ASIDE**.

SO ORDERED.[10]

In nullifying the decision of the DOLE, the appellate court gave credence to the findings of the Med-Arbiter that petitioner union failed to comply with the documentation requirements under the Labor Code. It, likewise, upheld the Med-Arbiter's finding that petitioner union consisted of both rank-and-file and supervisory employees. Moreover, the CA held that the issues as to the legitimacy of petitioner union may be attacked collaterally in a petition for certification election and the infirmity in the membership of petitioner union cannot be remedied through the exclusion-inclusion proceedings in a pre-election conference pursuant to the ruling in *Toyota Motor Philippines v. Toyota Motor Philippines Corporation Labor Union.*[11] Thus, considering that petitioner union is not a legitimate labor organization, it has no legal right to file a petition for certification election.

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[9] *Id.* at 75.

[10] *Id.* at 36.

[11] 335 Phil. 1045 (1997).

Issues

I

Whether x x x the Honorable Court of Appeals committed grave abuse of discretion tantamount to lack of jurisdiction in granting the respondent [company's] petition for *certiorari* (CA G.R. No. SP No. 58203) in spite of the fact that the issues subject of the respondent company[']s] petition was already settled with finality and barred from being re-litigated.

II

Whether x x x the Honorable Court of Appeals committed grave abuse of discretion tantamount to lack of jurisdiction in holding that the alleged mixture of rank-and-file and supervisory employee[s] of petitioner [union's] membership is [a] ground for the cancellation of petitioner [union's] legal personality and dismissal of [the] petition for certification election.

III

Whether x x x the Honorable Court of Appeals committed grave abuse of discretion tantamount to lack of jurisdiction in holding that the alleged failure to certify under oath the local charter certificate issued by its mother federation and list of the union membership attending the organizational meeting [is a ground] for the cancellation of petitioner [union's] legal personality as a labor organization and for the dismissal of the petition for certification election.[12]

Petitioner Union's Arguments

Petitioner union claims that the litigation of the issue as to its legal personality to file the subject petition for certification election is barred by the July 16, 1999 Decision of the DOLE. In this decision, the DOLE ruled that petitioner union complied with all the documentation requirements and that there was no independent evidence presented to prove an illegal mixture of supervisory and rank-and-file employees in petitioner union. After the promulgation of this Decision, respondent company did not move for reconsideration, thus, this issue must be deemed settled.

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[12] *Rollo,* pp. 12-13.

Petitioner union further argues that the lack of verification of its charter certificate and the alleged illegal composition of its membership are not grounds for the dismissal of a petition for certification election under Section 11, Rule XI of D.O. No. 9, series of 1997, as amended, nor are they grounds for the cancellation of a union's registration under Section 3, Rule VIII of said issuance. It contends that what is required to be certified under oath by the local union's secretary or treasurer and attested to by the local union's president are limited to the union's constitution and by-laws, statement of the set of officers, and the books of accounts.

Finally, the legal personality of petitioner union cannot be collaterally attacked but may be questioned only in an independent petition for cancellation pursuant to Section 5, Rule V, Book IV of the Rules to Implement the Labor Code and the doctrine enunciated in *Tagaytay Highlands International Golf Club Incorporated v. Tagaytay Highlands Empoyees Union-PTGWO*.[13]

Respondent Company's Arguments

Respondent company asserts that it cannot be precluded from challenging the July 16, 1999 Decision of the DOLE. The said decision did not attain finality because the DOLE subsequently reversed its earlier ruling and, from this decision, respondent company timely filed its motion for reconsideration.

On the issue of lack of verification of the charter certificate, respondent company notes that Article 235 of the Labor Code and Section 1, Rule VI of the Implementing Rules of Book V, as amended by D.O. No. 9, series of 1997, expressly requires that the charter certificate be certified under oath.

It also contends that petitioner union is not a legitimate labor organization because its composition is a mixture of supervisory and rank-and-file employees in violation of Article 245 of the Labor Code. Respondent company maintains that the ruling in *Toyota Motor Philippines vs. Toyota Motor Philippines Labor Union*[14] continues to be good case law. Thus, the illegal

[13] 443 Phil. 841 (2003).

[14] *Supra* note 11.

composition of petitioner union nullifies its legal personality to file the subject petition for certification election and its legal personality may be collaterally attacked in the proceedings for a petition for certification election as was done here.

Our Ruling

The petition is meritorious.

The issue as to the legal personality of petitioner union is not barred by the July 16, 1999 Decision of the DOLE.

A review of the records indicates that the issue as to petitioner union's legal personality has been timely and consistently raised by respondent company before the Med-Arbiter, DOLE, CA and now this Court. In its July 16, 1999 Decision, the DOLE found that petitioner union complied with the documentation requirements of the Labor Code and that the evidence was insufficient to establish that there was an illegal mixture of supervisory and rank-and-file employees in its membership. Nonetheless, the petition for certification election was dismissed on the ground that another union had previously filed a petition for certification election seeking to represent the same bargaining unit in respondent company. Upon motion for reconsideration by petitioner union on January 13, 2000, the DOLE reversed its previous ruling. It upheld the right of petitioner union to file the subject petition for certification election because its previous decision was based on a mistaken appreciation of facts.[15] From this adverse decision, respondent company timely moved for reconsideration by reiterating its previous arguments before the Med-Arbiter that petitioner union has no legal personality to file the subject petition for certification election.

The July 16, 1999 Decision of the DOLE, therefore, never attained finality because the parties timely moved for

[15] Upon reconsideration, the DOLE noted that the other union which allegedly filed a prior petition for certification election was prevented from doing so because its petition for certification election was filed out of time. Thus, there was no obstacle to the conduct of a certification election in respondent company.

reconsideration. The issue then as to the legal personality of petitioner union to file the certification election was properly raised before the DOLE, the appellate court and now this Court.

The charter certificate need not be certified under oath by the local union's secretary or treasurer and attested to by its president.

Preliminarily, we must note that Congress enacted Republic Act (R.A.) No. 9481[16] which took effect on June 14, 2007.[17] This law introduced substantial amendments to the Labor Code. However, since the operative facts in this case occurred in 1999, we shall decide the issues under the pertinent legal provisions then in force (*i.e.*, R.A. No. 6715,[18] amending Book V of the Labor Code, and the rules and regulations[19] implementing R.A. No. 6715, as amended by D.O. No. 9,[20] series of 1997) pursuant to our ruling in *Republic v. Kawashima Textile Mfg., Philippines, Inc.*[21]

In the main, the CA ruled that petitioner union failed to comply with the requisite documents for registration under Article 235 of the Labor Code and its implementing rules. It agreed with the Med-Arbiter that the Charter Certificate, *Sama-samang Pahayag ng Pagsapi at* Authorization, and *Listahan ng mga Dumalo sa Pangkalahatang Pulong at mga Sumang-ayon at Nagratipika sa Saligang Batas* were not executed under

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[16] "An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines."

[17] *Republic v. Kawashima Textile Mfg., Philippines, Inc.*, G.R. No. 160352, July 23, 2008, 559 SCRA 386, 396.

[18] "An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, and Foster Industrial Peace and Harmony." Effective March 21, 1989.

[19] Approved on May 24, 1989.

[20] Effective: June 21, 1997.

[21] *Supra* note 17 at 396-397.

oath. Thus, petitioner union cannot be accorded the status of a legitimate labor organization.

We disagree.

The then prevailing Section 1, Rule VI of the Implementing Rules of Book V, as amended by D.O. No. 9, series of 1997, provides:

> Section 1. *Chartering and creation of a local chapter*. — A duly registered federation or national union may directly create a local/chapter by submitting to the Regional Office or to the Bureau two (2) copies of the following:
>
> (a) A charter certificate issued by the federation or national union indicating the creation or establishment of the local/chapter;
>
> (b) The names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and
>
> (c) The local/chapter's constitution and by-laws provided that where the local/chapter's constitution and by-laws [are] the same as [those] of the federation or national union, this fact shall be indicated accordingly.
>
> All the foregoing supporting requirements shall be certified under oath by the Secretary or the Treasurer of the local/chapter and attested to by its President.

As readily seen, the *Sama-samang Pahayag ng Pagsapi at* Authorization and *Listahan ng mga Dumalo sa Pangkalahatang Pulong at mga Sumang-ayon at Nagratipika sa Saligang Batas* are not among the documents that need to be submitted to the Regional Office or Bureau of Labor Relations in order to register a labor organization. As to the charter certificate, the above-quoted rule indicates that it should be executed under oath. Petitioner union concedes and the records confirm that its charter certificate was not executed under oath. However, in *San Miguel Corporation (Mandaue Packaging Products Plants) v. Mandaue Packing Products Plants-San Miguel Corporation Monthlies Rank-and-File Union-FFW (MPPP-SMPP-SMAMRFU-*

FFW),[22] which was decided under the auspices of D.O. No. 9, Series of 1997, we ruled –

> In *San Miguel Foods-Cebu B-Meg Feed Plant v. Hon. Laguesma*, 331 Phil. 356 (1996), the Court ruled that it was **not necessary** for the charter certificate to be certified and attested by the local/chapter officers. *Id*. **While this ruling was based on the interpretation of the previous Implementing Rules provisions which were supplanted by the 1997 amendments**, we believe that **the same doctrine obtains in this case**. Considering that the charter certificate is prepared and issued by the national union and not the local/chapter, **it does not make sense to have the local/chapter's officers** x x x **certify or attest to a document which they had no hand in the preparation of**.[23] (Emphasis supplied)

In accordance with this ruling, petitioner union's charter certificate need not be executed under oath. Consequently, it validly acquired the status of a legitimate labor organization upon submission of (1) its charter certificate,[24] (2) the names of its officers, their addresses, and its principal office,[25] and (3) its constitution and by-laws[26]— the last two requirements having been executed under oath by the proper union officials as borne out by the records.

The mixture of rank-and-file and supervisory employees in petitioner union does not nullify its legal personality as a legitimate labor organization.

The CA found that petitioner union has for its membership both rank-and-file and supervisory employees. However, petitioner union sought to represent the bargaining unit consisting

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[22] 504 Phil. 376 (2005).

[23] *Id.* at 400.

[24] DOLE records, p. 51.

[25] *Id.* at 43-44.

[26] *Id.* at 25-40.

of rank-and-file employees. Under Article 245[27] of the Labor Code, supervisory employees are not eligible for membership in a labor organization of rank-and-file employees. Thus, the appellate court ruled that petitioner union cannot be considered a legitimate labor organization pursuant to *Toyota Motor Philippines v. Toyota Motor Philippines Corporation Labor Union*[28] (hereinafter *Toyota*).

Preliminarily, we note that petitioner union questions the factual findings of the Med-Arbiter, as upheld by the appellate court, that 12 of its members, consisting of batchman, mill operator and leadman, are supervisory employees. However, petitioner union failed to present any rebuttal evidence in the proceedings below after respondent company submitted in evidence the job descriptions[29] of the aforesaid employees. The job descriptions indicate that the aforesaid employees exercise recommendatory managerial actions which are not merely routinary but require the use of independent judgment, hence, falling within the definition of supervisory employees under Article 212(m)[30] of the Labor Code. For this reason, we are constrained to agree with the Med-Arbiter, as upheld by the

[27] Article 245. *Ineligibility of Managerial Employees to Join Any Labor Organization; Right of Supervisory Employees.*— x x x Supervisory employees shall not be eligible for membership in the collective bargaining unit of the rank-and-file employees but may join, assist or form separate collective bargaining units and/or legitimate labor organizations of their own. x x x

[28] *Supra* note 11.

[29] Respondent company claimed that the batchman, mill operator and leadman perform, among others, the following functions:

Prepares, coordinates and supervises work schedules and activities of subordinates or helpers in their respective area of responsibility.

1. Recommends the reduction, increase, transfer and number of employees assigned to them.

2. Sees to it that daily production schedules and outputs are carried on time.

3. Coordinates with their respective managers the needed raw materials and the quality of finished products. (*Rollo*, p. 220)

[30] Article 212(m) of the Labor Code, states in part: "Supervisory employees are those who, in the interest of the employer, effectively recommend

appellate court, that petitioner union consisted of both rank-and-file and supervisory employees.

Nonetheless, the inclusion of the aforesaid supervisory employees in petitioner union does not divest it of its status as a legitimate labor organization. The appellate court's reliance on *Toyota* is misplaced in view of this Court's subsequent ruling in *Republic v. Kawashima Textile Mfg., Philippines, Inc.*[31] (hereinafter *Kawashima*). In *Kawashima*, we explained at length how and why the *Toyota* doctrine no longer holds sway under the altered state of the law and rules applicable to this case, *viz*:

R.A. No. 6715 omitted specifying the exact effect any violation of the prohibition [on the co-mingling of supervisory and rank-and-file employees] would bring about on the legitimacy of a labor organization.

It was the Rules and Regulations Implementing R.A. No. 6715 (1989 Amended Omnibus Rules) which supplied the deficiency by introducing the following amendment to Rule II (Registration of Unions):

> "Sec. 1. *Who may join unions.* — x x x **Supervisory employees and security guards shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own**; Provided, that those supervisory employees who are included in an existing rank-and-file bargaining unit, upon the effectivity of Republic Act No. 6715, shall remain in that unit x x x." (Emphasis supplied)

and Rule V (Representation Cases and Internal-Union Conflicts) of the Omnibus Rules, *viz*:

> "Sec. 1. *Where to file*. — A petition for certification election may be filed with the Regional Office which has jurisdiction over the principal office of the employer. The petition shall be in writing and under oath.

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such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. x x x"

[31] *Supra* note 17.

> Sec. 2. *Who may file*. - Any legitimate labor organization or the employer, when requested to bargain collectively, may file the petition.
>
> The petition, when filed by a legitimate labor organization, shall contain, among others:
>
> x x x x x x x x x
>
> **(c) description of the bargaining unit which shall be the employer unit unless circumstances otherwise require; and provided further, that the appropriate bargaining unit of the rank-and-file employees shall not include supervisory employees and/or security guards.** (Emphasis supplied)

By that provision, any questioned mingling will prevent an otherwise legitimate and duly registered labor organization from exercising its right to file a petition for certification election.

Thus, when the issue of the effect of mingling was brought to the fore in *Toyota*, the Court, citing Article 245 of the Labor Code, as amended by R.A. No. 6715, held:

> "Clearly, based on this provision, a labor organization composed of both rank-and-file and supervisory employees is no labor organization at all. It cannot, for any guise or purpose, be a legitimate labor organization. Not being one, **an organization which carries a mixture of rank-and-file and supervisory employees cannot possess any of the rights of a legitimate labor organization, including the right to file a petition for certification election for the purpose of collective bargaining.** It becomes necessary, therefore, **anterior to the granting of an order allowing a certification election, to inquire into the composition of any labor organization whenever the status of the labor organization is challenged on the basis of Article 245 of the Labor Code.**
>
> x x x x x x x x x
>
> In the case at bar, as respondent union's membership list contains the names of at least twenty-seven (27) supervisory employees in Level Five positions, the union could not, prior to purging itself of its supervisory employee members, attain the status of a legitimate labor organization. Not being one, it cannot possess the requisite personality to file a petition for certification election." (Emphasis supplied)

In *Dunlop*, in which the labor organization that filed a petition for certification election was one for supervisory employees, but in which the membership included rank-and-file employees, the Court reiterated that such labor organization had no legal right to file a certification election to represent a bargaining unit composed of supervisors for as long as it counted rank-and-file employees among its members.

It should be emphasized that the petitions for certification election involved in *Toyota* and *Dunlop* were filed on November 26, 1992 and September 15, 1995, respectively; hence, the 1989 Rules was applied in both cases.

But then, on June 21, 1997, the 1989 Amended Omnibus Rules was further amended by Department Order No. 9, series of 1997 (1997 Amended Omnibus Rules). Specifically, the requirement under Sec. 2(c) of the 1989 Amended Omnibus Rules – that the petition for certification election indicate that the bargaining unit of rank-and-file employees has not been mingled with supervisory employees – was removed. Instead, what the 1997 Amended Omnibus Rules requires is a plain description of the bargaining unit, thus:

> Rule XI
> Certification Elections
>
> x x x x x x x x x
>
> Sec. 4. *Forms and contents of petition*. — The petition shall be in writing and under oath and shall contain, among others, the following: x x x (c) The description of the bargaining unit.

In *Pagpalain Haulers, Inc. v. Trajano*, the Court had occasion to uphold the validity of the 1997 Amended Omnibus Rules, although the specific provision involved therein was only Sec. 1, Rule VI, to wit:

> "Section. 1. *Chartering and creation of a local/chapter*.— A duly registered federation or national union may directly create a local/chapter by submitting to the Regional Office or to the Bureau two (2) copies of the following: a) a charter certificate issued by the federation or national union indicating the creation or establishment of the local/chapter; (b) the names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and (c) the local/ chapter's constitution and by-laws; provided that where the local/chapter's

> constitution and by-laws is the same as that of the federation or national union, this fact shall be indicated accordingly.
>
> All the foregoing supporting requirements shall be certified under oath by the Secretary or the Treasurer of the local/chapter and attested to by its President."

which does not require that, for its creation and registration, a local or chapter submit a list of its members.

Then came *Tagaytay Highlands Int'l. Golf Club, Inc. v. Tagaytay Highlands Employees Union-PGTWO* in which the core issue was whether mingling affects the legitimacy of a labor organization and its right to file a petition for certification election. This time, given the altered legal milieu, the Court abandoned the view in *Toyota* and *Dunlop* and reverted to its pronouncement in *Lopez* that while there is a prohibition against the mingling of supervisory and rank-and-file employees in one labor organization, the Labor Code does not provide for the effects thereof. Thus, the Court held that after a labor organization has been registered, it may exercise all the rights and privileges of a legitimate labor organization. Any mingling between supervisory and rank-and-file employees in its membership cannot affect its legitimacy for that is not among the grounds for cancellation of its registration, unless such mingling was brought about by misrepresentation, false statement or fraud under Article 239 of the Labor Code.

In *San Miguel Corp. (Mandaue Packaging Products Plants) v. Mandaue Packing Products Plants-San Miguel Packaging Products-San Miguel Corp. Monthlies Rank-and-File Union-FFW*, the Court explained that since the 1997 Amended Omnibus Rules does not require a local or chapter to provide a list of its members, it would be improper for the DOLE to deny recognition to said local or chapter on account of any question pertaining to its individual members.

More to the point is *Air Philippines Corporation v. Bureau of Labor Relations*, which involved a petition for cancellation of union registration filed by the employer in 1999 against a rank-and-file labor organization on the ground of mixed membership: the Court therein reiterated its ruling in *Tagaytay Highlands* that the inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) and (c) of Article 239 of the Labor Code.

All said, while the latest issuance is R.A. No. 9481, the 1997 Amended Omnibus Rules, as interpreted by the Court in *Tagaytay Highlands*, *San Miguel* and *Air Philippines*, had already set the tone for it. *Toyota* and *Dunlop* no longer hold sway in the present altered state of the law and the rules.[32] [Underline supplied]

The applicable law and rules in the instant case are the same as those in *Kawashima* because the present petition for certification election was filed in 1999 when D.O. No. 9, series of 1997, was still in effect. Hence, *Kawashima* applies with equal force here. As a result, petitioner union was not divested of its status as a legitimate labor organization even if some of its members were supervisory employees; it had the right to file the subject petition for certification election.

The legal personality of petitioner union cannot be collaterally attacked by respondent company in the certification election proceedings.

Petitioner union correctly argues that its legal personality cannot be collaterally attacked in the certification election proceedings. As we explained in *Kawashima*:

Except when it is requested to bargain collectively, an employer is a mere bystander to any petition for certification election; such proceeding is non-adversarial and merely investigative, for the purpose thereof is to determine which organization will represent the employees in their collective bargaining with the employer. The choice of their representative is the exclusive concern of the employees; the employer cannot have any partisan interest therein; it cannot interfere with, much less oppose, the process by filing a motion to dismiss or an appeal from it; not even a mere allegation that some employees participating in a petition for certification election are actually managerial employees will lend an employer legal personality to block the certification election. The employer's only right in the proceeding is to be notified or informed thereof.

The amendments to the Labor Code and its implementing rules have buttressed that policy even more.[33]

[32] *Id.* at 402-407.

[33] *Id.* at 408.

WHEREFORE, the petition is *GRANTED*. The March 15, 2005 Decision and September 16, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 58203 are *REVERSED and SET ASIDE*. The January 13, 2000 Decision of the Department of Labor and Employment in OS-A-6-53-99 (NCR-OD-M-9902-019) is *REINSTATED*.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171870. March 16, 2011]

SPOUSES ANTONIO F. ALAGAR and AURORA ALAGAR, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF JUDGMENTS; THE EXECUTION OF A JUDGMENT PENDING AN ACTION IN A HIGHER COURT ESSENTIALLY CHALLENGING ITS FINALITY CANNOT BE DEEMED AN ABANDONMENT OF THAT ACTION.— [T]he execution of a judgment pending an action in a higher court essentially challenging its finality cannot be deemed an abandonment of that action. The rules grant parties the right to question by special civil actions those orders and rulings that inferior courts issue with grave abuse of discretion. That the PNB complied with the writ of execution after its several attempts to stop it cannot be deemed a voluntary

abandonment of its action before the CA. PNB had no choice but to obey the RTC orders, given that the CA did not then deem it appropriate to issue a restraining order. And PNB did not relent in pursuing its action before the CA. Besides, the Alagars did not raise this issue of estoppel before the CA. Consequently, they cannot raise the same for the first time before the Court.

2. ID.; ID.; APPEALS; NO ISSUE MAY BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR.— The Alagars point out that PNB can no longer question the RTC orders that were issued from July 17, 2002 onwards since more than 60 days had elapsed when PNB challenged their validity by supplemental petition in CA-G.R. SP 71116. These orders have thus become final under Rule 65 of the Rules of Court. Again, the Alagars did not raise this issue before the CA. Indeed, they did not file a comment on the supplemental petition despite having been required to do so. They also failed to mention it in their memorandum before the CA. Consequently, the Court cannot adjudicate the issue. Besides, the RTC's subsequent orders were founded on the assumption that it correctly denied for being *pro forma* PNB's motion for reconsideration of its decision. All such orders assumed that the RTC decision had become final and executory. As it turned out, however, the CA held that PNB filed a valid motion for reconsideration, that it filed a timely appeal after the motion was denied, and that, therefore, the RTC decision had not become final and executory.

3. ID.; ID.; ACTIONS; THE NATURE OF AN ACTION IS DETERMINED BY THE ALLEGATIONS OF THE PLEADING AND THE CHARACTER OF THE RELIEF SOUGHT.— [A] reading of PNB's allegations in its petition in CA-G.R. SP 71116 shows that its action was not only for *certiorari* and prohibition but also for *mandamus*. The bank alleged that by its whimsical, capricious and arbitrary actions the RTC deprived the PNB of its appeal, leaving it with no other plain, speedy, and adequate remedy in the ordinary course of law. The PNB petition also specifically prayed the CA to direct the trial court to give due course to its appeal. Following the rule that the nature of an action is determined by the allegations of the pleading and the character of the relief sought,

it is unmistakable that CA-G.R. SP 71116 was also a petition for *mandamus*.

4. ID.; ID.; MOTION FOR RECONSIDERATION; NOT *PRO FORMA* IN CASE AT BAR.— That court's finding that PNB's motion for reconsideration was not *pro forma* and, therefore, tolled the running of PNB's period to appeal, is supported by the evidence on record. The motion for reconsideration specified the RTC's findings and conclusions in its decision that PNB thought to be contrary to law. The latter even raised new arguments, not previously considered by the trial court, which even the latter recognized in its assailed March 25, 2002 order. From all indications, the motion for reconsideration complied with requirements of Sections 1 and 2, Rule 37 of the Rules of Court. Thus, it was grave abuse of discretion for the trial court to have simply concluded that the motion was *pro forma* and did not toll the running of the period to appeal. The RTC should have given due course to PNB's appeal.

APPEARANCES OF COUNSEL

Jessie Emmanuel A. Vizcarra for petitioner.

Alvin C. Go, Eligio P. Petilla and Soraya F. Odiong for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about a) a claim that the defendant is estopped from questioning the validity of a writ of execution that he subsequently complied with; b) an assertion that a supplemental petition cannot elevate to the higher court those orders of the lower court that were issued more than 60 days earlier; and c) a contention that the petition was not one for *mandamus* which is the proper remedy when the trial court refuses to give due course to an appeal.

The Facts and the Case

On April 14, 1992 petitioner spouses Antonio and Aurora Alagar (the Alagars) got a personal loan of ₱500,000.00 from

respondent Philippine National Bank (PNB), secured by a mortgage over a 368-square meter lot on General Luna Street in Vigan, Ilocos Sur.[1] The Alagars subsequently increased their loan to ₱1,700,000.00 and later to ₱2,900,000.00 with corresponding amendments to the mortgage.

Meanwhile, in 1995 PNB gave New Taj Resources, Inc., a corporation owned by the Alagars, a loan of ₱9,300,000.00, secured by a mortgage on an 8,086-square meter lot in Pantay Daya, Vigan, Ilocos Sur. The Alagars also executed a joint and solidary agreement that bound them with other persons to pay the corporate loan to the bank.[2]

After a few years, the Alagars' outstanding balance on their personal loan with PNB rose to ₱4,003,134.36 as of May 31, 1997. In the face of this, they negotiated with the bank and requested the condonation of interests so they could settle their debt. Meantime they paid the bank ₱3,900,000.00 while awaiting approval of their request. When the bank granted it, the Alagars paid the balance of ₱330,221.50 and sought the release of the General Luna title to them. The bank refused, however, citing the Alagars' other unsettled account.

On January 12, 2001 the Alagars filed a petition for *mandamus*[3] before the Regional Trial Court (RTC) of Vigan, Ilocos Sur to compel PNB to release the General Luna title to them. They claimed that PNB had no reason to retain the title since they already paid their personal loan. They insisted that the unsettled account cited by PNB referred to the corporate loan of New Taj Resources, Inc. which was secured by the Pantay Daya title. The Alagars claimed moral and exemplary damages for having been deprived of the use and enjoyment of their property.

In its answer,[4] PNB alleged that the petition did not state a cause of action since *mandamus* is not the proper remedy

[1] Registered under Original Certificate of Title (OCT) 0-3576; CA *rollo*, pp. 32-36.

[2] *Id.* at 37-46.

[3] *Id.* at 50-54; docketed as Civil Case 5534-V.

[4] *Id.* at 55-58.

for compelling the performance of contractual obligations. Further, the bank had the right to retain the General Luna title since, as solidary debtors in the corporate loan, which had then become due, the Alagars still had an outstanding obligation with the bank. The mortgage contract between PNB and the Alagars provided that the property on General Luna was to secure, not only their personal loan, but also "any and all other obligations of the Mortgagors to the Mortgagees of whatever kind and nature."

At the trial, the Alagars presented their evidence and on June 26, 2001 formally offered their documentary exhibits. The RTC set PNB's presentation of its evidence on July 30, 2001 but its counsel failed to appear. Consequently, the RTC deemed PNB to have waived presentation of evidence and submitted the case for decision. It appears, however, that on the day of the hearing, the PNB branch manager in Vigan wrote the RTC a letter, explaining that the bank could not come to the hearing due to the retirement of its counsel of record. PNB asked the court for 60 days within which to find another lawyer.[5]

On August 6, 2001 Atty. Benjamin V. Sotero entered his appearance as PNB's new counsel. He then filed a motion for reconsideration asking that PNB be allowed to present evidence. He set the motion for hearing on September 17, 2001. On August 7, 2001 the RTC denied PNB's motion on the ground that it violated Sections 3[6] and 5[7] of Rule 15 of the Rules of Court.[8] PNB failed to accompany its motion with supporting affidavits and other papers and set it for hearing more than 10 days after its filing.

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[5] *Id.* at 82.

[6] SEC. 3. *Contents.* – A motion shall state the relief sought to be obtained and the grounds upon which it is based, and if required by these Rules or necessary to prove facts alleged therein, shall be accompanied by supporting affidavits and other papers.

[7] SEC. 5. *Notice of Hearing*. – The notice of hearing shall be addressed to all parties concerned and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[8] CA *rollo*, p. 83.

Subsequently, Atty. Sotero failed to appear during the hearing on September 17, 2001 that he himself set for the bank's motion for reconsideration. This prompted the trial court to issue another order on that date,[9] reiterating its earlier order submitting the case for decision. The trial court also noted that PNB did not react to its August 7, 2001 order that was sent to it by registered mail.

On October 5, 2001 PNB filed an omnibus motion for reconsideration of the orders of July 30, August 7, and September 17, 2001. The bank again asked for an opportunity to present evidence in support of its defense. In an order dated October 29, 2001,[10] the trial court denied the omnibus motion for its failure to state when the bank received the questioned orders. Moreover, the trial court rejected counsel's excuse for not reacting to the August 7, 2001 order. Counsel claimed that he had to attend to other urgent legal matters of equal importance.

On January 15, 2002 the trial court rendered judgment[11] in favor of the Alagars. It held that, although the pleading was denominated as a petition for *mandamus*, its allegations actually made out a case for specific performance. Since the Alagars' personal loan had already been fully paid, the real estate mortgage had nothing more to secure, such that both law and equity required that the collateral given to secure it be released to the owners.

PNB filed a motion for new trial or for reconsideration. It asserted in addition to its arguments on the merit of the case that the RTC had no jurisdiction over the issue of whether or not the controversial stipulation in the mortgage contract was valid and binding. The only issues presented by the pleadings were: (1) whether or not the petition stated a cause of action; (2) whether or not the title should be released to the Alagars upon full payment of their personal loan; and (3) whether or not the Alagars were entitled to damages.

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[9] *Id.* at 84.

[10] *Id.* at 85-87.

[11] *Rollo*, pp. 56-70.

Meanwhile, PNB filed a special civil action of *certiorari* before the Court of Appeals (CA) in CA-G.R. SP 68661, seeking to annul and set aside the trial court orders of August 7 (which denied PNB's motion for reconsideration due to technical defects), September 17 (reiterating the August 7 order when PNB's counsel failed to show up at the hearing he set for its motion for reconsideration), and October 29, 2001 (which denied as unmeritorious PNB's omnibus motion for reconsideration). Since the trial court had in the meantime already rendered a decision in the case, however, on March 20, 2002 the CA dismissed the petition for being moot and academic.[12]

On March 25, 2002 the RTC issued an order, denying PNB's motion for new trial or for reconsideration for failing to raise new matters and violating the 10-day hearing schedule rule. This prompted PNB to file a notice of appeal. The RTC issued an order on April 29, 2002, however, denying due course to the appeal on the ground that the bank filed it beyond the required 15-day period. The court said that, since PNB's motion for new trial or reconsideration was *pro forma*, it did not toll the running of the period to appeal.

Meantime, on motion of the Alagars, the trial court caused the issuance on June 4, 2002 of a writ of execution against the bank.[13] This prompted the PNB to file on June 13, 2002 a special civil action of *certiorari* in CA-G.R. SP 71116, assailing the RTC's March 25, April 29, and June 4, 2002 orders as well as the writ of execution that it issued.[14] In a parallel move, PNB asked the trial court to quash the writ of execution, claiming that it was improvidently issued and that, as a matter of judicial courtesy, it should await the CA action on the bank's petition before it.

On July 17, 2002 the RTC denied PNB's urgent motion to quash the writ. The court said that issuing the writ was a ministerial duty after its decision became final and executory. Further, the CA had not issued any restraining order against

[12] CA *rollo*, pp. 114-116.

[13] *Rollo*, pp. 79-80.

[14] CA *rollo*, pp. 2-23.

the RTC.[15] PNB moved for reconsideration of this last order but the RTC denied the same on September 16, 2002.[16] Thus, an *alias* writ of execution was issued, compelling PNB to abide by it in full.[17]

Later, the Alagars asked the RTC by motion to order the cancellation of the mortgage annotated on its title, alleging that this was a necessary and logical consequence of the implementation of the writ of execution. The RTC granted the motion on August 4, 2003, stating that although the dispositive part of the decision did not say so, the order to release the General Luna title necessarily included with it the cancellation of the mortgage.[18]

Again, PNB sought reconsideration of the RTC's August 4, 2003 order and the quashal of the second writ of execution.[19] In response, the Alagars filed a petition to cite the PNB for indirect contempt for failing to release the mortgage. PNB opposed the petition. On October 21, 2003[20] the RTC granted PNB's motion for reconsideration and dismissed the Alagars' petition for indirect contempt. At the same time, however, it ordered the amendment of the dispositive part of its January 15, 2002 decision to read as follows:

Wherefore, finding the allegations in the Complaint proven by competent and preponderant evidence, the Court hereby renders judgment in favor of the plaintiffs as follows:

1. Ordering the defendant Philippine National Bank (PNB), Vigan, Ilocos Sur Branch, through its Manager, Mrs. Rosalia A. Quilala to release Original Certificate of Title No. 0-3576 in the name of Spouses Antonio F. Alagar and Aurora J. Alagar to the plaintiffs herein;

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[15] *Rollo*, pp. 81-83.

[16] *Id.* at 91-93.

[17] *Id.* at 98.

[18] *Id.* at 102-104.

[19] *Id.* at 106-109.

[20] *Id.* at 112-118.

2. Ordering defendant PNB to pay same plaintiffs the amount of ₱1,825.00 as actual damages;

3. Ordering the defendant to pay the plaintiffs the amount of ₱100,000.00 as moral damages, ₱50,000.00 as exemplary damages and ₱30,000.00 as attorney's fees;

4. ORDERING THE DEFENDANT TO EXECUTE THE DEED SUFFICIENT IN LAW TO CANCEL THE MORTGAGE IN FAVOR OF THE PLAINTIFF-SPOUSES ANTONIO ALAGAR AND AURORA ALAGAR AND TO DELIVER SAID DEED TO THE LATTER;

5. AS AN ALTERNATIVE, SHOULD THE DEFENDANT FAIL OR REFUSE TO COMPLY WITH THE HEREINABOVE ORDER NO. 4, THE DEPUTY SHERIFF OF THIS COURT, MR. TERENCIO FLORENDO IS HEREBY APPOINTED TO EXECUTE THE DEED OF CANCELLATION OF THE MORTGAGE IN SUIT IN BEHALF OF THE DEFENDANT PNB FOR REGISTRATION IN THE REGISTRY OF DEEDS OF ILOCOS SUR.

The counterclaim not having been proven, the same is dismissed.[21]

The Alagars filed a motion for reconsideration of the above insofar as it granted PNB's motion for reconsideration of the August 4, 2003 order and motion to dismiss the petition for indirect contempt. On December 18, 2003 the RTC issued an order,[22] granting the Alagars' motion for reconsideration and reinstating its August 4, 2003 order that directed the issuance of a writ of execution. The order also deleted paragraphs 4 and 5 of the amended dispositive portion of the decision, thus reinstating the original version.

PNB moved for reconsideration of the RTC's December 18, 2003 order and prayed that the proceedings be held in abeyance in view of CA-G.R. SP 71116 which was pending before the CA. But the RTC denied the motion on March 11, 2004, stating that it had the inherent power to amend its decision to make it conform to law and justice. It also declined to hold matters in abeyance since the RTC had not been amply informed about the CA action and since there was no possibility that the

[21] *Id.* at 117-118.

[22] *Id.* at 119-120.

issues before the CA would be rendered moot if the proceedings below continued.[23]

In view of the trial court's conflicting directives, PNB filed a motion for clarification of the March 11, 2004 order. Further, on June 3, 2004 it also filed a supplemental petition[24] in CA-G.R. SP 71116, assailing all the RTC actions and orders subsequent to the filing of the original petition. On June 14, 2004 the RTC issued an order,[25] resolving PNB's motion for clarification and recalling in the meantime the writ of execution that it issued on August 4, 2003. It also deleted paragraph 5 of the amended dispositive portion of its decision but retained paragraph 4 ordering PNB to execute a deed of cancellation of mortgage in favor of the Alagars.

On September 30, 2005 the CA rendered judgment in CA-G.R. SP 71116, annulling and setting aside all the RTC's orders beginning March 25, 2002, when the RTC denied as *pro forma* PNB's motion for reconsideration of its January 12, 2002 decision. The CA held that the motion was not *pro forma* and, therefore, it tolled the running of the period to appeal. PNB did not belatedly file its notice of appeal, as it still had three days to elevate the trial court's decision to the CA. Consequently, the decision did not become final and executory and could not be the subject of a writ of execution.[26]

Moreover, said the CA, the trial court gravely abused its discretion when it substantially amended its decision which, by its own ruling, had already become final and executory. Inasmuch as the RTC decision merely ordered the PNB to release the mortgaged title to the Alagars, the additional order directing the bank to cancel and release the mortgage constituted on that title cannot be regarded as a simple clerical correction

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[23] *Id.* at 123-125.

[24] CA *rollo*, pp. 189-206.

[25] *Rollo*, p. 126.

[26] *Id.* at 42-47.

since it would substantially prejudice PNB's rights as mortgagee.[27]

The Alagars filed a motion for reconsideration of the decision but the CA denied it for lack of merit,[28] hence this petition for review.

The Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in failing to rule that PNB was estopped from assailing the validity of the writ of execution after it had been implemented;

2. Whether or not the CA erred in failing to rule that it could no longer nullify the RTC's orders that PNB assailed by supplemental petition beyond 60 days from the issuance of such orders; and

3. Whether or not the CA erred in failing to rule that PNB's petition before it was not the proper remedy for assailing the order that denied due course to its appeal.

The Rulings of the Court

FIRST. The Alagars contend that the issue of whether the RTC validly issued a writ of execution in the case had become moot since PNB willingly obeyed the writ, returned the General Luna title to the Alagars, and paid them the damages that the RTC awarded in its decision. Going further, the Alagars argue that the full implementation of the writ foreclosed any question concerning the validity of the decision itself.[29]

But the execution of a judgment pending an action in a higher court essentially challenging its finality cannot be deemed an abandonment of that action. The rules grant parties the right to question by special civil actions those orders and rulings that inferior courts issue with grave abuse of discretion. That the

[27] *Id.* at 49.

[28] *Id.* at 52-55.

[29] *Id.* at 305.

PNB complied with the writ of execution after its several attempts to stop it cannot be deemed a voluntary abandonment of its action before the CA. PNB had no choice but to obey the RTC orders, given that the CA did not then deem it appropriate to issue a restraining order. And PNB did not relent in pursuing its action before the CA. Besides, the Alagars did not raise this issue of estoppel before the CA. Consequently, they cannot raise the same for the first time before the Court.

SECOND. The Alagars point out that PNB can no longer question the RTC orders that were issued from July 17, 2002 onwards since more than 60 days had elapsed when PNB challenged their validity by supplemental petition in CA-G.R. SP 71116. These orders have thus become final under Rule 65 of the Rules of Court.[30]

Again, the Alagars did not raise this issue before the CA. Indeed, they did not file a comment on the supplemental petition despite having been required to do so. They also failed to mention it in their memorandum before the CA.[31] Consequently, the Court cannot adjudicate the issue.

Besides, the RTC's subsequent orders were founded on the assumption that it correctly denied for being *pro forma* PNB's motion for reconsideration of its decision. All such orders assumed that the RTC decision had become final and executory. As it turned out, however, the CA held that PNB filed a valid motion for reconsideration, that it filed a timely appeal after the motion was denied, and that, therefore, the RTC decision had not become final and executory.

THIRD. Finally, the Alagars assert that PNB availed of the wrong remedy when it filed a special civil action of *certiorari* before the CA rather than one of *mandamus* to compel the RTC to give due course to its notice of appeal after the latter held that its *pro forma* motion for reconsideration did not toll the period of appeal which had then already elapsed.[32]

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[30] *Id*.

[31] *Id.* at 54; CA *rollo*, p. 291.

[32] *Rollo*, p. 306.

But a reading of PNB's allegations in its petition in CA-G.R. SP 71116 shows that its action was not only for *certiorari* and prohibition but also for *mandamus*. The bank alleged that by its whimsical, capricious and arbitrary actions the RTC deprived the PNB of its appeal, leaving it with no other plain, speedy, and adequate remedy in the ordinary course of law. The PNB petition also specifically prayed the CA to direct the trial court to give due course to its appeal.[33] Following the rule that the nature of an action is determined by the allegations of the pleading and the character of the relief sought, it is unmistakable that CA-G.R. SP 71116 was also a petition for *mandamus*.

The Alagars fail to show any reversible error in the CA's decision. That court's finding that PNB's motion for reconsideration was not *pro forma* and, therefore, tolled the running of PNB's period to appeal, is supported by the evidence on record. The motion for reconsideration specified the RTC's findings and conclusions in its decision that PNB thought to be contrary to law. The latter even raised new arguments, not previously considered by the trial court, which even the latter recognized in its assailed March 25, 2002 order. From all indications, the motion for reconsideration complied with requirements of Sections 1 and 2, Rule 37 of the Rules of Court.[34] Thus, it was grave abuse of discretion for the trial court to have simply concluded that the motion was *pro forma* and did not toll the running of the period to appeal. The RTC should have given due course to PNB's appeal.

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[33] CA *rollo*, p. 20.

[34] SEC. 1. *Grounds of and period for filing motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

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Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

WHEREFORE, the Court *DISMISSES* the petition and *AFFIRMS* the decision of the Court of Appeals in CA G.R. SP 71116 dated September 30, 2005 in its entirety. The petitioner spouses Antonio and Aurora Alagar are further ordered to *RETURN* to respondent PNB OCT 0-3576, as well as the amount of ₱181,825.00 and all other amounts that they received under the *Alias* Writ of Execution dated October 22, 2002.

SO ORDERED.

Carpio, Carpio Morales,[*] *Peralta,* and *Mendoza, JJ.,* concur.

SEC. 2. *Contents of motion for new trial or reconsideration and notice thereof.* – The motion shall be made in writing stating the ground or grounds therefore, a written notice of which shall be served by the movant on the adverse party.

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A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933-B dated January 24, 2011.

SECOND DIVISION

[G.R. No. 178323. March 16, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMANDO CHINGH *y* PARCIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY THE TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL.— Generally, the Court will not disturb the findings of the trial court on the credibility of witnesses, as it was in the better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court; it had the unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is entitled to respect unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.

2. ID.; ID.; ID.; THE TESTIMONIES OF YOUNG AND IMMATURE RAPE VICTIMS ARE GIVEN CREDENCE BY COURTS.— Time and again, this Court has held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.

3. ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF THE COMPLAINANT.— Jurisprudence dictates that denial and alibi are the common defenses in rape cases. Sexual abuse is denied on the allegation that the accused was somewhere else and could not have physically committed the crime. This Court has always held that these two defenses are inherently weak and must be supported by clear and convincing evidence in order to be believed. As negative defenses, they cannot prevail over the positive testimony of the complainant.

4. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; WHEN TWO OR MORE OFFENSES ARE CHARGED IN A SINGLE INFORMATION BUT THE ACCUSED FAILS TO OBJECT TO IT BEFORE TRIAL, THE COURT MAY CONVICT HIM OF AS MANY AS ARE CHARGED AND PROVED; CASE AT BAR.— The CA correctly found Armando guilty of the crime of Rape Through Sexual Assault under paragraph 2, Article 266-A, of the Revised Penal Code, as amended by Republic Act No. (R.A.) 8353, or The Anti-Rape Law of 1997. From the Information, it is clear that Armando was being charged with two offenses, Rape under paragraph 1(d), Article 266-A of the Revised Penal Code, and rape as an act of sexual assault under paragraph 2, Article 266-A. Armando was charged with having carnal knowledge of VVV, who was under twelve years of age at the time, under paragraph 1(d) of Article 266-A, and he was also charged with committing an act of sexual assault by inserting his finger into the genital of VVV under the second paragraph of Article 266-A. Indeed, two instances of rape were proven at the trial. *First*, it was established that Armando inserted his penis into the private part of his victim, VVV. *Second*, through the testimony of VVV, it was proven that Armando also inserted his finger in VVV's private part. The Information has sufficiently informed accused-appellant that he is being charged with counts of rape. Although two offenses were charged, which is a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which states that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Nonetheless, Section 3, Rule 120 of the Revised Rules of Criminal Procedure also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial,

the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." Consequently, since Armando failed to file a motion to quash the Information, he can be convicted with two counts of rape.

5. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT); PUNISHES SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT NOT ONLY WITH A CHILD EXPLOITED IN PROSTITUTION, BUT ALSO WITH A CHILD SUBJECTED TO OTHER SEXUAL ABUSES.— It is undisputed that at the time of the commission of the sexual abuse, VVV was ten(10) years old. This calls for the application of R.A. No. 7610, or "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," which defines sexual abuse of children and prescribes the penalty therefor in Section 5 (b), Article III x x x. Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child. Corollarilly, Section 2 (h) of the rules and regulations of R.A. No. 7610 defines "Lascivious conduct" x x x. In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor*, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.

6. ID.; ID.; WHEN APPLIED.— The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article 366, in relation to Section 5 (b), Article III of R.A. No.

7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."

7. ID.; RAPE THROUGH SEXUAL ASSAULT; PENALTY IN CASE AT BAR.— Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Hence, Armando should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— As to Armando's civil liabilities, the CA correctly awarded the following damages: civil indemnity of ₱50,000.00 and another ₱50,000.00 as moral damages for Rape under paragraph 1(d), Article 266-A; and civil indemnity of ₱30,000.00 and moral damages also of ₱30,000.00 for Rape under paragraph 2, Article 266-A. In line, however, with prevailing jurisprudence, we increase the award of exemplary damages from ₱25,000.00 and ₱15,000.00, for Rape under paragraph 1 (d), Article 266-A and Rape under paragraph 2, Article 266-A, respectively, to ₱30,000.00 for each count of rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Armando Chingh *y* Parcia (Armando) seeks the reversal of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01119 convicting him of Statutory Rape and Rape Through Sexual Assault.

The factual and procedural antecedents are as follows:

On March 19, 2005, an Information for Rape was filed against Armando for inserting his fingers and afterwards his penis into the private part of his minor victim, VVV,[2] the accusatory portion of which reads:

That on or before March 11, 2004 in the City of Manila, Philippines, [Armando], with lewd design and by means of force, violence and intimidation did then and there willfully, unlawfully and knowingly commit sexual abuse and lascivious conduct upon a ten (10) year old minor child, [VVV], by then and there pulling her in a dark place then mashing her breast and inserting his fingers in her vagina and afterwards his penis, against her will and consent, thereby causing

[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Magdangal M. De Leon and Ramon R. Garcia, concurring; *rollo*, pp. 2-26.

[2] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 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.

serious danger to the normal growth and development of the child [VVV], to her damage and prejudice.

Contrary to law.[3]

Upon his arraignment, Armando pleaded not guilty to the charge. Consequently, trial on the merits ensued.

At the trial, the prosecution presented the testimonies of the victim, VVV; the victim's father; PO3 Ma. Teresa Solidarios; and Dr. Irene Baluyot. The defense, on the other hand, presented the lone testimony Armando as evidence.

Evidence for the Prosecution

Born on 16 September 1993, VVV was only 10 years old at the time of the incident. On 11 March 2004 at around 8:00 p.m., along with five other playmates, VVV proceeded to a store to buy food. While she was beckoning the storekeeper, who was not then at her station, Armando approached and pulled her hand and threatened not to shout for help or talk. Armando brought her to a vacant lot at Tindalo Street, about 400 meters from the store. While in a standing position beside an unoccupied passenger jeepney, Armando mashed her breast and inserted his right hand index finger into her private part. Despite VVV's pleas for him to stop, Armando unzipped his pants, lifted VVV and rammed his phallus inside her vagina, causing her to feel excruciating pain.

Threatened with death if she would tell anyone what had happened, VVV kept mum about her traumatic experience when she arrived home. Noticing her odd and uneasy demeanor as well as her blood-stained underwear, however, her father pressed her for an explanation. VVV confessed to her father about her unfortunate experience. Immediately, they reported the matter to the police authorities. After his arrest, Armando was positively identified by VVV in a police line-up.

The genital examination of VVV conducted by Dr. Irene Baluyot (Dr. Baluyot) of the Philippine General Hospital's Child Protection Unit, in the morning of 12 March 2004, showed a "fresh laceration with bleeding at 6 o'clock position" in the child's hymen and "minimal bleeding from [said] hymen laceration." Her impression was that

[3] Records, p. 1.

there was a "clear evidence" of "penetrating trauma" which happened within 24 hours prior to the examination. The photograph of the lacerated genitalia of VVV strongly illustrated and buttressed Dr. Baluyot's medical report.[4]

Evidence for the Defense

Armando denied that he raped VVV. Under his version, in (sic) the night of 11 March 2004, he and his granddaughter were on their way to his cousin's house at Payumo St., Tondo, Manila. As it was already late, he told his granddaughter to just go home ahead of him while he decided to go to Blumentritt market to buy food. While passing by a small alley on his way thereto, he saw VVV along with some companions, peeling "*dalanghita*." VVV approached him and asked if she could go with him to the market because she will buy "*dalanghita*" or sunkist. He refused her request and told VVV instead to go home. He then proceeded towards Blumentritt, but before he could reach the market, he experienced rheumatic pains that prompted him to return home. Upon arriving home, at about 8:30 o'clock in the evening, he watched television with his wife and children. Shortly thereafter, three (3) *barangay* officials arrived, arrested him, and brought him to a police precinct where he was informed of VVV's accusation against him.[5]

On April 29, 2005, the Regional Trial Court of Manila (RTC), Branch 43, after finding the evidence of the prosecution overwhelming against the accused's defense of denial and alibi, rendered a Decision[6] convicting Armando of Statutory Rape. The dispositive portion of which reads:

WHEREFORE, **premises considered,** the Court finds accused ARMANDO CHINGH **GUILTY** beyond reasonable doubt as principal of the crime of Statutory Rape defined and penalized under Article 266-A, paragraph 1 (d) of the Revised Penal Code as amended by RA 8353 and is hereby sentenced to suffer the penalty of ***Reclusion Perpetua*** and to indemnify private complainant [VVV] the amount of fifty thousand pesos (₱50,000.00) as compensatory damages, fifty thousand pesos (P50,000.00) as moral damages and to pay the costs.

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[4] *Rollo*, pp. 4-5.

[5] *Id.* at 5-6.

[6] CA *rollo*, pp. 51-59.

It appearing that accused is detained, the period of his detention shall be credited in the service of his sentence.

SO ORDERED.

Aggrieved, Armando appealed the Decision before the CA, which was docketed as CA-G.R. CR-H.C. No. 01119.

On December 29, 2006, the CA rendered a Decision[7] finding Armando not only guilty of Statutory Rape, but also of Rape Through Sexual Assault. The decretal portion of said Decision reads:

WHEREFORE, the assailed decision of the trial court is **AFFIRMED** with the following **MODIFICATIONS:** accused-appellant is hereby found **GUILTY** of two counts of rape and is, accordingly, sentenced to suffer, for the crime of statutory rape, the penalty of *reclusion perpetua* and, for the offense of rape through sexual assault, the indeterminate penalty of 3 years, 3 months and 1 day of *prision correccional*, as minimum, to 8 years and 11 months and 1 day of *prision mayor*, as maximum. He is likewise ordered to pay the victim, a total of ₱80,000.00 as civil indemnity, ₱80,000.00 as moral damages; and ₱40,000.00 as exemplary damages, or a grand total of ₱200,000.00 for the two counts of rape.

Costs against accused-appellant.

SO ORDERED.[8]

In fine, the CA affirmed the decision of the RTC, and considering that the appeal opened the entire case for judicial review, the CA also found Armando guilty of the crime of Rape Through Sexual Assault. The CA opined that since the Information charged Armando with two counts of rape: (1) by inserting his finger in the victim's vagina, which is classified as Rape Through Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, as amended; and (2) for inserting his penis in the private part of his victim, which is Statutory Rape, and considering that Armando failed to object thereto through a motion to

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[7] *Rollo*, pp. 2-26.

[8] *Id*. at 25-26.

quash before entering his plea, Armando could be convicted of as many offenses as are charged and proved.

The CA ratiocinated that coupled with the credible, direct, and candid testimony of the victim, the elements of Statutory Rape and Rape Through Sexual Assault were indubitably established by the prosecution.

Armando now comes before this Court for relief.

In a Resolution[9] dated September 26, 2007, the Court required the parties to file their respective supplemental briefs. In their respective Manifestations,[10] the parties waived the filing of their supplemental briefs, and instead adopted their respective briefs filed before the CA.

Hence, Armando raises the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF RAPE UNDER ARTICLE 266-A, PARAGRAPH 1 (D) OF THE REVISED PENAL CODE IN SPITE THE UNNATURAL AND UNREALISTIC TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.

Simply stated, Armando is assailing the factual basis of his conviction, which in effect, mainly questions the credibility of the testimony of the witnesses for the prosecution, particularly his victim, VVV.

Armando maintains that the prosecution failed to present sufficient evidence that will overcome the presumption of innocence. Likewise, Armando insists that the RTC gravely erred in convicting him based on the unrealistic and unnatural testimony of the victim. Armando claims that VVV's testimony was so

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[9] *Id.* at 29.

[10] *Id.* at 30-31 and 33-34.

inconsistent with common experience that it deserves careful and critical evaluation. *First*, it was so unnatural for VVV to remain quiet and not ask for help when the accused allegedly pulled her in the presence of several companions and bystanders; *second*, VVV did not resist or cry for help while they were on their way to the place where she was allegedly abused, which was 300 to 400 meters away from where he allegedly pulled her; *third*, VVV could have run away while Armando was allegedly molesting her, but she did not; *fourth*, Armando could not have inserted his penis in the victim's organ while both of them were standing, unless the victim did not offer any resistance.

Generally, the Court will not disturb the findings of the trial court on the credibility of witnesses, as it was in the better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court; it had the unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is entitled to respect unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[11]

From the testimony of the victim, VVV, she positively identified Armando as the one who ravaged her on that fateful night of March 11, 2004. VVV clearly narrated her harrowing experience in the hands of the accused. Notwithstanding her innocence and despite the thorough cross-examination by Armando's counsel, VVV never faltered and gave a very candid and truthful testimony of the traumatic events. VVV's testimony was corroborated and bolstered by the findings of Dr. Irene Baluyot that the victim's genital area showed a fresh laceration with bleeding at 6 o'clock position in her hymen.[12] Dr. Baluyot concluded that an acute injury occurred within 24 hours prior to the examination and that the occurrence of rape within that period was very possible.[13] Also, the age of VVV at the time the incident occurred,

[11] *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903.

[12] TSN, (Dr. Irene Baluyot), June 27, 2004, p. 23.

[13] *Id.* at 29-30.

which was 10 years old, was duly established by her birth certificate,[14] her testimony,[15] and that of her father's.[16]

Time and again, this Court has held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true.[17] A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.[18] Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.[19]

On the other hand, Armando admitted that he saw VVV on the date of the incident, but denied the accusations against him and merely relied on his defense that he was watching TV with his family when *barangay* officials arrested him.

Armando's defenses were also unavailing. His contention that it was unnatural and unrealistic for VVV to remain quiet when he pulled her from her companions and why she did not cry for help or run away when he was allegedly ravaging her deserves scant consideration. Clearly, the reason why VVV

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[14] Records, p. 63.

[15] TSN, (VVV), August 23, 2004, p. 7.

[16] TSN, September 13, 2004, p. 10.

[17] *Flordeliz v. People*, G.R. No. 186441, March 3, 2010, 614 SCRA 225, 234.

[18] *People v. Matunhay*, G.R. No. 178274, March 5, 2010, 614 SCRA 307, 316.

[19] *Id.* at 317, citing *People v. Quiñanola*, 366 Phil. 390 (1999).

did not shout for help was because Armando told her not to shout or talk.[20] Likewise, the reason why VVV did not run when Armando was molesting her was because his finger was still inside her private part.[21] Moreover, Armando's argument that he could not have inserted his penis in the victim's organ while both of them were standing is preposterous. It is settled that sexual intercourse in a standing position, while perhaps uncomfortable, is not improbable.[22]

Armando tendered nothing but his bare denial and contention that he was elsewhere when the crime was committed. Aside from this, he presented no more evidence to substantiate his claims. Jurisprudence dictates that denial and alibi are the common defenses in rape cases. Sexual abuse is denied on the allegation that the accused was somewhere else and could not have physically committed the crime. This Court has always held that these two defenses are inherently weak and must be supported by clear and convincing evidence in order to be believed. As negative defenses, they cannot prevail over the positive testimony of the complainant.[23] Consequently, Armando's bare denial and alibi must fail against the testimony of VVV and her positive identification that he was the perpetrator of the horrid deed. Unmistakably, it has been proved beyond reasonable doubt that Armando had carnal knowledge of VVV.

Anent Armando's conviction for the crime of Rape Through Sexual Assault.

The CA correctly found Armando guilty of the crime of Rape Through Sexual Assault under paragraph 2, Article 266-A, of the Revised Penal Code, as amended by Republic Act No. (R.A.) 8353, or The Anti-Rape Law of 1997.[24] From the Information,

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[20] TSN, (VVV), August 23, 2004, pp. 6-7.

[21] *Id.* at 10.

[22] *People v. Iroy*, G.R. No. 187743, March 3, 2010, 614 SCRA 245, 250; *People v. Castro*, G.R. No. 91490, May 6, 1991, 196 SCRA 679.

[23] *Supra* note 18, at 317.

[24] Art. 266-A. *Rape: When and How Committed. — Rape is committed —*
x x x x x x x x x

it is clear that Armando was being charged with two offenses, Rape under paragraph 1 (d), Article 266-A of the Revised Penal Code, and rape as an act of sexual assault under paragraph 2, Article 266-A. Armando was charged with having carnal knowledge of VVV, who was under twelve years of age at the time, under paragraph 1 (d) of Article 266-A, and he was also charged with committing an act of sexual assault by inserting his finger into the genital of VVV under the second paragraph of Article 266-A. Indeed, two instances of rape were proven at the trial. *First*, it was established that Armando inserted his penis into the private part of his victim, VVV. *Second*, through the testimony of VVV, it was proven that Armando also inserted his finger in VVV's private part.

The Information has sufficiently informed accused-appellant that he is being charged with two counts of rape. Although two offenses were charged, which is a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which states that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Nonetheless, Section 3, Rule 120 of the Revised Rules of Criminal Procedure also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." Consequently, since Armando failed to file a motion to quash the Information, he can be convicted with two counts of rape.

As to the proper penalty, We affirm the CA's imposition of *Reclusion Perpetua* for rape under paragraph 1 (d), Article 266-A. However, We modify the penalty for Rape Through Sexual Assault.

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2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

It is undisputed that at the time of the commission of the sexual abuse, VVV was ten (10) years old. This calls for the application of R.A. No. 7610, or "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," which defines sexual abuse of children and prescribes the penalty therefor in Section 5 (b), Article III, to wit:

> SEC. 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x x x x x x
>
> (b) ***Those who commit the act of*** sexual intercourse or ***lascivious conduct with a child*** exploited in prostitution or subjected to ***other sexual abuse***: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That **the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period**.[25]

Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. It covers not only a situation where a child is abused for profit, but also where one — through coercion, intimidation or influence — engages in sexual intercourse or lascivious conduct with a child.[26]

Corollarilly, Section 2 (h) of the rules and regulations[27] of R.A. No. 7610 defines "Lascivious conduct" as:

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[25] Emphasis supplied.

[26] *Supra* note 17, at 240.

[27] Rules and Regulations on the Reporting and Investigation of Child Abuse

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[28]

In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353,[29] for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor*, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.

The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article 366, in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those

Cases (adopted on October 11, 1993).

[28] *Supra* note 17, at 241, citing *Navarrete v. People*, 513 SCRA 509, 521-522 (2007); *Olivarez v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 473-474; *People v. Bon*, 444 Phil. 571, 584 (2003).

[29] R.A. No. 8353 or the Anti-Rape Law of (which took effect on October 22, 1997) reclassified rape as a crime against person and repealed Article 335 of the Revised Penal Code. The new provisions on rape are found in Articles 266-A to 266-D of the said Code.

"persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."[30]

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

Hence, Armando should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

As to Armando's civil liabilities, the CA correctly awarded the following damages: civil indemnity of ₱50,000.00 and another ₱50,000.00 as moral damages for Rape under paragraph 1(d), Article 266-A; and civil indemnity of ₱30,000.00 and moral damages also of ₱30,000.00 for Rape under paragraph 2, Article 266-A. In line, however, with prevailing jurisprudence, we increase the award of exemplary damages from ₱25,000.00 and ₱15,000.00, for Rape under paragraph 1 (d), Article 266-A and Rape under paragraph 2, Article 266-A, respectively, to ₱30,000.00 for each count of rape.[31]

WHEREFORE, premises considered, the Court of Appeals Decision dated December 29, 2006 in CA-G.R. CR-H.C. No. 01119 is *AFFIRMED* with *MODIFICATION*. For Rape under paragraph 1 (d), Article 266-A, Armando Chingh *y* Parcia is sentenced to suffer the penalty of *Reclusion Perpetua*; and for Rape Through Sexual Assault under paragraph 2,

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[30] R.A. No. 7610. Art. I, Sec. 3 (a).

[31] *People v. Lindo*, G.R. No. 189818, August 9, 2010, 519 SCRA 13.

Article 266-A, he is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. He is likewise ordered to pay VVV the total of ₱80,000.00 as civil indemnity, ₱80,000.00 as moral damages, and ₱60,000.00 as exemplary damages.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 182239. March 16, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HERMIE M. JACINTO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRINCIPLES IN DETERMINING THE INNOCENCE OR GUILT OF A PERSON ACCUSED OF RAPE.— In the determination of the innocence or guilt of a person accused of rape, we consider the three well-entrenched principles: "(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo Nachura, per Special Order No. 933, dated January 24, 2011.

own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense."

2. ID.; ID.; CREDIBILITY OF WITNESSES; THE CREDIBLE, NATURAL, AND CONVINCING TESTIMONY OF THE VICTIM MAY BE SUFFICIENT TO CONVICT THE ACCUSED.— [T]he credible, natural, and convincing testimony of the victim may be sufficient to convict the accused. More so, when the testimony is supported by the medico-legal findings of the examining physician.

3. ID.; ID.; ALIBI; CANNOT PREVAIL OVER THE VICTIM'S POSITIVE IDENTIFICATION OF THE PERPETRATOR OF THE CRIME; EXCEPTION.— [T]he defense of alibi cannot prevail over the victim's positive identification of the perpetrator of the crime, except when it is established that it was physically impossible for the accused to have been at the *locus criminis* at the time of the commission of the crime.

4. CRIMINAL LAW; RAPE; WHEN COMMITTED.— A man commits rape by having carnal knowledge of a child under twelve (12) years of age even in the absence of any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; or (c) by means of fraudulent machination or grave abuse of authority. That the crime of rape has been committed is certain. The vivid narration of the acts culminating in the insertion of the appellant's organ into the vagina of five-year-old AAA and the medical findings of the physicians sufficiently proved such fact.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; YOUTH AND IMMATURITY ARE NORMALLY BADGES OF TRUTH AND HONESTY.— The straightforward and consistent answers to the questions, which were phrased and re-phrased in order to test that AAA well understood the information elicited from her, said it all – she had been raped. When a woman, more so a minor, says so, she says in effect all that is essential to show that rape was committed. Significantly, youth and immaturity are normally badges of truth and honesty.

6. ID.; ID.; ID.; THE DETERMINATION THEREOF BY THE TRIAL COURT GENERALLY DESERVES FULL WEIGHT AND RESPECT.— In a long line of cases, this Court has consistently

ruled that the determination by the trial court of the credibility of the witnesses deserves full weight and respect considering that it has "the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath," unless it is shown that material facts and circumstances have been "ignored, overlooked, misconstrued or misinterpreted."

7. ID.; ID.; ALIBI; FOR ALIBI TO PROSPER, IT IS NECESSARY THAT THE CORROBORATION IS CREDIBLE.— [F]or alibi to prosper, it is necessary that the corroboration is credible, the same having been offered preferably by disinterested witnesses. The defense failed thuswise. Its witnesses cannot qualify as such, "they being related or were one way or another linked to each other."

8. ID.; ID.; ID.; PHYSICAL IMPOSSIBILITY; DEFINED.— We reiterate, time and again, that the court must be convinced that it would be physically impossible for the accused to have been at the *locus criminis* at the time of the commission of the crime. "Physical impossibility refers to distance and the facility of access between the *situs criminis* and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed."

9. CRIMINAL LAW; REPUBLIC ACT NO. 9344 (JUVENILE JUSTICE AND WELFARE ACT OF 2006); MAY BE GIVEN RETROACTIVE APPLICATION; CASE AT BAR.— In the determination of the imposable penalty, the Court of Appeals correctly considered Republic Act No. 9344 (*Juvenile Justice and Welfare Act of 2006*) despite the commission of the crime three (3) years before it was enacted on 28 April 2006. We recognize its retroactive application following the rationale elucidated in *People v. Sarcia*: "[Sec. 68 of Republic Act No. 9344] allows the retroactive application of the Act to those who have been convicted and are serving sentence at the time of the effectivity of this said Act, and who were below the age of 18 years at the time of the commission of the offense. **With more reason, the Act should apply to this case wherein the conviction by the lower court is still under review."**

10. ID.; ID.; EXEMPTS A CHILD ABOVE FIFTEEN YEARS BUT BELOW EIGHTEEN YEARS OF AGE FROM CRIMINAL LIABILITY, UNLESS THE CHILD IS FOUND TO HAVE ACTED WITH DISCERNMENT; DISCERNMENT, DEFINED.— Sec. 6 of Republic Act No. 9344 exempts a child above fifteen (15) years but below eighteen (18) years of age from criminal liability, unless the child is found to have acted with discernment, in which case, "the appropriate proceedings" in accordance with the Act shall be observed. We determine discernment in this wise: "Discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case. x x x The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness." In the present case, we agree with the Court of Appeals that: "(1) choosing an isolated and dark place to perpetrate the crime, to prevent detection[;] and (2) boxing the victim x x x, to weaken her defense" are indicative of then seventeen (17) year-old appellant's mental capacity to fully understand the consequences of his unlawful action.

11. ID.; RAPE; IMPOSABLE PENALTY IN CASE AT BAR.— In a more recent case, the Court *En Banc*, through the Honorable Justice Teresita J. Leonardo-de Castro, clarified: "Under Article 68 of the Revised Penal Code, when the offender is a minor under 18 years, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. **However, for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is still the penalty to be reckoned with.** Thus, the proper imposable penalty for the accused-appellant is *reclusion perpetua*." Accordingly, appellant should be meted the penalty of *reclusion perpetua*.

12. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— [T]he fact that the offender was still a minor at the time he committed the crime has no bearing on the gravity and extent of injury suffered by the victim and her family. The respective awards of civil indemnity and moral

damages in the amount of ₱75,000.00 each are, therefore, proper. Accordingly, despite the presence of the privileged mitigating circumstance of minority which effectively lowered the penalty by one degree, we affirm the damages awarded by the Court of Appeals in the amount of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. And, consistent with prevailing jurisprudence, the amount of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00.

13. CRIMINAL LAW; REPUBLIC ACT NO. 9344 (JUVENILE JUSTICE AND WELFARE ACT OF 2006); A CHILD IN CONFLICT WITH THE LAW, WHOSE JUDGMENT OF CONVICTION HAS BECOME FINAL AND EXECUTORY ONLY AFTER HIS DISQUALIFICATION FROM AVAILING OF THE BENEFITS OF SUSPENDED SENTENCE ON THE GROUND THAT HE HAS EXCEEDED THE AGE LIMIT OF TWENTY-ONE YEARS, SHALL STILL BE ENTITLED TO THE RIGHT TO RESTORATION, REHABILITATION, AND REINTEGRATION IN ACCORDANCE WITH THE ACT.— Republic Act No. 9344 warrants the suspension of sentence of a child in conflict with the law notwithstanding that he/she has reached the age of majority at the time the judgment of conviction is pronounced. Thus: "SEC. 38. *Automatic Suspension of Sentence*.—x x x That **suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.** x x x x" Applying *Declarador v. Gubaton*, which was promulgated on 18 August 2006, the Court of Appeals held that, consistent with Article 192 of Presidential Decree No. 603, as amended, the aforestated provision does not apply to one who has been convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment. Meanwhile, on 10 September 2009, this Court promulgated the decision in *Sarcia*, overturning the ruling in *Gubaton*. x x x The legislative intent reflected in the Senate deliberations on Senate Bill No. 1402 (Juvenile Justice and Delinquency Prevention Act of 2005) further strengthened the new position of this Court to cover heinous crimes in the application of the provision on the automatic suspension of sentence of a child in conflict with the law. x x x On 24 November 2009, the Court *En Banc* promulgated the *Revised Rule on Children in Conflict with the Law*,

which reflected the same position. These developments notwithstanding, we find that the benefits of a suspended sentence can no longer apply to appellant. The suspension of sentence lasts only until the child in conflict with the law reaches the maximum age of twenty-one (21) years. Section 40 of the law and Section 48 of the Rule are clear on the matter. Unfortunately, appellant is now twenty (25) years old. Be that as it may, to give meaning to the legislative intent of the Act, the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the Act in order that he/she is given the chance to live a normal life and become a productive member of the community. The age of the child in conflict with the law at the time of the promulgation of the judgment of conviction is not material. What matters is that the offender committed the offense when he/she was still of tender age. Thus, appellant may be confined in an agricultural camp or any other training facility in accordance with Sec. 51 of Republic Act No. 9344.

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.*:**

Once again, we recite the time-honored principle that the defense of alibi cannot prevail over the victim's positive identification of the accused as the perpetrator of the crime.[1] For it to prosper, the court must be convinced that there was physical impossibility on the part of the accused to have been

[1] *People v. Antivola*, G.R. No. 139236, 3 February 2004, 421 SCRA 587, 598; *People v. Nogar*, G.R. No. 133946, 27 September 2000, 341 SCRA 206, 217.

at the *locus criminis* at the time of the commission of the crime.[2]

Nevertheless, a child in conflict with the law, whose judgment of conviction has become final and executory only after his disqualification from availing of the benefits of suspended sentence on the ground that he/she has exceeded the age limit of twenty-one (21) years, shall still be entitled to the right to restoration, rehabilitation, and reintegration in accordance with Republic Act No. 9344, otherwise known as "*An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council under the Department of Justice, Appropriating Funds Therefor and for Other Purposes.*"

Convicted for the rape of five-year-old AAA,[3] appellant Hermie M. Jacinto seeks before this Court the reversal of the judgment of his conviction.[4]

The Facts

In an Information dated 20 March 2003[5] filed with the Regional Trial Court and docketed as Criminal Case No. 1679-13-141[1],[6]

[2] *People v. Trayco*, G.R. No. 171313, 14 August 2009, 596 SCRA 233, 253; *People v. Paraiso*, G.R. No. 131823, 17 January 2001, 349 SCRA 335, 350-351.

[3] To maintain the confidentiality of information on child abuse cases, and consistent with the application in *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419) of: (1) the provisions of Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*) and its implementing rules; (2) Republic Act No. 9262 (*Anti-Violence Against Women and their Children Act of 2004*) and its implementing rules; and (3) this Court's Resolution dated 19 October 2004 in A.M. No. 04-10-11-SC (*Rule on Violence Against Women and their Children*), the real name and the personal circumstances of the victim, and any other information tending to establish or compromise her identity, including those of her immediate family or household members are withheld.

[4] Records, pp. 64-69. Decision dated 26 March 2004 of the Regional Trial Court penned by Judge Ma. Nimfa Penaco-Sitaca; *Id.* at 77. Order dated 6 April 2004 of the Regional Trial Court penned by Judge Penaco-Sitaca; CA *rollo* pp. 134-159. Decision dated 29 August 2007 penned by Associate Justice Elihu A. Ybañez, with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring.

[5] Records, p. 2.

[6] The docket no. indicated in the covering of the trial court's record of

appellant was accused of the crime of RAPE allegedly committed as follows:

> That on or about the 28th day of January, 2003 at about 7:00 o'clock in the evening more or less, at barangay xxx, municipality of xxx, province of xxx and within the jurisdiction of this Honorable Court, [Hermie M. Jacinto], with lewd design did then and there willfully, unlawfully and feloniously had carnal knowledge with one AAA, a five-year old minor child.
>
> CONTRARY TO LAW, with the qualifying/aggravating circumstance of minority, the victim being only five years old.[7]

On 15 July 2003, appellant entered a plea of not guilty.[8] During pre-trial,[9] the defense admitted the existence of the following documents: (1) birth certificate of AAA, showing that she was born on 3 December 1997; (2) police blotter entry on the rape incident; and (3) medical certificate, upon presentation of the original or upon identification thereof by the physician.

Trial ensued with the prosecution and the defense presenting witnesses to prove their respective versions of the story.

Evidence for the Prosecution

The testimonies of AAA,[10] her father FFF,[11] and rebuttal witness Julito Apiki [Julito][12] may be summarized in the following manner:

FFF and appellant have been neighbors since they were born. FFF's house is along the road. That of appellant lies at the back approximately 80 meters from FFF. To access the road,

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the case and the majority of the Orders and other court processes, including the decisions of the Regional Trial Court and the Court of Appeals, is Criminal Case No. 1679-13-1411.

[7] Records, p. 2. Information dated 20 March 2003.

[8] *Id.* at 22. Order dated 15 July 2003.

[9] *Id.* at 25. Pre-Trial Order dated 4 August 2003.

[10] TSNs, 13 October 2003 and 18 February 2004.

[11] TSN, 16 September 2003.

[12] TSN, 1 March 2004.

appellant has to pass by FFF's house, the frequency of which the latter describes to be "every minute [and] every hour." Also, appellant often visits FFF because they were close friends. He bore no grudge against appellant prior to the incident.[13]

AAA likewise knows appellant well. She usually calls him *kuya*. She sees him all the time – playing at the basketball court near her house, fetching water, and passing by her house on his way to the road. She and appellant used to be friends until the incident.[14]

At about past 6 o'clock in the evening of 28 January 2003, FFF sent his eight-year-old daughter CCC to the store of Rudy Hatague to buy cigarettes. AAA followed CCC. When CCC returned without AAA, FFF was not alarmed. He thought she was watching television at the house of her aunt Rita Lingcay [Rita].[15]

Julito went to the same store at around 6:20 in the evening to buy a bottle of Tanduay Rum.[16] At the store, he saw appellant place AAA on his lap.[17] He was wearing sleeveless shirt and a pair of short pants.[18] All of them left the store at the same time.[19] Julito proceeded to the house of Rita to watch television, while appellant, who held the hand of AAA, went towards the direction of the "lower area or place."[20]

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[13] TSN, 16 September 2003, pp. 5 and 12.

[14] TSN, 13 October 2003, pp. 4-5.

[15] TSN, 16 September 2003, pp. 2-3.

[16] TSN, 1 March 2004, p. 2.

[17] *Id.*

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

[19] *Id.* at 3.

[20] *Id.*

In its decision, the trial court translated the testimony in the following manner: "xxx leaving the store at the same time, he saw Hermie holding the child by the hand and proceeding downward while he proceeded upward to the house of Lita Lingkay to watch TV." Records, p. 67. Decision dated 26 March 2004.

AAA recalled that appellant was wearing a *chaleko* (sando) and a pair of short pants[21] when he held her hand while on the road near the store.[22] They walked towards the rice field near the house of spouses Alejandro and Gloria Perocho [the Perochos].[23] There he made her lie down on harrowed ground, removed her panty and boxed her on the chest.[24] Already half-naked from waist down,[25] he mounted her, and, while her legs were pushed apart, pushed his penis into her vagina and made a push and pull movement.[26] She felt pain and cried.[27] Afterwards, appellant left and proceeded to the Perochos.[28] She, in turn, went straight home crying.[29]

FFF heard AAA crying and calling his name from downstairs.[30] She was without slippers.[31] He found her face greasy.[32] There was mud on her head and blood was oozing from the back of her head.[33] He checked for any injury and found on her neck a contusion that was already turning black.[34] She had no underwear on and he saw white substance and mud on her vagina.[35] AAA told him that appellant brought her from the

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[21] TSN, 13 October 2003, p. 18.

[22] *Id.* at 7 and 14.

[23] *Id.* at 16 and 18.

[24] *Id.* at 6-7.

[25] *Id.* at 16.

[26] *Id.* at 7-8.

[27] *Id.* at 8.

[28] *Id.*

[29] *Id.* at 9.

[30] TSN, 16 September 2003, p. 4.

[31] *Id.*

[32] *Id.* at 6.

[33] *Id.* at 4.

[34] *Id.* at 6.

[35] *Id.* at 4 and 6.

store[36] to the grassy area at the back of the house of the Perochos;[37] that he threw away her pair of slippers, removed her panty, choked her and boxed her breast;[38] and that he proceeded thereafter to the Perochos.[39]

True enough, FFF found appellant at the house of the Perochos.[40] He asked the appellant what he did to AAA.[41] Appellant replied that he was asked to buy rum at the store and that AAA followed him.[42] FFF went home to check on his daughter,[43] afterwhich, he went back to appellant, asked again,[44] and boxed him.[45]

Meanwhile, at around 7:45 in the evening of even date, Julito was still watching television at the house of Rita.[46] AAA and her mother MMM arrived.[47] AAA was crying.[48] Julito pitied her, embraced her, and asked what happened to her, to which she replied that appellant raped her.[49] Julito left and found appellant at the Perochos.[50] Julito asked appellant, "Bads, did you really rape the child, the daughter of [MMM]?" but the latter ignored his question.[51] Appellant's aunt, Gloria, told

[36] *Id.* at 15.

[37] *Id.* at 4 and 15.

[38] *Id.*

[39] *Id.* at 5.

[40] *Id.* at 6.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.* at 7.

[45] *Id.* at 17.

[46] TSN, 1 March 2004, pp. 10-11.

[47] *Id.* at 10.

[48] *Id.* at 3.

[49] *Id.*

[50] *Id.* at 4.

[51] *Id.*

appellant that the policemen were coming to which the appellant responded, "Wait a minute because I will wash the dirt of my elbow (sic) and my knees."[52] Julito did found the elbows and knees of appellant with dirt.[53]

On that same evening, FFF and AAA proceeded to the police station to have the incident blottered.[54] FFF also had AAA undergo a physical check up at the municipal health center.[55] Dr. Bernardita M. Gaspar, M.D., Rural Health Physician, issued a medical certificate[56] dated 29 January 2003. It reads:

Injuries seen are as follows:

1. Multiple abrasions with erythema along the neck area.
2. Petechial hemorrhages on both per-orbital areas.
3. Hematoma over the left upper arm, lateral area
4. Hematoma over the upper anterior chest wall, midclavicular line
5. Abrasion over the posterior trunk, paravertebral area
6. Genital and peri-anal area soiled with debris and whitish mucoid-like material
7. Introitus is erythematous with minimal bleeding
8. Hymenal lacerations at the 5 o'clock and 9 o'clock position

Impression

MULTIPLE SOFT TISSUE INJURIES
HYMENAL LACERATIONS

Upon the recommendation of Dr. Gaspar,[57] AAA submitted herself to another examination at the provincial hospital on the following day. Dr. Christine Ruth B. Micabalo, Medical Officer III of the provincial hospital, attended to her and issued a medico-

[52] *Id.*

[53] *Id.* at 5.

[54] TSN, 16 September 2003, p. 7.

[55] *Id.* at 7-8.

[56] Records, p. 9. Medico-legal Certificate issued on 29 January 2003 by the Municipal Health Office.

[57] *Id.*

legal certificate dated 29 January 2003,[58] the pertinent portion of which reads:

P.E. = Findings is consistent with Dr. Bernardita M. Gaspar findings except No. 6 and 7 there is no bleeding in this time of examination. (sic)[59]

Evidence for the Defense

Interposing the defense of alibi, appellant gave a different version of the story. To corroborate his testimony, Luzvilla Balucan [Luzvilla] and his aunt Gloria took the witness stand to affirm that he was at the Perochos at the time of the commission of the crime.[60] Luzvilla even went further to state that she actually saw Julito, not appellant, pick up AAA on the road.[61] In addition, Antonia Perocho [Antonia], sister-in-law of appellant's aunt, Gloria,[62] testified on the behavior of Julito after the rape incident was revealed.[63]

Appellant claimed that he lives with his aunt, not with his parents whose house stands at the back of FFF's house.[64] He denied that there was a need to pass by the house of FFF in order to access the road or to fetch water.[65] He, however, admitted that he occasionally worked for FFF,[66] and whenever he was asked to buy something from the store, AAA always approached him.[67]

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[58] *Id.* at 12. Medico Legal Certificate issued on 29 January 2003 by the provincial hospital.

[59] *Id*.

[60] TSN, 8 January 2004, p. 9; TSN, 9 February 2004, pp. 3-4.

[61] *Id.* at 8.

[62] TSN, 22 March 2004, p. 5.

[63] *Id.* at 3.

[64] TSN, 2 February 2004, p. 7.

[65] *Id.* at 8.

[66] *Id.*

[67] *Id*.

At about 8 o'clock in the morning of 28 January 2003, appellant went to the Perochos to attend a birthday party. At 6:08 in the evening, while the visitors, including appellant and his uncle Alejandro Perocho [Alejandro], were gathered together in a drinking session, appellant's uncle sent him to the store to buy Tanduay Rum. Since the store is only about 20 meters from the house, he was able to return after three (3) minutes. He was certain of the time because he had a watch.[68]

Appellant's aunt, Gloria, the lady of the house, confirmed that he was in her house attending the birthday party; and that appellant went out between 6 and 7 in the evening to buy a bottle of Tanduay from the store. She recalled that appellant was back around five (5) minutes later. She also observed that appellant's white shorts and white sleeveless shirt were clean.[69]

At 6:30 in the evening,[70] Luzvilla, who was also at the party, saw appellant at the kitchen having a drink with his uncle Alejandro and the rest of the visitors.[71] She went out to relieve herself at the side of the tree beside the road next to the house of the Perochos.[72] From where she was, she saw Julito, who was wearing black short pants and black T-shirt, carry AAA.[73] AAA's face was covered and she was wiggling.[74] This did not alarm her because she thought it was just a game.[75] Meanwhile, appellant was still in the kitchen when she returned.[76] Around three (3) minutes later, Luzvilla saw Julito, now in a white T-shirt,[77] running

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

[69] TSN, 9 February 2004, pp. 3-4.

[70] TSN, 8 January 2004, p. 7.

[71] *Id.* at 6 and 9.

[72] *Id.* at 7.

[73] *Id.* at 8.

[74] *Id.*

[75] *Id.*

[76] *Id.* at 9.

[77] *Id.* at 11.

towards the house of Rita.[78] AAA was slowly following behind.[79] Luzvilla followed them.[80] Just outside the house, Julito embraced AAA and asked what the appellant did to her.[81] The child did not answer.[82]

Luzvilla also followed FFF to the Perochos. She witnessed the punching incident and testified that appellant was twice boxed by FFF. According to her, FFF tapped the left shoulder of the appellant, boxed him, and left. FFF came in the second time and again boxed appellant. This time, he had a bolo pointed at appellant. Appellant's uncle Alejandro, a *barangay* councilor, and another Civilian Voluntary Organization (CVO) member admonished FFF.[83]

On sur-rebuttal, Antonia testified that, at 7 o'clock in the evening, she was watching the television along with other people at the house of Rita. Around 7:10, Julito, who was wearing only a pair of black short pants without a shirt on, entered the house drunk. He paced back and forth. After 10 minutes, AAA came in crying. Julito tightly embraced AAA and asked her what happened. AAA did not answer. Upon Antonia's advice, Julito released her and went out of the house.[84]

Appellant further testified that at past 7 o'clock in the evening, FFF arrived, pointed a finger at him, brandished a bolo, and accused him of molesting AAA. FFF left but returned at around 8 o'clock in the evening. This time, he boxed appellant and asked again why he molested his daughter.[85]

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[78] *Id.* at 10.

[79] *Id.*

[80] *Id.* at 9.

[81] *Id.* at 10.

[82] *Id.* at 11.

[83] *Id.* at 11-12.

[84] TSN, 22 March 2004, pp. 2-4.

[85] TSN, 2 February 2004, p. 5.

On 26 March 2004, the Regional Trial Court rendered its decision,[86] the dispositive portion of which reads:

> WHEREFORE, finding accused Hermie M. Jacinto guilty beyond reasonable doubt of rape committed upon a 5-year old girl, the court sentences him to death and orders him to pay [AAA] ₱75,000.000 as rape indemnity and ₱50,000.00 as moral damages. With costs.[87]

The defense moved to reopen trial for reception of newly discovered evidence stating that appellant was apparently born on 1 March 1985 and that he was only seventeen (17) years old when the crime was committed on 28 January 2003.[88] The trial court appreciated the evidence and reduced the penalty from death to *reclusion perpetua*.[89] Thus:

> WHEREFORE, the judgment of the court imposing the death penalty upon the accused is amended in order to consider the privileged mitigating circumstance of minority. The penalty impos[a]ble upon the accused, therefore[,] is reduced to *reclusion perpetua*. xxx

Appealed to this Court, the case was transferred to the Court of Appeals for its disposition in view of the ruling in *People v. Mateo* and the *Internal Rules of the Supreme Court* allowing an intermediate review by the Court of Appeals of cases where the penalty imposed is death, *reclusion perpetua*, or life imprisonment.[90]

On 29 August 2007, the Court of Appeals AFFIRMED the decision of the trial court with the following MODIFICATIONS:

> xxx that Hermie M. Jacinto should suffer the Indeterminate penalty of from six (6) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to seventeen (17) and four (4) months of

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[86] Records, pp. 64-69.

[87] *Id.* at 69.

[88] *Id.* at 71-72. Motion to Re-open Trial for Reception of Newly Discovered Evidence of Minority on the Part of the Accused dated 1 April 2004.

[89] *Id.* at 77. Order dated 6 April 2004.

[90] CA *Rollo*, pp. 32-33. Resolution of the Supreme Court Third Division, 8 September 2004, G.R. No. 163715.

reclusion temporal, as maximum. Appellant Hermie M. Jacinto is ordered to indemnify the victim in the sum of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages and to pay the costs.[91]

On 19 November 2007, the Court of Appeals gave due course to the appellant's Notice of Appeal.[92] This Court required the parties to simultaneously file their respective supplemental briefs.[93] Both parties manifested that they have exhaustively discussed their positions in their respective briefs and would no longer file any supplement.[94]

Before the Court of Appeals, appellant argued that "THE COURT *A QUO* GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF RAPE"[95] by invoking the principle that "if the inculpatory facts and circumstances are capable of two or more reasonable explanations, one of which is consistent with the innocence of the accused and the other with his guilt, then the evidence does not pass the test of moral certainty and will not suffice to support a conviction."[96]

Our Ruling

We sustain the judgment of conviction.

In the determination of the innocence or guilt of a person accused of rape, we consider the three well-entrenched principles:

[91] CA *rollo*, p. 158. Decision dated 29 August 2007.

[92] *Id.* at 169. Resolution of the Court of Appeals 22nd Division, 19 November 2007, CA-G.R. CR–HC No. 00213.

[93] *Rollo*, p. 36. Resolution of the Supreme Court 2nd Division, 25 June 2008, G.R. No. 182239.

[94] *Id.* at 37-40. Manifestation (In Lieu of Supplemental Brief) of the Accused-Appellant dated 12 August 2008; *Id.* at 41-44. Manifestation (In Lieu of Supplemental Brief) of the People of the Philippines dated 22 August 2008.

[95] CA *rollo*, p. 92. Brief for the Accused-Appellant dated 25 January 2006.

[96] *Id.* at 95 citing *People v. Lagramada*, G.R. Nos. 146357 & 148170, 29 August 2002.

(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[97]

Necessarily, the credible, natural, and convincing testimony of the victim may be sufficient to convict the accused.[98] More so, when the testimony is supported by the medico-legal findings of the examining physician.[99]

Further, the defense of alibi cannot prevail over the victim's positive identification of the perpetrator of the crime,[100] except when it is established that it was physically impossible for the accused to have been at the *locus criminis* at the time of the commission of the crime.[101]

I

A man commits rape by having carnal knowledge of a child under twelve (12) years of age even in the absence of any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; or (c) by means of fraudulent machination or grave abuse of authority.[102]

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[97] *People v. Dalisay*, G.R. No. 188106, 25 November 2009, 605 SCRA 807, 814 citing *People v. Glivano*, G.R. No. 177565, 28 January 2008, 542 SCRA 656, 662 further citing *People v. Malones*, 425 SCRA 318, 329 (2004).

[98] *People v. Cadap*, G.R. No. 190633, 5 July 2010 citing *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

[99] *People v. Leonardo*, G.R. No. 181036, July 6, 2010; *People v. Alcazar*, G.R. No. 186494, 15 September 2010.

[100] *People v. Antivola*, *supra* note 1; *People v. Nogar*, *supra* note 1.

[101] *People v. Trayco*, *supra* note 2.

[102] Art. 266-A paragraph 1(d), Revised Penal Code, as amended by Sec. 2 of The Anti-Rape Law of 1997.

That the crime of rape has been committed is certain. The vivid narration of the acts culminating in the insertion of appellant's organ into the vagina of five-year-old AAA and the medical findings of the physicians sufficiently proved such fact.

AAA testified:

PROS. OMANDAM:
x x x x x x x x x

Q You said Hermie laid you on the ground, removed your panty and boxed you, what else did he do to you?
A He mounted me.
Q When Hermie mounted you, was he facing you?
A Yes.
Q When he mounted you what did he do, did he move?
A He moved his ass, he made a push and pull movement.
Q When he made a push and pull movement, how were your legs positioned?
A They were apart.
Q Who pushed them apart?
A Hermie.
Q Did Hermie push anything at you?
A Yes.
Q What was that?
A His penis.
Q Where did he push his penis?
A To my vagina.
Q Was it painful?
A Yes.
Q What was painful?
A My vagina.
Q Did you cry?
A Yes.[103]

The straightforward and consistent answers to the questions, which were phrased and re-phrased in order to test that AAA well understood the information elicited from her, said it all – she had been raped. When a woman, more so a minor, says so, she says in effect all that is essential to show that rape was

[103] TSN, 13 October 2003, pp. 7-8.

committed.[104] Significantly, youth and immaturity are normally badges of truth and honesty.[105]

Further, the medical findings and the testimony of Dr. Micabalo[106] revealed that the hymenal lacerations at 5 o'clock and 9 o'clock positions could have been caused by the penetration of an object; that the redness of the introitus could have been "the result of the repeated battering of the object"; and that such object could have been an erect male organ.[107]

The credible testimony of AAA corroborated by the physician's finding of penetration conclusively established the essential requisite of carnal knowledge.[108]

II

The real identity of the assailant and the whereabouts of the appellant at the time of the commission of the crime are now in dispute.

The defense would want us to believe that it was Julito who defiled AAA, and that appellant was elsewhere when the crime was committed.[109]

We should not, however, overlook the fact that a victim of rape could readily identify her assailant, *especially when he is not a stranger to her*, considering that she could have a good look at him during the commission of the crime.[110] AAA had known appellant all her life. Moreover, appellant and AAA even walked together from the road near the store to the *situs*

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[104] *People v. Amatorio*, G.R. No. 175837, 8 August 2010.

[105] *People v. Corpuz*, G.R. No. 168101, 13 February 2006, 482 SCRA 435, 448.

[106] TSN, 8 January 2004, pp. 2-4,

[107] *Id.* at 3.

[108] *People v. Castillo*, G.R. No. 186533, 9 August 2010, citing *People v. Malones*, 469 Phil. 301, 325-326 (2004).

[109] CA *rollo*, p. 93. Brief for the Accused-Appellant dated 25 January 2006.

[110] *People v. Antivola*, *supra* note 1 at 597-598.

criminus[111] that it would be impossible for the child not to recognize the man who held her hand and led her all the way to the rice field.

We see no reason to disturb the findings of the trial court on the unwavering testimony of AAA.

> The certainty of the child, unusually intelligent for one so young, that it was accused, whom she called "*kuya*" and who used to play basketball and fetch water near their house, and who was wearing a sleeveless shirt and shorts at the time he raped her, was convincing and persuasive. The defense attempted to impute the crime to someone else – one Julito Apiki, but the child, on rebuttal, was steadfast and did not equivocate, asserting that it was accused who is younger, and not Julito, who is older, who molested her.[112]

In a long line of cases, this Court has consistently ruled that the determination by the trial court of the credibility of the witnesses deserves full weight and respect considering that it has "the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath,"[113] unless it is shown that material facts and circumstances have been "ignored, overlooked, misconstrued, or misinterpreted."[114]

Further, as correctly observed by the trial court:

> xxx His and his witness' attempt to throw the court off the track by imputing the crime to someone else is xxx a vain exercise in view of the private complainant's positive identification of accused and other corroborative circumstances. Accused also admitted that on the same evening, Julito Apiki, the supposed real culprit, asked him "What is this incident, *Pare?*," thus corroborating the latter's testimony that he confronted accused after hearing of the incident from the child."[115]

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[111] TSN, 13 October 2003, pp. 7 and 14-16.

[112] Records, p. 68. Decision of the Regional Trial Court dated 26 March 2004.

[113] *People v. Celocelo*, G.R. No. 173798, 15 December 2010 citing *People v. Fernandez*, 426 Phil. 169, 173 (2002).

[114] *People v. Ayade*, G.R. No. 188561, 15 January 2010, 610 SCRA 246, 253.

[115] Records, p. 68. Decision of the Regional Trial Court dated 26 March 2004.

On the other hand, we cannot agree with the appellant that the trial court erred in finding his denial and alibi weak despite the presentation of witnesses to corroborate his testimony. Glaring inconsistencies were all over their respective testimonies that even destroyed the credibility of the appellant's very testimony.

Appellant testified that it was his uncle Alejandro Perocho who sent him to store to buy Tanduay; that he gave the bottle to his uncle; and that they had already been drinking long before he bought Tanduay at the store.

This was contradicted by the testimony of his aunt Gloria, wife of his uncle Alejandro. On cross-examination, she revealed that her husband was not around before, during, and after the rape incident because he was then at work.[116] He arrived from work only after FFF came to their house for the second time and boxed appellant.[117] It was actually the fish vendor, not her husband, who asked appellant to buy Tanduay.[118] Further, the drinking session started only after the appellant's errand to the store.[119]

Neither was the testimony of Luzvilla credible enough to deserve consideration.

Just like appellant, Luzvilla testified that Alejandro joined the drinking session. This is contrary to Gloria's statement that her husband was at work.

Luzvilla's testimony is likewise inconsistent with that of surrebuttal witness Antonia Perocho. Antonia recalled that Julito arrived without a shirt on. This belied Luzvilla's claim that Julito wore a white shirt on his way to the house of Rita. In addition, while both the prosecution, as testified to by AAA and Julito, and the defense, as testified to by Gloria, were consistent in saying that appellant wore a sleeveless shirt, Luzvilla's

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[116] TSN, 9 February 2004, p. 8.

[117] *Id.* at 6 and 8.

[118] *Id.* at 7.

[119] *Id.* at 7-8.

recollection differ in that Julito wore a T-shirt (colored black and later changed to white), and, thus, a short-sleeved shirt.

Also, contrary to Luzvilla's story that she saw AAA walking towards Rita's house three (3) minutes after she returned to the Perochos at 6:38 in the evening, Antonia recalled that AAA arrived at the house of Rita at 7:30. In this respect, we find the trial court's appreciation in order. Thus:

> xxx. The child declared that after being raped, she went straight home, crying, to tell her father that Hermie had raped her. She did not first drop into the house of Lita Lingkay to cry among strangers who were watching TV, as Luzvilla Balucan would have the court believe. When the child was seen at the house of Lita Lingkay by Julito Apiki and Luzvilla Balucan, it was only later, after she had been brought there by her mother Brenda so that Lita Lingkay could take a look at her—just as Julito Apiki said.[120]

Above all, for alibi to prosper, it is necessary that the corroboration is credible, the same having been offered preferably by disinterested witnesses. The defense failed thuswise. Its witnesses cannot qualify as such, "they being related or were one way or another linked to each other."[121]

Even assuming for the sake of argument that we consider the corroborations on his whereabouts, still, the defense of alibi cannot prosper.

We reiterate, time and again, that the court must be convinced that it would be physically impossible for the accused to have been at the *locus criminis* at the time of the commission of the crime.[122]

Physical impossibility refers to distance and the facility of access between the *situs criminis* and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the scene

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[120] Records, pp. 68-69. Decision of the Regional Trial Court dated 26 March 2004.

[121] *People v. Antivola*, *supra* note 1.

[122] *People v. Paraiso*, *supra* note 2.

of the crime and its immediate vicinity when the crime was committed.[123]

In *People v. Paraiso*,[124] the distance of two thousand meters from the place of the commission of the crime was considered not physically impossible to reach in less than an hour even by foot.[125] Inasmuch as it would take the accused not more than five minutes to rape the victim, this Court disregarded the testimony of the defense witness attesting that the accused was fast asleep when she left to gather bamboo trees and returned several hours after. She could have merely presumed that the accused slept all throughout.[126]

In *People v. Antivola*,[127] the testimonies of relatives and friends corroborating that of the appellant that he was in their company at the time of the commission of the crime were likewise disregarded by this Court in the following manner:

> Ruben Nicolas, the appellant's part-time employer, and Marites Capalad, the appellant's sister-in-law and co-worker, in unison, vouched for the appellant's physical presence in the fishpond at the time Rachel was raped. It is, however, an established fact that **the appellant's house where the rape occurred, was a stone's throw away from the fishpond**. **Their claim that the appellant never left their sight the entire afternoon** of December 4, 1997 **is unacceptable**. It was impossible for Marites to have kept an eye on the appellant for almost four hours, since she testified that she, too, was very much occupied with her task of counting and recording the fishes being harvested. Likewise, Mr. Nicolas, who, admittedly was 50 meters away from the fishpond, could not have focused his entire attention solely on the appellant. **It is, therefore, not farfetched that the appellant easily sneaked out unnoticed, and along the way inveigled the victim,**

[123] *People v. Trayco*, *supra* note 2 at 253 citing *People v. Limio*, G.R. Nos. 148804-06, 27 May 2004, 429 SCRA 597.

[124] *Supra* note 2.

[125] *People v. Trayco*, *supra* note 2 at 351 citing *People v. Arlee*, G.R. No. 113518, 25 January 2000, 323 SCRA 201; *People vs. Cañete*, 287 SCRA 490 (1998); *People v. Andan*, 269 SCRA 95 (1997).

[126] *Id*.

[127] *People v. Antivola*, *supra* note 1.

brought her inside his house and ravished her, then returned to the fishpond as if he never left.[128] *(Emphasis supplied.)*

As in the cases above cited, the claim of the defense witnesses that appellant never left their sight, save from the 5-minute errand to the store, is contrary to ordinary human experience. Moreover, considering that the farmland where the crime was committed is just behind the house of the Perochos, it would take appellant only a few minutes to bring AAA from the road near the store next to the Perochos down the farmland and consummate the crime. As correctly pointed out by the Court of Appeals, appellant could have committed the rape after buying the bottle of Tanduay and immediately returned to his uncle's house.[129] Unfortunately, the testimonies of his corroborating witnesses even bolstered the fact that he was within the immediate vicinity of the scene of the crime.[130]

Clearly, the defense failed to prove that it was physically impossible for appellant to have been at the time and place of the commission of the crime.

All considered, we find that the prosecution has sufficiently established the guilt of the appellant beyond reasonable doubt.

III

In the determination of the imposable penalty, the Court of Appeals correctly considered Republic Act No. 9344 *(Juvenile Justice and Welfare Act of 2006)* despite the commission of the crime three (3) years before it was enacted on 28 April 2006.

We recognize its retroactive application following the rationale elucidated in *People v. Sarcia*:[131]

[Sec. 68 of Republic Act No. 9344][132] allows the retroactive application of the Act to those who have been convicted and are

[128] *Id.* at 598-599.

[129] CA *rollo*, p. 148.

[130] *Id.* at 149.

[131] G.R. No. 169641, 10 September 2009, 599 SCRA 20.

[132] Sec. 68. *Children Who Have Been Convicted and are Servicing*

serving sentence at the time of the effectivity of this said Act, and who were below the age of 18 years at the time of the commission of the offense. **With more reason, the Act should apply to this case wherein the conviction by the lower court is still under review.**[133] *(Emphasis supplied.)*

Criminal Liability; Imposable Penalty

Sec. 6 of Republic Act No. 9344 exempts a child above fifteen (15) years but below eighteen (18) years of age from criminal liability, unless the child is found to have acted with discernment, in which case, "the appropriate proceedings" in accordance with the Act shall be observed.[134]

We determine discernment in this wise:

Discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act.[135] Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case.[136]

xxx The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong.[137] Such circumstance

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Sentence. – Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. x x x

[133] *People v. Sarcia, supra* note 131 at 48.

[134] SEC. 6. *Minimum Age of Criminal Responsibility.* — xxx

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

x x x x x x x x x

[135] *Madali v. People of the Philippines*, G.R. No. 180380, 4 August 2009, 595 SCRA 274, 296 citing the Rule on Juveniles in Conflict with the Law.

[136] *Id.* at 296-297.

[137] *Remiendo v. People of the Philippines*, G.R. No. 184874, 9 October 2009, 603 SCRA 274, 289.

includes the gruesome nature of the crime and the minor's cunning and shrewdness.[138]

In the present case, we agree with the Court of Appeals that: "(1) choosing an isolated and dark place to perpetrate the crime, to prevent detection[;] and (2) boxing the victim xxx, to weaken her defense" are indicative of then seventeen (17) year-old appellant's mental capacity to fully understand the consequences of his unlawful action.[139]

Nonetheless, the corresponding imposable penalty should be modified.

The birth certificate of AAA[140] shows that she was born on 3 December 1997. Considering that she was only five (5) years old when appellant defiled her on 28 January 2003, the law prescribing the death penalty when rape is committed against a child below seven (7) years old[141] applies.

The following, however, calls for the reduction of the penalty: (1) the prohibition against the imposition of the penalty of death in accordance with Republic Act No. 9346;[142] and (2) the privileged mitigating circumstance of minority of the appellant, which has the effect of reducing the penalty one degree lower than that prescribed by law, pursuant to Article 68 of the Revised Penal Code.[143]

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[138] *Id.* citing *Llave v. People*, G.R. No. 166040, 26 April 2006, 488 SCRA 376.

[139] CA *rollo*, p. 151.

[140] Records, pp. 73-74. Certificate of Live Birth and Certification from the Municipal Office of the Civil Registrar issued on 30 March 2004.

[141] Paragraph 6, sub-paragraph 5, Article 266-B of the Revised Penal Code, as amended by The Anti-Rape Law of 1997.

[142] Sec. 1, Republic Act No. 9346 *(An Act Prohibiting the Imposition of Death Penalty in the Philippines).*

[143] ART. 68 *Penalty to be imposed upon a person under eighteen years of age.* – When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of Article 80 of this Code, the following rules shall be observed:

Relying on *People v. Bon*,[144] the Court of Appeals excluded death from the graduation of penalties provided in Article 71 of the Revised Penal Code.[145] Consequently, in its appreciation of the privileged mitigating circumstance of minority of appellant, it lowered the penalty one degree from *reclusion perpetua* and sentenced appellant to suffer the indeterminate penalty of six (6) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, in its medium period, as maximum.[146]

We differ.

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1. xxx

2. Upon a person over fifteen and under eighteen yeras of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

[144] G.R. No. 166401, 30 October 2006, 506 SCRA 168.

[145] *Id.* at 215.

Article 71 of the Revised Penal Code provides:

ART. 71. *Graduated scales.* — In the cases in which the law prescribes a penalty lower or higher by one or more degrees than another given penalty, the rules prescribed inArticle 61 shall be observed in graduating such penalty.

x x x x x x x x x

The courts, in applying such lower or higher penalty, shall observe the following graduated scales:

SCALE NO. 1

1. Death,
2. *Reclusion perpetua,*
3. *Reclusion temporal*,
4. *Prision mayor*,
5. *Prision correccional,*
6. *Arresto mayor*,
7. *Destierro,*
8. *Arresto menor*,
9. Public censure,
10. Fine.

x x x x x x x x x

[146] CA *rollo*, p. 154.

In a more recent case,[147] the Court *En Banc*, through the Honorable Justice Teresita J. Leonardo-de Castro, clarified:

> Under Article 68 of the Revised Penal Code, when the offender is a minor under 18 years, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. **However, for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is still the penalty to be reckoned with.** Thus, the proper imposable penalty for the accused-appellant is *reclusion perpetua.*[148] *(Emphasis supplied.)*

Accordingly, appellant should be meted the penalty of *reclusion perpetua*.

Civil Liability

We have consistently ruled that:

> The litmus test xxx in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to *reclusion perpetua.*[149]

Likewise, the fact that the offender was still a minor at the time he committed the crime has no bearing on the gravity and extent of injury suffered by the victim and her family.[150] The respective awards of civil indemnity and moral damages in the amount of ₱75,000.00 each are, therefore, proper.[151]

Accordingly, despite the presence of the privileged mitigating circumstance of minority which effectively lowered the penalty by one degree, we affirm the damages awarded by the Court of Appeals in the amount of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. And, consistent with prevailing

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[147] *People v. Sarcia*, *supra* note 131.

[148] *Id.* at 41.

[149] *Id.* at 45.

[150] *Id.* at 43.

[151] *Id.* at 46.

jurisprudence,[152] the amount of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00.

Automatic Suspension of Sentence; Duration; Appropriate Disposition after the Lapse of the Period of Suspension of Sentence

Republic Act No. 9344 warrants the suspension of sentence of a child in conflict with the law notwithstanding that he/she has reached the age of majority at the time the judgment of conviction is pronounced. Thus:

> SEC. 38. *Automatic Suspension of Sentence.* — Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however,* That **suspension of sentence shall still be applied even if the juvenile is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt.** *(Emphasis supplied.)*
>
> x x x x x x x x x

Applying *Declarador v. Gubaton,*[153] which was promulgated on 18 August 2006, the Court of Appeals held that, consistent with Article 192 of Presidential Decree No. 603, as amended,[154] the aforestated provision does not apply to one who has been

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[152] *Id.* citing *People v. Regalario*, G.R. No. 174483, 31 March 2009, 582 SCRA 738.

[153] G.R. No. 159208, 18 August 2006, 499 SCRA 341.

[154] Art. 192. *Suspension of Sentence and Commitment of Youthful Offender.*– If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court, shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court, upon application of the youthful offender and if it finds that the best interest of the public, as well as that of the offender will be served thereby, may suspend all further proceedings and commit such minor to the custody or care of the Department of Social Welfare and

convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment.[155]

Meanwhile, on 10 September 2009, this Court promulgated the decision in *Sarcia*,[156] overturning the ruling in *Gubaton*. Thus:

> The xxx provision makes no distinction as to the nature of the offense committed by the child in conflict with the law, unlike P.D. No. 603 and A.M. No. 02-1-18-SC. The said P.D. and Supreme Court (SC) Rule provide that the benefit of suspended sentence would not apply to a child in conflict with the law if, among others, he/she has been convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment. In construing Sec. 38 of R.A. No. 9344, the Court is guided by the basic principle of statutory construction that when the law does not distinguish, we should not distinguish. Since R.A. No. 9344 does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a lesser offense, the Court should also not distinguish and should apply the automatic suspension of sentence

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Development or to any training institution operated by the government or any other responsible person until he shall have reached twenty-one years of age, or for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare and Development or the government training institution or responsible person under whose care he has been committed.

Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Welfare and Development to prepare and submit to the court a social case study report over the offender and his family.

The youthful offender shall be subject to visitation and supervision by the representative of the Department of Social Welfare and Development or government training institution as the court may designate subject to such conditions as it may prescribe.

The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to **one who is convicted for an offense punishable by death or life imprisonment or to one who is convicted for an offense by the Military Tribunals**. *(Emphasis supplied.)*

[155] CA *rollo*, pp. 155-156.

[156] *People v. Sarcia*, *supra* note 131.

to a child in conflict with the law who has been found guilty of a heinous crime.[157]

The legislative intent reflected in the Senate deliberations[158] on Senate Bill No. 1402 (Juvenile Justice and Delinquency Prevention Act of 2005) further strengthened the new position of this Court to cover heinous crimes in the application of the provision on the automatic suspension of sentence of a child in conflict with the law. The pertinent portion of the deliberation reads:

> If a mature minor, maybe 16 years old to below 18 years old is charged, accused with, or may have committed a serious offense, and may have acted with discernment, then the child could be recommended by the Department of Social Welfare and Development (DSWD), by the Local Council for the Protection of Children (LCPC), or by [Senator Miriam Defensor-Santiago's] proposed Office of Juvenile Welfare and Restoration to go through a judicial proceeding; but *the welfare, best interests, and restoration of the child should still be a primordial or primary consideration. Even in heinous crimes, the intention should still be the child's restoration, rehabilitation and reintegration.* xxx (Italics supplied in *Sarcia*.)[159]

On 24 November 2009, the Court *En Banc* promulgated the *Revised Rule on Children in Conflict with the Law*, which reflected the same position.[160]

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[157] *Id.* at 49-50.

[158] *Id.* at 50 citing Senate Bill No. 1402 on Second Reading by the 13th Congress, 2nd Regular Session, No. 35, held on 9 November 2005, amendments by Senator Miriam Defensor-Santiago.

[159] *Id.*

[160] Section 48. *Automatic Suspension of Sentence and Disposition Orders.* If the child is found guilty of the offense charged, the court, instead of executing the judgment of conviction, shall place the child in conflict with the law under suspended sentence, without need of application. Suspension of sentence can be availed of even if the child is already eighteen years (18) of age or more but not above twenty-one (21) years old, at the time of the pronouncement of guilt, without prejudice to the child's availing of other benefits such as probation, if qualified, or adjustment of penalty, in the interest of justice.

These developments notwithstanding, we find that the benefits of a suspended sentence can no longer apply to appellant. The suspension of sentence lasts only until the child in conflict with the law reaches the maximum age of twenty-one (21) years.[161] Section 40[162] of the law and Section 48[163] of the Rule are clear on the matter. Unfortunately, appellant is now twenty-five (25) years old.

Be that as it may, to give meaning to the legislative intent of the Act, the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the Act in order that he/she is given the

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The benefits of suspended sentence shall not apply to a child in conflict with the law who has once enjoyed suspension of sentence, but **shall nonetheless apply to one who is convicted of an offense punishable by *reclusion perpetua* or life imprisonment pursuant to the provisions of Rep. Act No. 9346 prohibiting the imposition of the death penalty and in lieu thereof, *reclusion perpetua,* and after application of the privileged mitigating circumstance of minority.** *(Emphasis supplied.)*

[161] *People v. Sarcia, supra* note 131 at 50.

[162] Sec. 40. *Return of the Child in Conflict with the Law to Court.* –

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If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, **or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.** *(Emphasis supplied.)*

[163] Section 48. *Automatic Suspension of Sentence and Disposition Orders.* –

x x x x x x x x x

If the child in conflict with the law reaches eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with the provisions of Republic Act No. 9344, **or to extend the suspended sentence for a maximum period of up to the time the child reaches twenty-one (21) years of age**, or to order service of sentence. *(Emphasis supplied.)*

chance to live a normal life and become a productive member of the community. The age of the child in conflict with the law at the time of the promulgation of the judgment of conviction is not material. What matters is that the offender committed the offense when he/she was still of tender age.

Thus, appellant may be confined in an agricultural camp or any other training facility in accordance with Sec. 51 of Republic Act No. 9344.[164]

> Sec. 51. *Confinement of Convicted Children in Agricultural Camps and Other Training Facilities.*– A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

Following the pronouncement in *Sarcia*,[165] the case shall be remanded to the court of origin to effect appellant's confinement in an agricultural camp or other training facility.

WHEREFORE, the Decision dated 29 August 2007 of the Court of Appeals in CA-G.R. CR–H.C. No. 00213 finding appellant Hermie M. Jacinto guilty beyond reasonable doubt of qualified rape is *AFFIRMED* with the following *MODIFICATIONS:* (1) the death penalty imposed on the appellant is reduced to *reclusion perpetua*; and (2) appellant is ordered to pay the victim ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The case is hereby *REMANDED* to the court of origin for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.

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

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[164] *People v. Sarcia, supra* note 131 at 51.

[165] *Id.* at 52.

FIRST DIVISION

[G.R. No. 185390. March 16, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEX PALING, ERNIE VILBAR @ "DODONG" (at large), and ROY VILBAR,** *accused,* **ALEX PALING,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; THE FACT THAT THE JUDGE WHO RENDERED JUDGMENT WAS NOT THE ONE WHO HEARD THE WITNESSES DOES NOT RENDER THE JUDGMENT ERRONEOUS.— The fact that the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial but merely relied on the records of the case does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion. x x x Further, "it is not unusual for a judge who did not try a case in its entirety to decide it on the basis of the records on hand." This is because the judge "can rely on the transcripts of stenographic notes and calibrate the testimonies of witnesses in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law." Considering that, in the instant case, the transcripts of stenographic notes taken during the trial were extant and complete, there was no impediment for the judge to decide the case.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY THE WITNESS' DELAY IN DISCLOSING THE IDENTITY OF THE OFFENDER FOR FEAR OF REPRISAL; CASE AT BAR.— [A]s correctly found by the CA, there is scarcity of evidence to doubt the credibility of the prosecution's principal witness, Richard. Even if the said witness failed to immediately disclose or identify the accused as the culprits when he was initially interviewed by the police on July 8, 1996, he cannot be faulted for such omission, as it is not uncommon for witnesses "to delay or

vacillate in disclosing the identity of the offender after the startling occurrence for fear of reprisal," more so, when he was warned by the three accused not to disclose to anyone the killing he had witnessed.

3. **ID.; ID.; ID.; ABSENCE OF IMPROPER MOTIVE ON THE PART OF THE WITNESS FOR THE PROSECUTION STRONGLY TENDS TO SUSTAIN THE CONCLUSION THAT NO SUCH IMPROPER MOTIVE EXISTS AND HIS TESTIMONY IS WORTHY OF CREDIT.—** Paling did not present any evidence which would show that Richard was driven by any improper motive in testifying against him and the other accused. Significantly, the absence of such improper motive on the part of the witness for the prosecution strongly tends to sustain the conclusion that no such improper motive exists and that his testimony is worthy of full faith and credit. Indeed, there is no reason to deviate from the factual findings of the trial court.

4. **ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE.—** "[F]or alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission." Significantly, the place where Paling claimed to be was just within the immediate vicinity, if not within the vicinity itself, of the crime scene. Verily, it was not physically impossible for Paling to be present at the *locus criminis* at the time the crime was committed.

5. **ID.; ID.; ID.; CANNOT ATTAIN MORE CREDIBILITY THAN THE TESTIMONIES OF PROSECUTION WITNESSES WHO TESTIFY ON CLEAR AND POSITIVE EVIDENCE.—** [T]his Court has repeatedly held that "alibi, as a defense, is inherently weak and crumbles in the light of positive identification by truthful witnesses." Notably, "it is evidence negative in nature and self-serving and cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence." There being no strong evidence adduced to overcome the testimony of the eye witness, Richard, no weight can be given to the alibi of Paling.

6. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS.— To prove treachery, the following must be clearly established: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense and retaliation; and (2) the deliberate and conscious adoption of the means of execution. The essence of treachery is "the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend oneself, ensuring the attack without risk to the aggressor, and without the slightest provocation on the part of the victim."

7. ID.; ID.; ID.; NOT DULY ESTABLISHED IN CASE AT BAR.— [I]t should be noted that the eyewitness account of Richard does not establish that the perpetrators suddenly and unexpectedly attacked the victim, since at the time he went outside to check the commotion, Vilbar was already holding the victim, while Paling and Ernie were already stabbing him. Noticeably, the events immediately preceding the attack had not been disclosed. Richard, therefore, had no way of knowing whether the attack was indeed sudden and unexpected so as to prevent the victim from defending himself and whether there was indeed not the slightest provocation on the part of the victim. Hence, treachery cannot be appreciated in the instant case.

8. ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS; NOT PRESENT IN CASE AT BAR.— [T]he qualifying circumstance of evident premeditation cannot x x x be considered since there was neither proof that Paling and the other accused indeed planned or determined to kill Walter nor was there any proof that the perpetrators had sufficient lapse of time between the determination and the execution to allow them to reflect. In *People v. Dadivo*, this Court enumerated the requirements to prove evident premeditation, to wit: "x x x The requirements to prove evident premeditation are the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act." Evidently, the above-mentioned elements are not present in the case at bar.

9. ID.; ID.; TAKING ADVANTAGE OF SUPERIOR STRENGTH; TAKEN INTO ACCOUNT WHENEVER THE AGGRESSOR PURPOSELY USED EXCESSIVE FORCE THAT IS OUT OF PROPORTION TO THE MEANS OF DEFENSE AVAILABLE TO THE PERSON ATTACKED.— The aggravating circumstance of taking advantage of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressors that is plainly and obviously advantageous to the aggressors and purposely selected or taken advantage of to facilitate the commission of the crime. It is taken into account whenever the aggressor purposely used excessive force that is "out of proportion to the means of defense available to the person attacked." The victim need not be completely defenseless in order for the said aggravating circumstance to be appreciated. x x x In the present case, the victim, Walter, while being restrained by Vilbar, was simultaneously stabbed by Paling and Ernie. Plainly, not only did the perpetrators outnumber their victim, more importantly, they secured advantage of their combined strength to perpetrate the crime with impunity. Under these circumstances, it is undeniable that there was gross inequality of forces between the victim and the three accused.

10. ID.; MURDER; PENALTY.— Under Article 248 of the Revised Penal Code, as amended, the penalty for the crime of murder is *reclusion perpetua* to death. Without any mitigating or aggravating circumstance attendant in the commission of the crime, the medium penalty is the lower indivisible penalty of *reclusion perpetua*. In the instant case, while Paling was charged with three aggravating circumstances in the Information, only one was proved, thereby qualifying the killing as murder. Consequently, the imposable penalty shall be *reclusion perpetua*.

11. ID.; CIVIL LIABILITY; PERSONS CIVILLY LIABLE FOR FELONIES; DAMAGES THAT MAY BE AWARDED WHEN DEATH OCCURS DUE TO A CRIME.— Art. 100 of the Code states that every person criminally liable for a felony is also civilly liable. Hence, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5)

attorney's fees and expenses of litigation; and (6) interest, in proper cases.

12. CIVIL LAW; DAMAGES; CIVIL INDEMNITY OF PHP 50,000 AND MORAL DAMAGES OF PHP 50,000 ARE AWARDED AUTOMATICALLY IN CASES OF MURDER AND HOMICIDE.— In cases of murder and homicide, civil indemnity of PhP 50,000 and moral damages of PhP 50,000 are awarded automatically. To be sure, such awards are mandatory without need of allegation and proof other than the death of the victim owing to the fact of the commission of murder or homicide.

13. ID.; ID.; EXEMPLARY DAMAGES; GRANTED IF AN AGGRAVATING CIRCUMSTANCE, EITHER QUALIFYING OR GENERIC, ACCOMPANIES THE COMMISSION OF THE CRIME.— This Court x x x additionally grants exemplary damages in the amount of PhP 30,000, in line with current jurisprudence, since the qualifying circumstance of taking advantage of superior strength was firmly established. Under Art. 2230 of the Civil Code, if an aggravating circumstance, either qualifying or generic, accompanies the crime, the award of exemplary damages is justified.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the April 28, 2006 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00189, which affirmed the March 10, 2003 Decision in Criminal Case No. 10-97 of the Regional Trial Court (RTC), Branch 17 in Kidapawan City, Cotabato. The RTC found accused Alex Paling (Paling) and Roy Vilbar (Vilbar) guilty of murder.

The Facts

Accused Paling and Vilbar, as well as accused Ernie Vilbar (Ernie), were charged with the crime of murder in an Information which reads as follows:

> That on or about July 1, 1996, in the Municipality of Pres. Roxas, Province of Cotabato, Philippines, the above-named accused in company with ERNIE VILBAR *Alias* "DODONG", who is still at large, with intent to kill, conspiring, confederating and mutually helping one another, armed with knives, with treachery, evident premeditation, taking advantage of superiority, did then and there, willfully, unlawfully and feloniously, attack, assault, stab and use physical violence to the person of WALTER NOLASCO, thereby hitting and inflicting upon him multiple [stab] wounds on the different parts of his body, which is the direct and immediate cause of his death thereafter.
>
> CONTRARY TO LAW.
>
> Kidapawan, Cotabato, Philippines, February 10, 1997.[1]

When arraigned on April 3, 1997, Paling and Vilbar, with the assistance of counsel, pleaded "not guilty."[2] However, Ernie remained at large.[3] Thereafter, trial on the merits ensued.[4]

During trial, the prosecution presented three (3) witnesses, namely: Richard Nolasco (Richard), Francisco Perez (Francisco), and Agustin Nolasco. On the other hand, the defense presented Leonida Mondejar, as well as Paling and Vilbar.[5]

The Prosecution's Version of Facts

In the evening of July 1, 1996, Richard, Jojo Paling (Jojo), and Rolly Talagtag (Rolly) were in the house of Paling in *Sitio* Mahayag, Pres. Roxas, Cotabato watching television. At around 9:15 p.m., the group left the said house and decided to proceed

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[1] CA *rollo*, p. 9; records, p. 1.

[2] *Rollo*, p. 7.

[3] Records, p. 13.

[4] *Rollo*, p. 7.

[5] *Id*.

to the other house of Paling situated in the latter's farm at Brgy. Greenhills. This is where the three usually sleep at night. En route, Jojo and Rolly, along with the victim, Walter Nolasco (Walter), were invited by Paling, Ernie, and *Barangay Kagawad* Rene Mondejar to a drinking spree at the house of the latter. Jojo, Rolly, and Walter accepted the invitation, while Richard just waited for them outside the house of Paling.[6]

About 15 minutes later, Richard went back to his companions and told them that they had to go home since they still have to go to school the following morning. The three acceded, but Ernie convinced Walter to stay with them a little longer. Thus, Richard, Jojo, and Rolly went ahead, while Walter stayed behind.[7]

At around 10:00 p.m., Francisco, the uncle-in-law of Walter,[8] was roused from his sleep by the barking of his dogs. When he went out to find out why the dogs were barking, he saw Vilbar and Ernie walking beside Walter. They were heading towards Brgy. Greenhills where Paling's farmhouse was located.[9]

At around 10:30 p.m. that same night, Richard, who was already asleep in the farmhouse of Paling, was awakened when he heard Jeniline Paling-Bernesto, the daughter of Paling, shout, "Kill him in a distance. Don't kill him here, kill him away from here."[10]

When Richard went outside to find out what was happening, he saw Paling, Vilbar, and Ernie assaulting Walter. Vilbar was holding Walter, while Paling and Ernie were stabbing him.[11]

After Walter was killed, the three accused warned Richard not to speak about it to anyone; otherwise, they would also kill

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[6] *Id.*

[7] *Id.*

[8] *Id.* at 17.

[9] *Id.* at 8.

[10] *Id*.

[11] *Id*.

him. Thereafter, the three left, bringing with them the cadaver of Walter.[12]

Incidentally, Francisco also recounted that about 30 minutes after he first saw Walter in the company of Vilbar and Ernie heading towards Brgy. Greenhills, he was awakened again by the barking of the dogs. When he checked again, he saw Vilbar and Ernie running. But this time, he did not see Walter with them.[13]

The following day, July 2, 1996, at 10:00 a.m., Walter's cadaver was found in the farm of one Jonathan Policarpio.[14]

Version of the Defense

Paling and Vilbar interposed the defense of denial. Paling testified that on July 1, 1996, he worked in his farm at Sitio Mahayag, Pres. Roxas, Cotabato. He stated that when he learned of the death of Walter, he even helped in bringing his cadaver to the house of the latter's grandfather in the presence of policemen and Richard,[15] a first cousin of the victim.[16]

For his part, Vilbar testified that on July 1, 1996, he worked in the drier of the Sta. Catalina Cooperative from 7:30 a.m. to 4:30 p.m. He, therefore, had no opportunity to leave his house since he was already tired from working the entire day.[17]

Ruling of the Trial Court

After trial, the RTC convicted Paling and Vilbar. The dispositive portion of its March 10, 2003 Decision reads:

WHEREFORE, this Court finds and so holds that the prosecution was able to prove the guilt beyond reasonable doubt of accused Alex

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.* at 9.

[16] *Id.* at 16.

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

Paling and Roy Vilbar. Accused Alex Paling and Roy Vilbar are found guilty beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code. Accused Alex Paling and Roy Vilbar are directed to serve the penalty of *RECLUSION PERPETUA* with its accessory penalties. The detention of Alex Paling from October 13, 1996 up to May 13, 1998 and Roy Vilbar from July 22, 1996 up to May 13, 1998 are counted in full in their favor. They are directed to pay cost. Accused Alex Paling and Roy Vilbar are directed to indemnify the heirs of Walter Nolasco the sum of ₱50,000.00.

The property bonds posted by the accused for their provisional liberty are cancelled and released. The Register of Deeds of Cotabato is hereby directed to cancel the annotation in OCT No. P-42589 and TCT No. T-64391.

The Warden of the Office of the Provincial Jail of Cotabato is directed to take accused Alex Paling and Roy Vilbar into custody.

Let *Alias* Warrant of Arrest be issued against accused Ernie Vilbar with no amount of bail fixed.

SO ORDERED.[18]

The records of this case were forwarded to this Court in view of the Notice of Appeal[19] dated March 24, 2003 filed by Paling and Vilbar, which this Court accepted in its Resolution[20] dated May 24, 2004. On June 17, 2004, the Court required the two accused to submit their appellant's brief.[21]

On September 2, 2004, both accused filed their Appellant's Brief[22] dated August 9, 2004. On the other hand, the Brief for the Appellee[23] dated December 8, 2004 was filed on December 13, 2004. Thereafter, the Court issued a Resolution[24] dated

[18] CA *rollo*, pp. 23-24. Penned by Judge Rogelio R. Narisma.

[19] *Id.* at 25.

[20] *Id.* at 27.

[21] *Id.* at 29.

[22] *Id.* at 37-61.

[23] *Id.* at 92-115.

[24] *Id.* at 122.

March 14, 2005, transferring the case to the CA for intermediate review conformably with the ruling in *People v. Mateo*.[25]

Essentially, both accused contended that the decision of the RTC is erroneous because the testimony of Richard was misappreciated as the judge who rendered the decision was not the same judge who received the evidence during trial. Also, they claimed that the corroborative witness, Francisco, did not even mention Paling in his open court testimony, thereby allegedly casting doubt on the credibility of the other witness, Richard.[26]

Ruling of the Appellate Court

On April 28, 2006, the CA affirmed the judgment of the lower court *in toto*.[27] It ruled that contrary to the contention of accused-appellants, the fact that the judge who tried the case was different from the judge who penned the decision does not in any way taint the decision, especially in the instant case where there is scarcity of evidence to doubt the credibility of Richard, the prosecution's principal witness.[28]

The CA further held that it did not find any error or abuse of discretion in the lower court's calibration of the witnesses' credibility, and that even granting in *ex gratia argumenti* that minor contradictions exist in the statements of the prosecution witnesses, these would have no effect on the probative value of their statements as their declarations are consistent in pointing to the accused as *participis criminis* in the killing of the victim.[29]

In its Resolution dated July 30, 2008,[30] the CA treated accused-appellant Paling's letter dated May 18, 2006 as a notice of

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[25] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[26] CA *rollo*, p. 45.

[27] *Rollo*, p. 18. The Decision was penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Romulo V. Borja and Ricardo R. Rosario.

[28] *Id.* at 12.

[29] *Id.* at 13.

[30] *Id.* at 28-30.

appeal, in the interest of justice. With respect to accused-appellant Vilbar, the CA Decision became final.

In Our Resolution dated February 25, 2009, We notified the parties that they may file their respective supplemental briefs if they so desired. Both the People and accused-appellant Paling manifested that they are no longer filing a supplemental brief and they are adopting their respective briefs before the CA. Thus, we have this appeal.

The Issues

Paling contends in his *Brief* [31] that:

THE COURT *A QUO* RENDERED JUDGMENT SOLELY ON THE TESTIMONY OF THE LONE (EYE) WITNESS RICHARD NOLASCO WHICH WAS MISAPPRECIATED BY THE JUDGE WHO INHERITED THIS CASE FROM THE FORMER PRESIDING JUDGE WHO TRIED AND HEARD THIS CASE FROM ITS INCEPTION TO ITS TERMINATION.

FRANCISCO PEREZ, THE CORROBORATIVE WITNESS, DID NOT EVEN MENTION ACCUSED-APPELLANT ALEX PALING IN HIS OPEN COURT TESTIMONY.

Our Ruling

We sustain Paling's conviction.

The fact that the judge who rendered judgment was not the one who heard the witnesses does not adversely affect the validity of conviction

Paling alleges that since the judge who penned the appealed decision is different from the judge who heard the testimonies of the witnesses, the former was in no position to observe their demeanor diligently.[32]

We disagree. The fact that the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial but merely relied on the

[31] CA *rollo,* pp. 37-61.

[32] *Rollo,* p. 46.

records of the case does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion.[33] Citing *People v. Competente*,[34] this Court held in *People v. Alfredo*:[35]

> **The circumstance that the Judge who rendered the judgment was not the one who heard the witnesses, does not detract from the validity of the verdict of conviction.** Even a cursory perusal of the Decision would show that it was based on the evidence presented during trial and that it was carefully studied, with testimonies on direct and cross examination as well as questions from the Court carefully passed upon. (Emphasis in the original.)

Further, "it is not unusual for a judge who did not try a case in its entirety to decide it on the basis of the records on hand."[36] This is because the judge "can rely on the transcripts of stenographic notes and calibrate the testimonies of witnesses in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law."[37] Considering that, in the instant case, the transcripts of stenographic notes taken during the trial were extant and complete, there was no impediment for the judge to decide the case.

Moreover, as correctly found by the CA, there is scarcity of evidence to doubt the credibility of the prosecution's principal witness, Richard.[38] Even if the said witness failed to immediately disclose or identify the accused as the culprits when he was initially interviewed by the police on July 8, 1996, he cannot

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[33] *People v. Hatani*, G.R. Nos. 78813-14, November 8, 1993, 227 SCRA 497, 508.

[34] G.R. No. 96697, March 26, 1992, 207 SCRA 591, 598.

[35] G.R. No. 188560, December 15, 2010.

[36] *Garcia v. People*, G.R. No. 171951, August 28, 2009, 597 SCRA 392, 401-402; citing *Decasa v. CA*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 283.

[37] *Id.* at 402; citing *Decasa v. CA*, *id.* at 284.

[38] *Rollo*, p. 12.

be faulted for such omission, as it is not uncommon for witnesses "to delay or vacillate in disclosing the identity of the offender after the startling occurrence for fear of reprisal,"[39] more so, when he was warned by the three accused not to disclose to anyone the killing he had witnessed.

Also, Paling did not present any evidence which would show that Richard was driven by any improper motive in testifying against him and the other accused. Significantly, the absence of such improper motive on the part of the witness for the prosecution strongly tends to sustain the conclusion that no such improper motive exists and that his testimony is worthy of full faith and credit.[40] Indeed, there is no reason to deviate from the factual findings of the trial court.

Nonetheless, it is the contention of Paling that the testimonies of the prosecution witnesses Richard and Francisco are conflicting in that while the former stated that he saw Paling and the two other accused help one another in assaulting the victim, Francisco only saw Ernie and Vilbar walking beside the victim, and not Paling.[41]

Contrarily, there is nothing conflicting in the testimonies of Richard and Francisco. As a matter of fact, their statements are even consistent in pointing to Paling, Ernie, and Vilbar as the perpetrators of the killing of Walter.[42] In the farmhouse of Paling where he was staying, Richard witnessed the killing of Walter by the three accused, who even warned him immediately afterwards not to speak about it. On the other hand, Francisco, after being awakened by the barkings of his dogs, merely chanced seeing Walter in the company of Ernie and Vilbar walking by his house towards the direction of Paling's place at around

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[39] *People v. Reyes*, G.R. No. 118649, March 9, 1998, 287 SCRA 229, 243.

[40] *People v. Elarcosa*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 428; citing *People v. Baylen*, G.R. No. 135242, April 19, 2002, 381 SCRA 395, 404.

[41] *Rollo,* p. 13.

[42] *Id*.

10:00 p.m. Francisco was again awakened approximately 30 minutes later by the barking of his dogs and saw Ernie and Vilbar running in the opposite direction. Thus, Francisco's testimony was consistent with the fact that after Walter was killed, Ernie and Vilbar rushed away from the crime scene. And the fact that Paling was not in the company of Walter, Ernie, and Vilbar neither shows that Paling could not have been in his house nor that he did not participate in the killing of Walter.

Besides, the issue posed is one of credibility of witnesses, a matter that is peculiarly within the province of the trial court.[43] Absent a clear showing that the findings of the trial court are tainted with arbitrariness, capriciousness, or palpable error, We generally defer to its assessment.[44]

Alibi is an inherently weak defense

Paling denies participation in the killing of Walter and, as mentioned earlier, asserts that on July 1, 1996, he worked in his farm at *Sitio* Mahayag, Pres. Roxas, Cotabato. To bolster his claim of innocence, he also testified that when he learned of the victim's death, he even helped in bringing his cadaver to the house of the latter's grandfather in the presence of policemen and Richard.[45]

In this regard, it bears stressing that "for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission."[46]

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[43] *Llanto v. Alzona*, G.R. No. 150730, January 31, 2005, 450 SCRA 288, 295-296.

[44] *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 708-710.

[45] *Rollo*, p. 9.

[46] *People v. Alfredo*, *supra* note 35; citing *People v. Guerrero*, G.R. No. 170360, March 12, 2009, 580 SCRA 666, 683 and *People v. Garte*, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 583.

Significantly, the place where Paling claimed to be was just within the immediate vicinity, if not within the vicinity itself, of the crime scene. Verily, it was not physically impossible for Paling to be present at the *locus criminis* at the time the crime was committed.

Moreover, this Court has repeatedly held that "alibi, as a defense, is inherently weak and crumbles in the light of positive identification by truthful witnesses."[47] Notably, "it is evidence negative in nature and self-serving and cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence."[48] There being no strong evidence adduced to overcome the testimony of the eye witness, Richard, no weight can be given to the alibi of Paling.

The killing of Walter is qualified by abuse of superior strength, not by treachery or evident premeditation

In convicting Paling, the trial and appellate courts appreciated the qualifying circumstance of treachery. In addition, the RTC appreciated the aggravating circumstance of evident premeditation.

We disagree. The killing of Walter was neither attended by treachery nor evident premeditation. In this regard, it is worth noting that "qualifying circumstances cannot be presumed, but must be established by clear and convincing evidence as conclusively as the killing itself."[49]

To prove treachery, the following must be clearly established: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense and retaliation; and (2) the deliberate and conscious adoption of the means of execution.[50] The essence of treachery is "the sudden and

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[47] *Id*.

[48] *Id.*; citing *People v. Ranin, Jr.*, G.R. No. 173023, June 25, 2008, 555 SCRA 297, 309; *Velasco v. People*, G.R. No. 166479, February 28, 2006.

[49] *People v. Elarcosa*, *supra* note 40, at 431; citing *People v. Discalsota*, G.R. No. 136892, April 11, 2002, 380 SCRA 583, 592.

[50] *People v. Vallespin*, G.R. No. 132030, October 18, 2002, 391 SCRA 213, 220.

unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend oneself, ensuring the attack without risk to the aggressor, and without the slightest provocation on the part of the victim."[51]

Pertinently, it should be noted that the eyewitness account of Richard does not establish that the perpetrators suddenly and unexpectedly attacked the victim, since at the time he went outside to check the commotion, Vilbar was already holding the victim, while Paling and Ernie were already stabbing him. Noticeably, the events immediately preceding the attack had not been disclosed. Richard, therefore, had no way of knowing whether the attack was indeed sudden and unexpected so as to prevent the victim from defending himself and whether there was indeed not the slightest provocation on the part of the victim. Hence, treachery cannot be appreciated in the instant case.

Similarly, the qualifying circumstance of evident premeditation cannot also be considered since there was neither proof that Paling and the other accused indeed planned or determined to kill Walter nor was there any proof that the perpetrators had sufficient lapse of time between the determination and the execution to allow them to reflect. In *People v. Dadivo*, this Court enumerated the requirements to prove evident premeditation, to wit:

> x x x The requirements to prove evident premeditation are the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.[52]

Evidently, the above-mentioned elements are not present in the case at bar. Consequently, the aggravating circumstance of evident premeditation cannot also be appreciated.

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[51] *People v. Asis*, G.R. No. 191194, October 20, 2010.

[52] G.R. No. 143765, July 30, 2002, 385 SCRA 449, 453.

Despite the foregoing disquisition, the crime committed by Paling is still murder and not homicide, since the killing of Walter is qualified by taking advantage of superior strength.

The aggravating circumstance of taking advantage of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressors that is plainly and obviously advantageous to the aggressors and purposely selected or taken advantage of to facilitate the commission of the crime.[53] It is taken into account whenever the aggressor purposely used excessive force that is "out of proportion to the means of defense available to the person attacked."[54] The victim need not be completely defenseless in order for the said aggravating circumstance to be appreciated.[55] As this Court held in *People v. Amodia*:[56]

> To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. Taking advantage of superior strength does not mean that the victim was completely defenseless.
>
> In *People v. Ventura*, we opined that there are no fixed and invariable rules in considering abuse of superior strength or employing means to weaken the defense of the victim. Superiority does not always mean numerical superiority. Abuse of superiority depends upon the relative strength of the aggressor *vis-à-vis* the victim. Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the position of both, and the employment of the means to weaken the defense, although not annulling it. The aggressor must have advantage of his natural strength to ensure the commission of the crime. (Citations omitted.)

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[53] *Valenzuela v. People*, G.R. No. 149988, August 14, 2009, 596 SCRA 1, 10-11.

[54] *People v. Amodia*, G.R. No. 173791, April 7, 2009, 584 SCRA 518, 543; citing *People v. de Leon*, G.R. No. 128436, December 10, 1999, 320 SCRA 495, 505.

[55] *Id.*; citing *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 411.

[56] *Id*.

In the present case, the victim, Walter, while being restrained by Vilbar, was simultaneously stabbed by Paling and Ernie. Plainly, not only did the perpetrators outnumber their victim, more importantly, they secured advantage of their combined strength to perpetrate the crime with impunity. Under these circumstances, it is undeniable that there was gross inequality of forces between the victim and the three accused.

Penalty Imposed

Under Article 248 of the Revised Penal Code, as amended, the penalty for the crime of murder is *reclusion perpetua* to death. Without any mitigating or aggravating circumstance attendant in the commission of the crime, the medium penalty is the lower indivisible penalty of *reclusion perpetua*.[57]

In the instant case, while Paling was charged with three aggravating circumstances in the Information, only one was proved, thereby qualifying the killing as murder. Consequently, the imposable penalty shall be *reclusion perpetua*.

Award of Damages

Art. 100 of the Code states that every person criminally liable for a felony is also civilly liable. Hence, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[58]

In cases of murder and homicide, civil indemnity of PhP 50,000 and moral damages of PhP 50,000 are awarded automatically.[59] To be sure, such awards are mandatory without

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[57] *People v. Elarcosa*, *supra* note 40, at 437-438; citing *People v. Valdez*, G.R. No. 127663, March 11, 1999, 304 SCRA 611, 629.

[58] *Id.*; citing *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[59] *Id.*; citing *People v. Gutierrez*, G.R. No. 188602, February 4, 2010 and *People v. Mondigo*, G.R. No. 167954, January 31, 2008, 543 SCRA 384, 392.

need of allegation and proof other than the death of the victim[60] owing to the fact of the commission of murder or homicide.[61]

This Court, however, additionally grants exemplary damages in the amount of PhP 30,000, in line with current jurisprudence,[62] since the qualifying circumstance of taking advantage of superior strength was firmly established. Under Art. 2230 of the Civil Code, if an aggravating circumstance, either qualifying or generic,[63] accompanies the crime, the award of exemplary damages is justified.

Interest of six percent (6%) per annum from finality of judgment shall likewise be imposed on the award of damages.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 00189 is *AFFIRMED* with *MODIFICATIONS.* Accused-appellant Alex Paling is ordered to pay the heirs of the victim civil indemnity of fifty thousand pesos (PhP 50,000), moral damages of fifty thousand pesos (PhP 50,000), and exemplary damages of thirty thousand pesos (PhP 30,000), with 6% interest per annum on said damages from finality of judgment. Since Roy Vilbar did not appeal the CA Decision, he shall indemnify the heirs of Walter Nolasco in the sum of PhP 50,000.

SO ORDERED.

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

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[60] *Id.*; citing *People v. Bajar*, G.R. No. 143817, October 27, 2003, 414 SCRA 494, 510.

[61] *Id.*; citing *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 303.

[62] *Id*.

[63] *Id.*; citing *Sumbillo v. People*, G.R. No. 167464, January 21, 2010.

THIRD DIVISION

[G.R. No. 185683. March 16, 2011]

UNION LEAF TOBACCO CORPORATION, REPRESENTED BY ITS PRESIDENT MR. HILARION P. UY, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

CIVIL LAW; LAND REGISTRATION; REGISTRATION OF ALIENABLE AND DISPOSABLE LANDS; ADVANCE PLANS AND CONSOLIDATED PLANS ARE NOT COMPETENT EVIDENCE ON CLASSIFICATION OF LANDS; ORIGINAL CLASSIFICATION APPROVED BY THE DENR SECRETARY AND CERTIFIED AS TRUE COPY BY THE LEGAL CUSTODIAN OF THE OFFICIAL RECORDS MUST BE PRESENTED.—The Advance Plans and Consolidated Plans are hardly the competent pieces of evidence that the law requires. The notation by a geodetic engineer on the survey plans that properties are alienable and disposable does not suffice to prove these lands' classification. *Republic v. T.A.N. Properties, Inc.* directs that x x x **[T]he applicant for registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.** These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.

APPEARANCES OF COUNSEL

Gerodias Suchianco Estrella for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CARPIO MORALES, *J.*:

For consideration of the Court is the Motion for Reconsideration filed by Union Leaf Tobacco Corporation (petitioner) of the Resolution dated March 1, 2010 which denied the present petition for review on the ground of petitioner's failure to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution.[1]

Petitioner filed before the Regional Trial Court of Agoo, La Union on December 1, 2004 four applications for land registration covering various parcels of land (LRC-A-294, LRC-A-295, LRC-A-296 and LRC-A-298).[2]

Petitioner alleged that it is the absolute owner of those parcels of land, having bought them from various individuals; and that its predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the properties for more than thirty (30) years.[3]

The Republic opposed the applications, citing Article XII, Section 3 of the Constitution which proscribes private corporations or associations from holding, except by lease, alienable lands of the public domain for a period not exceeding twenty five (25) years and not to exceed one thousand (1,000) hectares in area.[4]

After the trial court dismissed without prejudice the applications for failure of petitioner to prove its allegation that it had been in "open, continuous, exclusive and notorious possession and occupation" of the lots,[5] it, on petitioner's move,

[1] *Rollo,* p. 459.

[2] Records (LRC Case No. A-294) pp. 1-4; records (LRC Case No. A-295) pp. 1-3; records (LRC Case No. A-296), pp. 1-3; and records (LRC Case No. A-298), pp. 1-3.

[3] *Id.*

[4] *Id.* at 27-29; pp. 16-18; and pp. 15-17.

[5] *Id.* at 140-141; pp. 94-95 and pp. 91-92.

reopened the applications and allowed the presentation of additional evidence — testimonial — in support thereof.[6]

By Decision of July 30, 2005,[7] the trial court ***confirmed*** petitioners' titles over the properties subject of its applications. In finding for petitioner, the trial court ruled that petitioner had complied with the minimum 30-year uninterrupted possession; that realty taxes have been paid on these properties; and that no interested private individual opposed the applications.[8]

On appeal by the Republic, the Court of Appeals, by Decision of July 30, 2008,[9] ***reversed*** the trial court's decision, it holding that:

> x x x. Union Leaf presented no evidence to show that the subject parcels of land have been reclassified by the State as alienable or disposable to a private person. Absent proof of such reclassification, the subject parcels of land remain part of the public domain. x x x.
>
> x x x x x x x x x
>
> The trial court ruled that the subject parcels of land were converted to private lands by reason of the possession of Union Leaf's predecessors-in-interest for a period longer than 30 years. In so ruling, the trial court relied on the testimonies of Celso Domondon, Bartolome Carreon, Encarnacion Magno, Norma Gayo, Ricardo Fronda, Anastacia Saltat, Em[manuel] Balderas and Jose Padilla. Analyzing their testimonies, it is our considered view that they are inconclusive to prove that Union Leaf's predecessors-in-interest had been in open, continuous, exclusive and notorious possession of the subject parcels of land, under a bona fide claim of acquisition of ownership for at least thirty (30) years immediately preceding the filing of the application. (underscoring partly in the original and partly supplied)

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[6] *Id.* at p. 151; p. 104 and p. 101.

[7] *Rollo,* pp. 286-305. Penned by Presiding Judge Clifton U. Ganay.

[8] *Ibid.*

[9] *Id.* at 47-56. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez Jr. and Isaias P. Dicdican, concurring.

Petitioner's motion for reconsideration having been denied,[10] it filed a petition for review which, as stated early on, the Court denied by Resolution of March 1, 2010 for failure to show that the appellate court committed any reversible error in its challenged issuances.

In its present motion for reconsideration, petitioner argues in the main that its documentary evidence shows that the government declared and confirmed that the subject properties are alienable and disposable.[11] It particularly points to the Advance Plans and Consolidated Plans which all noted that the subject lands are "inside alienable and disposable area as per project No. 5-A, LC Map No. 2891."[12]

The Solicitor General counters that petitioner failed to present evidence that the subject lands are alienable and disposable and that petitioner and its predecessors-in-interest failed to prove by preponderance of evidence that they have occupied the properties since June 12, 1945 or earlier.[13]

The Motion for Reconsideration fails.

The Advance Plans and Consolidated Plans are hardly the competent pieces of evidence that the law requires. The notation by a geodetic engineer on the survey plans that properties are alienable and disposable does not suffice to prove these lands' classification.[14]

Republic v. T.A.N. Properties, Inc.[15] directs that

x x x [**T]he applicant for registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official**

[10] *Id.* at 58-60.

[11] *Id.* at 464-466.

[12] *Id.* at 465; Exhibit "C".

[13] *Vide* Comment on Motion for Reconsideration dated April 30, 2010, pp. 5-7.

[14] *Menguito v. Republic*, 401 Phil. 274 (2000).

[15] G.R. No. 154953, June 26, 2008, 555 SCRA 477.

records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.[16] (emphasis and underscoring supplied)

Respondent failed to comply with this directive. This leaves it unnecessary to delve into the testimonies of petitioner's predecessors-in-interest respecting their alleged possession of the subject properties.

WHEREFORE, petitioner's Motion for Reconsideration is *DENIED*. No further pleadings shall be entertained. Let entry of judgment be made in due course.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190341. March 16, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROMY FALLONES *y* LABANA,** *appellant.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; *RES GESTAE*; ELUCIDATED. — *Res gestae* refers to statements made by the participants or the victims of, or the spectators to, a crime immediately before, during, or after its commission. These statements are a spontaneous reaction or utterance inspired by the excitement of the occasion, without any opportunity for the declarant to

[16] *Id.* at 489.

[*] Designated member per Special Order No. 940 dated February 7, 2011, in lieu of Associate Justice Arturo D. Brion.

fabricate a false statement. An important consideration is whether there intervened, between the occurrence and the statement, any circumstance calculated to divert the mind and thus restore the mental balance of the declarant; and afford an opportunity for deliberation. For spontaneous statements to be admitted in evidence, the following must concur: 1) the principal act, the *res gestae*, is a startling occurrence; 2) the statements were made before the declarant had time to contrive or devise; and 3) the statements concerned the occurrence in question and its immediately attending circumstances.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

ABAD, *J.*:

This case involves the admissibility of the deceased rape victim's spontaneous utterances during the time she was being sexually abused and immediately afterwards.

The Facts and the Case

The public prosecutor charged the accused Romy Fallones *y* Labana with rape[1] in an amended information dated September 14, 2004 before a Regional Trial Court (RTC).[2]

The complainant in this case, Alice,[3] was a retardate. She died while trial was ongoing, hence, was unable to testify.[4] To prove

[1] Records, p. 1, Crim. Case Q-04-127845.

[2] *Id.* at 25.

[3] 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 her to protect her privacy and that of her family. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419).

[4] CA *rollo*, p. 24.

its case, the prosecution presented Allan (Alice's father), Amalia[5] (her sister), PO3 Lilibeth S. Aguilar (a police investigator), BSDO Eduardo P. Marcelo and BSDO Arturo M. Reyes (the apprehending officers), Dr. Paul Ed D. Ortiz (a medico-legal officer), and Eden H. Terol (a psychologist). The accused testified in his defense.[6]

Amalia testified that at about 9:45 a.m. on June 29, 2004, her mother told her older sister, Alice, to look for their brother Andoy.[7] Since Andoy arrived without Alice, her mother asked Amalia to look for her. Amalia looked in places where Andoy often played and this led her near accused Fallones' house. As she approached the house, Amalia heard someone crying out from within, "*Tama na, tama na!*" Recognizing Alice's voice, Amalia repeatedly knocked on the door until Fallones opened it. Amalia saw her sister standing behind him. As Amalia went in to take her sister out, Alice held out a sanitary napkin and, crying, said that Fallones had given her the napkin. Alice's shorts were wet and blood-stained. Frightened and troubled, the two girls went home.[8]

On their way home, Alice recounted to her sister that Fallones brought her to his bathroom, pulled down her shorts, and ravished her. She said that Fallones wet her shorts to make it appear that she tripped and had her monthly period.[9] Along the way, they met an uncle and told him what happened. On their arrival, their father brought Alice to the *barangay* while Amalia returned to Fallones' house where she saw her uncle, some relatives, and neighbors accosting and beating Fallones. Shortly after, some *barangay* officials arrived and intervened.[10]

Accused Fallones testified that, at about the time and date of the alleged rape, he was at home with his wife, cleaning their house. After his wife left and while he was having his

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[5] *Id.*

[6] *Id.* at 23, RTC Decision dated July 10, 2007.

[7] *Supra* note 3.

[8] TSN, March 6, 2006, pp. 341-368.

[9] *Id.* at 349, 365.

[10] *Id.* at 351-353.

lunch, two men arrived, arrested him at gunpoint, and brought him to the *barangay* hall. They accused him of raping Alice but he denied the charge. The *barangay* officials brought him to the police station where he was detained and further interrogated.[11] Again, he denied the accusations.

On July 10, 2007 the RTC rendered a Decision, finding the accused guilty beyond reasonable doubt of simple rape. The RTC sentenced him to suffer the penalty of *reclusion perpetua*, and ordered him to pay ₱50,000.00 as civil indemnity and ₱50,000.00 as damages. The accused appealed to the Court of Appeals (CA) but the latter court rendered judgment on June 30, 2009, affirming the RTC Decision. Accused Fallones moved for reconsideration but the CA denied his motion, hence, the present appeal to this Court.

The Issue Presented

The core issue in this case is whether or not the CA erred in affirming the RTC's finding that accused Fallones raped Alice, a mental retardate.

The Court's Ruling

Although Alice died before she could testify, the evidence shows that she positively identified Fallones as her abuser before the *barangay* officials and the police. Amalia, her sister, testified of her own personal knowledge that she had been out looking for Alice that midmorning; that she heard the latter's voice from within Fallones' house imploring her attacker to stop what he was doing to her; that upon repeatedly knocking at Fallones' door, he opened it, revealing the presence of her sister, her shorts bloodied.

The prosecution presented the psychologist who gave Alice a series of psychological tests. She confirmed that Alice had been sexually abused and suffered post-traumatic stress disorder. She found Alice to have moderate mental retardation with a mental age of a five-year-old person, although she was 18 at

[11] TSN, March 14, 2007, pp. 370-386.

the time of the incident. On cross-examination, the psychologist testified that while Alice may be vulnerable to suggestions, she had no ability to recall or act out things that may have been taught to her. Neither can anyone manipulate her emotions if indeed she was influenced by others.[12]

Accused Fallones tried to discredit Amalia's testimony as hearsay, doubtful, and unreliable. But, although what Alice told Amalia may have been hearsay, the rest of the latter's testimony, which established both concomitant (Alice's voice from within Fallones' house, pleading that she was hurting) and subsequent circumstance (Alice coming from behind Fallones as the latter opened the door, her shorts bloodied), are admissible in evidence having been given from personal knowledge.

Further, the Court considers as *res gestae* Amalia's recital of what she heard Alice utter when she came and rescued her. *Res gestae* refers to statements made by the participants or the victims of, or the spectators to, a crime immediately before, during, or after its commission. These statements are a spontaneous reaction or utterance inspired by the excitement of the occasion, without any opportunity for the declarant to fabricate a false statement. An important consideration is whether there intervened, between the occurrence and the statement, any circumstance calculated to divert the mind and thus restore the mental balance of the declarant; and afford an opportunity for deliberation.[13] For spontaneous statements to be admitted in evidence, the following must concur: 1) the principal act, the *res gestae*, is a startling occurrence; 2) the statements were made before the declarant had time to contrive or devise; and 3) the statements concerned the occurrence in question and its immediately attending circumstances.[14]

Here, Fallones' act of forcing himself into Alice is a startling event. And Amalia happened to be just outside his house when

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[12] TSN, December 12, 2005, pp. 323-337.

[13] *Marturillas v. People*, G.R. No. 163217, April 18, 2006, 487 SCRA 273, 308-309.

[14] *Id.* at 309.

she heard Alice cry out "*tama na, tama na!*" When Fallones opened the door upon Amalia's incessant knocking, Alice came out from behind him, uttering "*Amalia, may napkin na binigay si Romy o.*" The admissibility of Alice's spontaneous statements rests on the valid assumption that they were spoken under circumstances where there had been no chance to contrive.[15] It is difficult to lie in an excited state and the impulsiveness of the expression is a guaranty of trustworthiness.[16]

For his defense, Fallones claimed that the members of Alice's family pressured her into pointing to him as her abuser. But he has been unable to establish any possible ill-motive that could prompt Alice's family into charging him falsely. Indeed, Fallones admitted at the trial that there had been no animosity between Alice's family and him.[17]

Fallones argues that Alice's actuations after the incident negate rape, invoking the Court's ruling in *People v. Dela Cruz*.[18] But the circumstances of the latter case are far too different from those existing in the present case. In *Dela Cruz*, although the victim was seven years old when the supposed rape took place, she was not mentally retarded. Further, she was already 19 years old when she reported the incident 12 years after it happened. Besides, the medical findings revealed that her hymen remained intact. Thus, the Court did not believe that she had been raped when she was seven.

In sum, the testimony of the witnesses, the physical evidence, the medico-legal finding, and the psychologist's report all establish that Fallones raped Alice. The defense offered no witness or evidence of Fallones' innocence other than his bare denial. Again, the Court will not disturb the RTC's findings and conclusion being the first-hand observer of the witnesses' attitude and behavior during trial. The defense counsel was unsuccessful

[15] *Id*.

[16] *Capila v. People*, G.R. No. 146161, July 17, 2006, 495 SCRA 276, 281-282.

[17] TSN, February 14, 2007, pp. 383-384.

[18] 388 Phil. 678 (2000).

in impeaching Amalia during cross-examination. In fine, the guilt of the accused has been proved beyond reasonable doubt.

Alice is dead but, as Shakespeare wrote in his Sonnets—The Winter's Tale, "*the silence often of pure innocence persuades when speaking fails.*"[19]

WHEREFORE, the Court *DENIES* the appeal and *AFFIRMS* the decision of the Court of Appeals in CA-G.R. CR-H.C. 03182 dated June 30, 2009.

SO ORDERED.

Carpio, Velasco, Jr.,[*] *Peralta,* and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 194259. March 16, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JIMMY ALVERIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; FORCIBLE RAPE; CORROBORATION OF VICTIM'S TESTIMONY NOT NECESSARY WHERE THE SAME IS SUFFICIENT TO CONVICT; FINDINGS OF TRIAL COURT RESPECTED UNLESS EVIDENCE PROVES OTHERWISE.—In *People v. Malate*, We reiterated the principles with which courts are guided in determining the guilt or innocence of the accused in rape cases, viz: x x x Moreover, in that same case, this Court held that "in cases involving the prosecution for forcible rape x x x corroboration of the victim's testimony is not a necessary condition to a conviction for rape

[19] "Bartlett's Familiar Quotations" by John Bartlett, p. 222, par. 22.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 933 dated January 24, 2011.

where the victim's testimony is credible, or clear and convincing or sufficient to prove the elements of the offense beyond a reasonable doubt." As such, appellate courts generally do not disturb the findings of the trial court with regard to the assessment of the credibility of witnesses, the reason being that the trial court has the "unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination." More importantly, courts generally give full credence to the testimony of a complainant for rape, especially one who is only a minor. The exceptions to this rule are when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value likely to change the outcome of the case have been overlooked by the lower court, or when the assailed decision is based on a misapprehension of facts.

2. ID.; ID.; ELEMENTS; MEDICAL EVIDENCE, NOT INDISPENSABLE. — Medical evidence is dispensable and merely corroborative in proving the crime of rape. Besides, a medical certificate is not even necessary to prove the crime of rape. The gravamen of rape is carnal knowledge of a woman through force and intimidation. The elements needed to prove the crime of rape under paragraph 1(a) of Article 266-A of the Revised Penal Code are: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; and (3) the act is accomplished by using force or intimidation. All these elements were sufficiently proved by the prosecution.

3. REMEDIAL LAW; EVIDENCE; ALIBI; WEAK AGAINST POSITIVE IDENTIFICATION BY THE RAPE VICTIM. — Alverio's defense of alibi cannot stand versus the positive identification of AAA. Nothing is more settled in criminal law jurisprudence than the rule that alibi and denial cannot prevail over the positive and categorical testimony and identification of the accused by the complainant.

4. CRIMINAL LAW; FORCIBLE RAPE; CIVIL PENALTIES; MORAL DAMAGES OF PHP 50,000.00 AND EXEMPLARY DAMAGES OF PHP 30,000.00, PROPER. — As to the award of damages, the CA was correct in awarding Php 50,000 as moral damages without need of proof. However, in line with current jurisprudence, an additional award of PhP 30,000 as exemplary damages should likewise be given, as well as interest

of six percent (6%) per annum on all damages awarded from the finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the March 25, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00020, which affirmed the August 26, 2004 Decision in Criminal Case No. CB-02-195 of the Regional Trial Court (RTC), Branch 37 in Caibiran, Naval, Biliran.[2] The RTC convicted accused Jimmy Alverio (Alverio) of rape.

The Facts

The charge against Alverio stemmed from the following Information:

That on or about the 3rd day of June, 2002, at about 2:00 o'clock early dawn, more or less, at [PPP],[3] Philippines, and within the jurisdiction of this Honorable Court, while [AAA] was on her way

[1] *Rollo*, pp. 2-10. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Edgardo L. Delos Santos and Socorro B. Inting.

[2] CA *rollo*, pp. 79-83. Penned by Judge Pepe P. Romael.

[3] Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 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.

to her grandmother's house from the benefit dance, herein accused, a cousin of herein complainant, with lewd designs, and by means of force and intimidation, get hold of her arm and did then and there drag her to the back of the *barangay* hall, by holding her hair and forcibly laid her to the ground, willfully, unlawfully and feloniously poked her a short bladed weapon known as '*pisao*' forcibly took off her pants and panty and succeeded in having carnal knowledge with her against her will to her damage and prejudice.

Contrary to law.[4]

On July 3, 2003, Alverio, with the assistance of his counsel *de oficio*, was arraigned, and he pleaded "not guilty" to the charge against him. After the pre-trial, trial on the merits ensued.

During the trial, the prosecution offered the sole testimony of the private complainant. On the other hand, the defense presented accused Alverio, Henry Toledo (Toledo), and Lily Toledo as its witnesses.

The Prosecution's Version of Facts

In the afternoon of June 2, 2002, AAA, along with her friends Belen Sabanag (Sabanag) and Aileen Sinangote (Sinangote), went to the house of her grandmother to attend a dance event.[5] At around 8:30 in the evening, they proceeded to the dance hall because the dance would start at around 9 o'clock.[6] During the dance, Sabanag and Sinangote danced with Alverio but AAA did not.[7] At 2 o'clock in the morning of June 3, 2002, AAA noticed that her friends were no longer at the dance so she decided to go home to her grandmother's house.[8]

As she was nearing the *barangay* hall, Alverio suddenly appeared and took hold of AAA. She tried to resist him but he was too strong and he managed to pull her away. AAA started

[4] Records, p. 1.

[5] TSN, September 9, 2003, p. 3.

[6] *Id.* at 5.

[7] *Id.* at 6.

[8] *Id.* at 7.

to cry while she was being dragged towards the back of the *barangay* hall.[9] There, Alverio held her hair, undressed her, and started to kiss her.[10] AAA kept on resisting and even punched Alverio after he kissed her, at which point, Alverio told her that it was painful and that he might retaliate if she continued.[11] This caused AAA to stop resisting and Alverio then proceeded to insert his penis in her vagina repeatedly.[12]

After having carnal knowledge with her, Alverio stood up and put on his clothes. He warned AAA that if she told anyone about what happened, he will kill her.[13] After threatening her, he left.

During this entire incident, Alverio was armed with a knife which he used to poke AAA's side.

Dazed, AAA could not muster enough strength to go home. She just sat on the road beside the *barangay* hall until 5 o'clock in the morning when her Uncle Intoy passed by. He brought her home to her parents but she did not tell him anything. Upon reaching home, AAA told her parents about what happened.[14]

Version of the Defense

Alverio's defense, on the other hand, was confined to his denial of the accusation and an alibi, to wit:

Sometime around 7:30 in the evening of June 2, 2002, Alverio recalled that he was in the *barangay* chapel with his friend, Toledo, waiting for the dance to begin.[15] The dance hall was just adjacent to the *barangay* chapel. At 8:30 in the evening,

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[9] *Id.* at 8.

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

[11] *Id.* at 9.

[12] *Id.* at 9-12.

[13] *Id.* at 12.

[14] *Id.* at 13.

[15] TSN, February 24, 2004, pp. 7-10.

the dance started. He danced with some persons whose names he could no longer recall.[16] But he categorically remembered that he did not see AAA in the dance area.[17]

At 12:00 midnight, Alverio and Toledo walked home to Toledo's house, where Alverio was staying.[18] On their way home, they passed by the *barangay* hall.[19] Upon reaching home, they slept and woke up at 5:30 in the morning of June 3, 2002.[20]

In his testimony, Alverio admitted that he and AAA are cousins, their mothers being sisters.[21]

His testimony was corroborated by Toledo[22] and Toledo's mother, Lily Toledo.[23]

Ruling of the Trial Court

After trial, the RTC convicted Alverio. The dispositive portion of its August 26, 2004 Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused JIMMY ALVERIO guilty beyond reasonable doubt of the crime of rape. With no aggravating or mitigating circumstance, he is sentenced to the lesser penalty of *reclusion perpetua*; to indemnify [AAA] Fifty Thousand (P50,000.00) Pesos; and to pay the costs.
>
> SO ORDERED.[24]

On appeal to the CA, Alverio disputed the trial court's finding of his guilt beyond reasonable doubt of the crime charged. He argued that the presumption of innocence should prevail especially

[16] *Id.* at 10.

[17] *Id.* at 11.

[18] *Id.* at 12.

[19] *Id.* at 15.

[20] *Id.* at 14.

[21] *Id.* at 20.

[22] TSN, March 8, 2004, pp. 1-12.

[23] TSN, May 4, 2004, pp. 1-9.

[24] CA *rollo*, p. 24.

considering that the prosecution only had a single testimony to support the charge of rape.

Ruling of the Appellate Court

On March 25, 2010, the CA affirmed the judgment of the RTC. The dispositive portion of the CA Decision reads:

> IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court, Branch 37, Caibiran, Naval, Biliran in Criminal Case No. CB-02-195 convicting the accused-appellant is AFFIRMED with MODIFICATION in that he is also hereby adjudged liable to pay the victim the amount of Php50,000.00 as moral damages.
>
> His penalty of *reclusion perpetua* and the award of civil indemnity of Php50,000.00 stands.
>
> Costs against the accused-appellant.
>
> SO ORDERED.[25]

The Issue

Alverio now comes before this Court with the lone assignment of error contending that "[t]he trial court gravely erred in finding the accused-appellant guilty beyond reasonable doubt of rape."[26]

The Court's Ruling

We sustain Alverio's conviction.

In his *Brief*, Alverio argues that the trial court should have taken the lone testimony of the complainant with caution and that the testimony should have been weighed carefully, taking into consideration the constitutional precept that in all criminal prosecutions, the accused must be presumed innocent unless the contrary is proved.

Alverio raises three (3) grounds in support of his argument. First, he assails the trial court for giving credence to the sole testimony of the victim. He claims that the prosecution should have presented other witnesses to corroborate the testimony of

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[25] *Rollo*, p. 11.

[26] CA *rollo*, p. 69.

the victim. Second, he contends that the medical certificate presented as evidence was not testified to by the signatory himself and should therefore not be considered as corroborative evidence. Lastly, he claims that the trial court gravely erred in convicting him of the crime of rape for failure of the prosecution to prove his guilt beyond reasonable doubt.

After a careful perusal of the records of this case, however, the Court is satisfied that the prosecution's evidence sufficiently established Alverio's guilt with moral certainty.

In *People v. Malate*,[27] We reiterated the principles with which courts are guided in determining the guilt or innocence of the accused in rape cases, *viz*:

> x x x (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, though innocent, to disprove the charge; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence of the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

Moreover, in that same case, this Court held that "in cases involving the prosecution for forcible rape x x x corroboration of the victim's testimony is not a necessary condition to a conviction for rape where the victim's testimony is credible, or clear and convincing or sufficient to prove the elements of the offense beyond a reasonable doubt."[28] As such, appellate courts generally do not disturb the findings of the trial court with regard to the assessment of the credibility of witnesses,[29] the reason being that the trial court has the "unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination."[30] More importantly, courts generally give

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[27] G.R. No. 185724, June 5, 2009, 588 SCRA 817, 825.

[28] *Id*.

[29] *People v. Malana*, G.R. No. 185716, September 29, 2010.

[30] *People v. Malate*, G.R. No. 185724, June 5, 2009, 588 SCRA 817, 825.

full credence to the testimony of a complainant for rape, especially one who is only a minor.[31]

The exceptions to this rule are when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value likely to change the outcome of the case have been overlooked by the lower court, or when the assailed decision is based on a misapprehension of facts.[32] However, this Court finds none of these exceptions present in the instant case.

The victim testified in a steadfast and straightforward manner, to wit:

PROS. JOCOBO:

Q Now can you tell now [since] there are no more persons around except you and the accused can tell to the Court, or were you able to reach in the house of your lola?
A When I was walking I was suddenly held by Jimmy Alverio.

Q Where were you already walking did Jimmy Alverio suddenly held you?
A Near Brgy. Hall of Brgy. Maurang.

Q What happened next after you were held by Jimmy Alverio near the brgy. hall of Maurang?
A He tried to pull me but then I resisted, and Jimmy insisted by pulling me until I cried.

Q Then even if you were already crying what next happened?
A He drag me towards the back of the Brgy. hall.

Q Did you in fact drag to the brgy. hall?
A Yes sir.

Q While you were at the back of the brgy. hall can you tell this Honorable Court what happened?
A [He] held my hair and he tried to undressed me but I resisted.

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[31] *People v. Escoton*, G.R. No. 183577, February 1, 2010, 611 SCRA 233, 243.

[32] *People v. Burgos*, G.R. No. 117451, September 29, 1997, 279 SCRA 697, 705.

Q Since he tried to undressed [sic] you and you were resisted [sic] was he able or was he successful in undressing you?
A Yes sir.

Q Despite of your resistance?
A Yes sir.

Q When you were already undressed what happened, can you tell this to the Honorable Court?
A He tried kissed [sic] me several times and I resisted and I boxed him.

Q After you have boxed him after kissing you what next happened?
A He said that is painful I might retaliate with you.

Q After hearing on that what did Jimmy had done to you?
A I just cried I did not mind him anymore.

Q How about Jimmy what was he doing?
A He continued kissing me.

Q After kissing you what next follow?

ATTY. SABANDAL:

I would like to request Your Honor that the prosecution would discontinue and encouraging very much because its up to the witness to answer Your Honor the question. Since previously it would [seem] that the witness could be able to answer only after so much question…

PROS. JOBOCO:

Your Honor please according to the circular on examining minors we will to give full support and we to understand the minors especially if victims of minor cases.

ATTY. SABANDAL:

It was not established that she is a minor, Your Honor.

COURT:

She is 14 years old.

FROM THE COURT:

Q Now you said that you were undressed by Jimmy Alverio, do you mean to say that you were already naked when you said undressed?
A Yes sir.

Q And when Jimmy Alverio kissing you several times were you already naked?
A Yes sir.

x x x x x x x x x

Q What did Jimmy do more while he was kissing several times and you were naked?

COURT INTERPRETER:
At this juncture Your Honor the witness is crying.

COURT:
Q And when you were naked was Jimmy also naked?
A Yes sir.

x x x x x x x x x

Q You were naked and Jimmy Alverio was also naked and Jimmy Alverio was kissing you so many times, what more did Jimmy Alverio do to you?
A He inserted his penis.

Q What were your position, were you standing, or you were lying down?
A Lying position.

Q Or something was placed on the ground?
A On the ground.

COURT:
Alright Pros. Joboco you can proceed the continuation of your direct examination.

PROS. JOBOCO:
Q When you said when Jimmy Alverio was inserted his penis where was inserted?
A To my vagina.

Q And when Jimmy inserted his penis to your vagina what did you feel?
A I felt pain.

Q And when you felt pain what did you do?
A I kept on crying.

PROS. JOBOCO:
I think that would be all Your Honor I think the witness already crying.

COURT:
How many times did Jimmy insert his penis to your vagina?
A three (3) times.

Q After the three (3) times intercourse with you what did Jimmy do to you?
A He stood up and he dressed himself and he left me.

Q Did he not leave words to you?
A He told me that if you will told anybody in your family, your mother and your father I will kill you.

Q Was she (sic) have arm [*sic*] at that time of the incident?
A Yes sir.

Q What arm or firearm or what?
A A knife.

Q Did he use that in forcing you to do the sexual acts?
A Yes sir.

Q By what means did he threatened you?
A He poke it at my side.

Q Now what would you mean, he poke it at my side, what did you do?
A I remain there crying.[33]

It is strikingly clear from the above transcript that AAA's testimony was very coherent and candid. Thus, We find no reason to overturn the findings of the trial court.

In addition, Alverio submits that although the medical certificate was presented as evidence, its contents were never testified to by the signatory himself and, as such, cannot be considered as corroborative of the claim of the victim that she was raped.

Such argument, however, cannot prosper. Medical evidence is dispensable and merely corroborative in proving the crime of rape. Besides, a medical certificate is not even necessary to prove the crime of rape.[34] The gravamen of rape is carnal knowledge of a woman through force and intimidation.[35]

[33] TSN, September 9, 2003, pp. 7-13.

[34] *People v. Cabudbod*, G.R. No. 176348, April 16, 2009, 585 SCRA 499, 508.

[35] *People v. Domingo*, G.R. No. 177744, November 23, 2007, 538 SCRA 733, 737.

The elements needed to prove the crime of rape under paragraph 1(a) of Article 266-A of the Revised Penal Code are: (1) the offender is a man; (2) the offender had carnal knowledge of a woman; and (3) the act is accomplished by using force or intimidation. All these elements were sufficiently proved by the prosecution. The testimony of AAA overwhelmingly proves that Alverio raped her with the use of force and intimidation.

Furthermore, Alverio's defense of alibi cannot stand versus the positive identification of AAA. Nothing is more settled in criminal law jurisprudence than the rule that alibi and denial cannot prevail over the positive and categorical testimony and identification of the accused by the complainant.[36]

Accordingly, We find that the prosecution has discharged its burden of proving the guilt of Alverio beyond reasonable doubt.

As to the award of damages, the CA was correct in awarding PhP 50,000 as moral damages without need of proof. However, in line with current jurisprudence,[37] an additional award of PhP 30,000 as exemplary damages should likewise be given, as well as interest of six percent (6%) per annum on all damages awarded from the finality of judgment until fully paid.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 00020 finding accused-appellant Jimmy Alverio guilty of the crime charged is *AFFIRMED* with *MODIFICATION*. As modified, the ruling of the trial court should read as follows:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused JIMMY ALVERIO guilty beyond reasonable doubt of the crime of rape. With no aggravating or mitigating circumstance, he is sentenced to the lesser penalty of *reclusion perpetua*; to pay [AAA] Fifty Thousand (₱50,000.00) Pesos as civil indemnity, Fifty Thousand (₱50,000.00) as moral damages and Thirty Thousand (₱30,000.00) as exemplary damages with interest of six percent

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[36] *People v. Gingos*, G.R. No. 176632, September 11, 2007, 532 SCRA 670, 683.

[37] *People v. Combate*, G.R. No. 189301, December 15, 2010.

(6%) per annum on all awards of damages from the finality of judgment until fully paid; and to pay the costs.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-07-2297. March 21, 2011]
(Formerly A.M. No. 07-1-04-MTC — Re: Report on the Financial Audit Conducted in the MTC, Argao, Cebu)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MS. MIRA THELMA V. ALMIRANTE, Interpreter and former Officer-in-Charge, Municipal Trial Court, Argao, Cebu,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; OIC CLERK OF COURT; SIMPLE NEGLECT OF DUTY COMMITTED FOR RETAINING IN POSSESSION CASH COLLECTIONS; PROPER PENALTY. — [As per] OCA report/ recommendation, [Court employee] Ms. Almirante retained in her possession for a period from fifteen (15) days to eleven (11) months the court's cash collections. She admitted that she was not aware of the directive to promptly remit cash collections. Since she adduced no valid justification, this omission amounts to neglect of duty. Being the Officer-in-Charge, she is considered the custodian of court funds and revenues. For this reason, she should have been aware of her duty to immediately deposit the various funds she received to the authorized government depositories. Failure to fulfill this responsibility deserves administrative sanction. Not even the

> full payment of the shortages or the claim of ignorance of the applicable rule can exempt the accountable officer from liability. x x x Indeed, Almirante should be penalized for she had been remiss in the performance of her duties as OIC Clerk of Court at the MTC, Argao, Cebu. The OCA's recommended fine, however, is not proportionate with the penalty that could have been imposed had Almirante not been given the chance for an early separation. Since the penalty for simple neglect is one (1) month and one (1) day up to six (6) months suspension, the fine imposable on Almirante should at least be the equivalent of one (1) month suspension, or ₱9,612.00 based on Almirante's personnel records. In this manner, there is proportion between the suspension that should have been imposed and the fine, as the substitute penalty under the circumstances.

D E C I S I O N

BRION, *J.*:

We resolve the administrative matter involving Ms. Mira Thelma V. Almirante, Interpreter and former Officer-in-Charge (*OIC*), Office of the Clerk of Court, Municipal Trial Court (*MTC*), Argao, Cebu.

The Factual Background

On July 17, 2006, an audit team from the Office of the Court Administrator (*OCA*) conducted an audit on the books of accounts of the MTC, Argao, Cebu. The audit was in response to the request of Presiding Judge Leonardo P. Carreon, of the same court, for an investigation into the alleged failure of Almirante to turn over to Clerk of Court Ryan S. Plaza the Fiduciary Account passbook, deposit slips, and official receipts for the Judiciary Development Fund (*JDF*), Special Allowance for the Judiciary Fund (*SAJF*) and the Fiduciary Fund (*FF*).[1] The audit covered the financial transactions of Almirante from January 1, 2005 to November 30, 2005; and of Plaza from December 1, 2005 to June 30, 2006. Almirante served as OIC Clerk of

[1] *Rollo*, pp. 12-13; letter dated April 20, 2006.

Court from January 24, 2005 to November 2005, while Plaza assumed the position of Clerk of Court on December 1, 2005.

The Audit Report, dated November 3, 2006,[2] disclosed the following findings in relation with Almirante's accountability:[3]

1) Shortages in the SAJF collections in the total amount of ₱7,655.60 incurred between January 2005 and November 2005 due to the erroneous remittance of the collections to the FF account;

2) Shortages in the JDF collections in the total amount of ₱6,682.90 incurred between January 2005 and November 2005 due to the erroneous remittance of the collections to the FF account; and

3) Reported misappropriation of the exhibit money in Criminal Case No. 6553 (*People of the Philippines v. Florecita Bucacao*) in the amount of ₱41,000.00.

On July 28, 2006, Almirante deposited, by way of restitution, the amounts corresponding to her shortages — ₱7,655.60 for the SAJF account[4] and ₱6,682.90 for the JDF account[5] — with the MTC's Land Bank account. Further, the reportedly misappropriated exhibit money had been returned to the court even before the OCA audit. In a letter to the OCA dated May 18, 2006,[6] Plaza reported that on May 16, 2006, a certain Erlinda Tecson tendered to him cash amounting to ₱162,000.00, claiming that the money was a payment for Almirante's accountabilities. On May 22, 2006, Plaza deposited ₱121,000.00, out of the ₱162,000.00 he received from Tecson, to the court's Land Bank FF account, and set aside the balance of ₱41,000.00 as replacement for the exhibit money in Criminal Case No. 6553.

On the recommendation of the OCA, the Court (First Division) issued a Resolution[7] directing Almirante to explain

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[2] *Id.* at 4-11.

[3] *Id.* at 5-7.

[4] *Id.* at 20; audit report, Annex "F".

[5] *Id.* at 21; audit report, Annex "G".

[6] *Id.* at 24; audit report, Annex "J".

[7] *Id.* at 26-28; dated February 12, 2007.

in writing, within ten (10) days from notice, why no disciplinary action should be taken against her for: (1) misappropriating the exhibit money in Criminal Case No. 6553; (2) her failure to regularly submit her Monthly Report of Collections and Deposits in violation of OCA Circular Nos. 32-93 and 113-2004; and (3) her failure to submit her collections for the SAJF and the JDF on time.

Almirante's Explanation

Almirante submitted her explanation on April 17, 2007.[8] She denied misappropriating the exhibit money in Criminal Case No. 6553. She explained that due to her intermittent absences because of her health condition at the time, she sent the exhibit money to Plaza, the newly-appointed clerk of court, together with the court collections. She claimed that due to inadvertence, she placed all the money in one envelope without segregating the exhibit money from the collections. Plaza deposited the money in the court's FF account, believing that the entire amount constituted the court's cash collections.

Almirante admitted her failure to deposit her cash collections on time. She claimed, however, that when she was designated as Acting Clerk of Court in early 2005, she was not aware that court collections should be deposited within twenty-four (24) hours from the time of collection, until the auditor called her attention to this requirement sometime in April 2006. Moreover, the court is located sixty-six (66) kilometers away from the depository bank. She said, the travel to the bank to deposit the collections would be very costly.

With respect to the non-submission of monthly reports, Almirante claimed that when she went to the Prosecutor's Office at one time to deliver the records of remanded cases, she inadvertently left the reports, together with other personal items she was carrying, in the taxicab she took that day.

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[8] *Id.* at 29; Comment dated March 30, 2007.

The OCA Report

On October 7, 2008, the OCA submitted its report/recommendation[9] whose pertinent portion provides:

Ms. Almirante retained in her possession for a period from fifteen (15) days to eleven (11) months the court's cash collections. She admitted that she was not aware of the directive to promptly remit cash collections. Since she adduced no valid justification, this omission amounts to neglect of duty. Being the Officer-in-Charge, she is considered the custodian of court funds and revenues. For this reason, she should have been aware of her duty to immediately deposit the various funds she received to the authorized government depositories. Failure to fulfill this responsibility deserves administrative sanction. Not even the full payment of the shortages or the claim of ignorance of the applicable rule can exempt the accountable officer from liability.

The respondent's failure to regularly submit the corresponding reports on the collections and deposits of court funds/fees indicates her negligence. The regular submission of the monthly report on the collections of the court funds/fees is mandatory. Ms. Almirante's claim that she inadvertently lost the monthly reports in a taxi cannot justify her omission, the said assertion being clearly self-serving.

In the matter of the alleged misappropriation of the exhibit money in Criminal Case No. 6553, the evidence on record does not show adequately that there was unauthorized use of the exhibit money by the respondent, whether in whole or in part thereof. The entire amount was intact during the conduct of the cash count examination, and the same was already placed in the custody of the incumbent Clerk of Court.

Nonetheless, as indicated by the results of the judicial audit, Ms. Almirante has been remiss in the performance of her administrative responsibilities as then Officer-in-Charge of the MTC, Argao, Cebu. Her omissions partake of violations of specific rules and regulations governing the duties and responsibilities of Clerks of Court (or their authorized substitutes) in the collection and custody of legal funds/fees. Well-defined is the role of the Clerks of Court as judicial officers entrusted with the delicate function in the collection of legal fees, and they are expected to correctly and effectively

[9] *Id.* at 51-57.

implement regulations *(Gutierrez v. Quitalig, 448 Phil 465, [2003], cited in Dela Pena v. Sia, A.M. No. P-06-2167, June 27, 2006).* The same exacting standard should also be observed by those who, like the herein respondent, have been temporarily designated to discharge the functions of the Clerk of Court. Failure of Ms. Almirante to properly remit the court collections and regularly submit corresponding monthly reports transgressed the trust reposed in her as officer of the court.

In A.M. No. 01-4-119-MTC (Re: Financial Audit conducted on the books of accounts of Clerk of Court Pacita L. Sendin, MTC, Solano, Nueva Viscaya, January 16, 2002) the Clerk of Court concerned was directed by the Court to pay a fine of ₱5,000.00 for violating the circular issued by the court relative to the immediate remittance of court collections. Moreover, in *Re: Gener C. Endoma (241 SCRA 237),* the Court found the respondent Clerk of Court remiss in the performance of his duties when he deposited the collections for the month of June 1994 on 01 August 1994; and for the months of July and August 1994, on 16 September 1994. The delays were deemed unreasonable and violative of Administrative Circular No. 5-93. The Clerk of Court was ordered to pay a fine of ₱2,000.00.

Under the Uniform Rules on Administrative Cases in the Civil Service, the omissions of the respondent, as established, amount to simple neglect of duty warranting a penalty of suspension of one (1) month and one (1) day to six (6) months for the first offenders.

However, in the 07 March 2007 Resolution in A.M. No. 07-2-26-MTC, the Second Division of the Court ordered the dropping of Ms. Almirante from the rolls effective 01 December 2005, and her position had been declared vacant.

With this supervening circumstance, it would be impractical to impose upon her the penalty of suspension. A penalty in the form of a fine would be in order.

IN VIEW OF THE FOREGOING, it is respectfully submitted for the consideration of the Honorable Court the recommendation that Ms. Mira Thelma V. Almirante, Interpreter, Municipal Trial Court, Argao, Cebu be FOUND LIABLE for simple neglect of duty; and be FINED in the amount of Eight Thousand Pesos (₱8,000.00). The said amount shall be deducted from any monetary benefits she may receive from the court as a result of her early separation from the service per A.M. No. 07-2-26-MTC.

We find the OCA's report/recommendation to be well-founded except for the penalty. Indeed, Almirante should be penalized for she had been remiss in the performance of her duties as OIC Clerk of Court at the MTC, Argao, Cebu. The OCA's recommended fine, however, is not proportionate with the penalty that could have been imposed had Almirante not been given the chance for an early separation. Since the penalty for simple neglect is one (1) month and one (1) day up to six (6) months suspension, the fine imposable on Almirante should at least be the equivalent of one (1) month suspension, or ₱9,612.00 based on Almirante's personnel records. In this manner, there is proportion between the suspension that should have been imposed and the fine, as the substitute penalty under the circumstances.

WHEREFORE, premises considered, Ms. Mira Thelma V. Almirante, Interpreter, Municipal Trial Court, Argao, Cebu, is found *LIABLE* for simple neglect of duty and is *FINED* an amount equivalent to her one (1) month salary. The amount shall be deducted from any monetary benefits she is entitled to as a result of her early separation from the service, pursuant to the Resolution dated March 7, 2007 in A.M. No. 07-2-26-MTC.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 165427. March 21, 2011]

BETTY B. LACBAYAN, *petitioner, vs.* **BAYANI S. SAMOY, JR.,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY; PARTITION; DETERMINATION AS TO THE EXISTENCE OF CO-OWNERSHIP IS NECESSARY IN THE RESOLUTION OF ACTION FOR PARTITION.— Our disquisition in *Municipality of Biñan v. Garcia* is definitive. There, we explained that the determination as to the existence of co-ownership is necessary in the resolution of an action for partition. Thus: The **first phase of a partition** and/or accounting suit is **taken up with the determination of whether or not a co-ownership in fact exists, and a partition is proper** (*i.e.,* not otherwise legally proscribed) and may be made by voluntary agreement of all the parties interested in the property. This phase may end with a declaration that plaintiff is not entitled to have a partition either because a co-ownership does not exist, or partition is legally prohibited. It may end, on the other hand, with an adjudgment that a co-ownership does in truth exist, partition is proper in the premises and an accounting of rents and profits received by the defendant from the real estate in question is in order. x x x Indubitably, therefore, until and unless this issue of co-ownership is definitely and finally resolved, it would be premature to effect a partition of the disputed properties. More importantly, the complaint will not even lie if the claimant, or petitioner in this case, does not even have any rightful interest over the subject properties.

2. CIVIL LAW; LAND TITLES; TORRENS CERTIFICATE OF TITLE (TCT); WHAT CANNOT BE COLLATERALLY ATTACKED IS THE TCT, NOT THE TITLE IN THE CONCEPT OF OWNERSHIP ITSELF.— There is no dispute that a Torrens certificate of title cannot be collaterally attacked, but that rule is not material to the case at bar. What cannot be collateraly attacked is the certificate of title and not the title itself. The certificate referred to is that documents issued by the Register of Deeds known as the TCT. In contrast, the title referred to by law means ownership which is, more often than not, represented by that document. Petitioner apparently confuses title with the certificate of title. Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used. Moreover, placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. Ownership is different from a certificate

of title, the latter only serving as the best proof of ownership over a piece of land. The certificate cannot always be considered as conclusive evidence of ownership. In fact, mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title. Needless to say, registration does not vest ownership over a property, but may be the best evidence thereof.

3. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; ADMISSIONS OF A PARTY; NOT ADMISSIBLE WHERE IT INVOLVES MATTERS NECESSITATING PRIOR SETTLEMENT OF QUESTIONS OF LAW, ALSO PREJUDICIAL TO THE RIGHT OF A THIRD PERSON. — [A]s to whether respondent's assent to the initial partition agreement serves as an admission against interest, in that the respondent is deemed to have admitted the existence of co-ownership between him and petitioner, we rule in the negative. An admission is any statement of fact made by a party against his interest or unfavorable to the conclusion for which he contends or is inconsistent with the facts alleged by him. Admission against interest is governed by Section 26 of Rule 130 of the Rules of Court, which provides: Sec. 26. *Admissions of a party*. – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. To be admissible, an admission must (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible. A careful perusal of the contents of the so-called Partition Agreement indicates that the document involves matters which necessitate prior settlement of questions of law, basic of which is a determination as to whether the parties have the right to freely divide among themselves the subject properties. Moreover, to follow petitioner's argument would be to allow respondent not only to admit against his own interest but that of his legal spouse as well, who may also be lawfully entitled co-ownership over the said properties. Respondent is not allowed by law to waive whatever share his lawful spouse may have on the disputed properties. Basic is the rule that rights

may be waived, unless the waiver is contrary to law, public order, public policy, morals, good customs or prejudicial to a third person with a right recognized by law.

BRION, *J.*, *separate opinion:*

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; RESTS ON THE PARTY WHO ASSERTS THE AFFIRMATIVE IN THE ISSUE.— This case stemmed from a complaint for judicial partition of several properties based on the petitioner's assertion of co-ownership. As in other civil cases, the burden of proof rests on the party (the petitioner in this case) who, as determined by the pleadings or the nature of the case, asserts the affirmative in the issue presented.

2. CIVIL LAW; FAMILY CODE; PROPERTY REGIME OF UNION WITHOUT MARRIAGE; CO-OWNERSHIP PRESENT ONLY WHEN THERE IS CLEAR PROOF SHOWING ACQUISITION OF PROPERTY BY *ACTUAL JOINT CONTRIBUTION* DURING THE PERIOD OF COHABITATION.— Article 148 of the Family Code which applies to the property relationship in a cohabitation situation, is clear on the conditions it imposes. x x x Thus, any property acquired during the cohabitation can only be considered common property if two (2) conditions are met: *first*, there must be evidence showing that the properties were acquired by the parties during their cohabitation; and *second*, there must be evidence that the properties were acquired through the parties' actual joint contribution of money, property, or industry. Stated plainly, co-ownership only arises when there is clear proof showing the acquisition of the property during the cohabitation of the parties, and the actual joint contribution of the parties to acquire the same. These two (2) conditions must concur. x x x [P]roof of actual contribution must be established by clear evidence showing that the party either used his or her own money or that he or she actually contributed his or her own money to purchase the property. Jurisprudence holds that this fact may be proven by evidence in the form of bank account statements and bank transactions as well as testimonial evidence proving the financial capacity of the party to purchase the property or contribute to the purchase of a property.

APPEARANCES OF COUNSEL

Feliciano Law Office for petitioner.
Culvera & Waytan Law Offices and *Jimenea & Associates Law Office* for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

This settles the petition for review on *certiorari* filed by petitioner Betty B. Lacbayan against respondent Bayani S. Samoy, Jr. assailing the September 14, 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 67596. The CA had affirmed the February 10, 2000 Decision[2] of the Regional Trial Court (RTC), Branch 224, of Quezon City declaring respondent as the sole owner of the properties involved in this suit and awarding to him ₱100,000.00 as attorney's fees.

This suit stemmed from the following facts.

Petitioner and respondent met each other through a common friend sometime in 1978. Despite respondent being already married, their relationship developed until petitioner gave birth to respondent's son on October 12, 1979.[3]

During their illicit relationship, petitioner and respondent, together with three more incorporators, were able to establish a manpower services company.[4] Five parcels of land were also acquired during the said period and were registered in petitioner and respondent's names, ostensibly as husband and wife. The lands are briefly described as follows:

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[1] *Rollo*, pp. 28-42. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Portia Aliño-Hormachuelos and Aurora Santiago-Lagman, concurring;

[2] CA *rollo*, pp. 35-39.

[3] Records, p. 108.

[4] *Rollo*, p. 29.

1. A 255-square meter real estate property located at Malvar St., Quezon City covered by TCT No. 303224 and registered in the name of Bayani S. Samoy, Jr. "married to Betty Lacbayan."[5]
2. A 296-square meter real estate property located at Main Ave., Quezon City covered by TCT No. 23301 and registered in the name of "Spouses Bayani S. Samoy and Betty Lacbayan."[6]
3. A 300-square meter real estate property located at Matatag St., Quezon City covered by TCT No. RT-38264 and registered in the name of Bayani S. Samoy, Jr. "married to Betty Lacbayan Samoy."[7]
4. A 183.20-square meter real estate property located at Zobel St., Quezon City covered by TCT No. 335193 and registered in the name of Bayani S. Samoy, Jr. "married to Betty L. Samoy."[8]
5. A 400-square meter real estate property located at Don Enrique Heights, Quezon City covered by TCT No. 90232 and registered in the name of Bayani S. Samoy, Jr. "married to Betty L. Samoy."[9]

Initially, petitioner lived with her parents in Mapagbigay St., V. Luna, Quezon City. In 1983, petitioner left her parents and decided to reside in the property located in Malvar St. in Project 4, Quezon City. Later, she and their son transferred to Zobel St., also in Project 4, and finally to the 400-square meter property in Don Enrique Heights.[10]

Eventually, however, their relationship turned sour and they decided to part ways sometime in 1991. In 1998, both parties agreed to divide the said properties and terminate their business partnership by executing a Partition Agreement.[11] Initially, respondent agreed to petitioner's proposal that the properties

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[5] Records, pp. 7-8, 51-52.

[6] *Id.* at 9-10, 57-58.

[7] *Id.* at 11-12, 55-56.

[8] *Id.* at 13-14, 53-54.

[9] *Id.* at 15-16, 59-60.

[10] *Rollo*, p. 31.

[11] Records, pp. 61-64.

in Malvar St. and Don Enrique Heights be assigned to the latter, while the ownership over the three other properties will go to respondent.[12] However, when petitioner wanted additional demands to be included in the partition agreement, respondent refused.[13] Feeling aggrieved, petitioner filed a complaint for judicial partition[14] of the said properties before the RTC in Quezon City on May 31, 1999.

In her complaint, petitioner averred that she and respondent started to live together as husband and wife in 1979 without the benefit of marriage and worked together as business partners, acquiring real properties amounting to ₱15,500,000.00.[15] Respondent, in his Answer,[16] however, denied petitioner's claim of cohabitation and said that the properties were acquired out of his own personal funds without any contribution from petitioner.[17]

During the trial, petitioner admitted that although they were together for almost 24 hours a day in 1983 until 1991, respondent would still go home to his wife usually in the wee hours of the morning.[18] Petitioner likewise claimed that they acquired the said real estate properties from the income of the company which she and respondent established.[19]

Respondent, meanwhile, testified that the properties were purchased from his personal funds, salaries, dividends, allowances and commissions.[20] He countered that the said properties were registered in his name together with petitioner to exclude the

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[12] *Id.* at 63.

[13] *Rollo*, p. 32.

[14] Records, pp. 2-6.

[15] *Id.* at 2.

[16] *Id.* at 26-28.

[17] *Id.* at 26.

[18] TSN, Betty B. Lacbayan, October 20, 1999, pp. 52-54.

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

[20] TSN, Bayani Samoy, Jr., December 10, 1999, pp. 22-23 and 27.

same from the property regime of respondent and his legal wife, and to prevent the possible dissipation of the said properties since his legal wife was then a heavy gambler.[21] Respondent added that he also purchased the said properties as investment, with the intention to sell them later on for the purchase or construction of a new building.[22]

On February 10, 2000, the trial court rendered a decision dismissing the complaint for lack of merit.[23] In resolving the issue on ownership, the RTC decided to give considerable weight to petitioner's own admission that the properties were acquired not from her own personal funds but from the income of the manpower services company over which she owns a measly 3.33% share.[24]

Aggrieved, petitioner elevated the matter to the CA asserting that she is the *pro indiviso* owner of one-half of the properties in dispute. Petitioner argued that the trial court's decision subjected the certificates of title over the said properties to collateral attack contrary to law and jurisprudence. Petitioner also contended that it is improper to thresh out the issue on ownership in an action for partition.[25]

Unimpressed with petitioner's arguments, the appellate court denied the appeal, explaining in the following manner:

Appellant's harping on the indefeasibility of the certificates of title covering the subject realties is, to say the least, misplaced. Rather

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

[22] *Id.* at 29-32.

[23] The dispositive portion of the February 10, 2000 RTC Decision reads:

WHEREFORE, premises considered, the present complaint is hereby DISMISSED for lack of merit and the defendant is hereby adjudged as the sole owner of the properties which are the subject matters of this case. Furthermore, the plaintiff is hereby directed to pay the defendant the amount of ₱100,000.00 as and for attorney's fees and to pay the cost of this suit.

SO ORDERED. (CA *rollo*, p. 39.)

[24] CA *rollo*, pp. 37-39.

[25] *Id.* at 23.

than the validity of said certificates which was nowhere dealt with in the appealed decision, the record shows that what the trial court determined therein was the ownership of the subject realties – itself an issue correlative to and a necessary adjunct of the claim of co-ownership upon which appellant anchored her cause of action for partition. It bears emphasizing, moreover, that the rule on the indefeasibility of a Torrens title applies only to original and not to subsequent registration as that availed of by the parties in respect to the properties in litigation. To our mind, the inapplicability of said principle to the case at bench is even more underscored by the admitted falsity of the registration of the selfsame realties in the parties' name as husband and wife.

The same dearth of merit permeates appellant's imputation of reversible error against the trial court for supposedly failing to make the proper delineation between an action for partition and an action involving ownership. Typically brought by a person claiming to be co-owner of a specified property against a defendant or defendants whom the plaintiff recognizes to be co-owners, an action for partition may be seen to present simultaneously two principal issues, *i.e.*, first, the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned and, second – assuming that the plaintiff successfully hurdles the first – the issue of how the property is to be divided between plaintiff and defendant(s). Otherwise stated, the court must initially settle the issue of ownership for the simple reason that it cannot properly issue an order to divide the property without first making a determination as to the existence of co-ownership. Until and unless the issue of ownership is definitely resolved, it would be premature to effect a partition of the properties. This is precisely what the trial court did when it discounted the merit in appellant's claim of co-ownership.[26]

Hence, this petition premised on the following arguments:

I. Ownership cannot be passed upon in a partition case.

II. The partition agreement duly signed by respondent contains an admission against respondent's interest as to the existence of co-ownership between the parties.

III. An action for partition cannot be defeated by the mere expedience of repudiating co-ownership based on self-

[26] *Rollo*, pp. 35-37.

serving claims of exclusive ownership of the properties in dispute.

IV. A Torrens title is the best evidence of ownership which cannot be outweighed by respondent's self-serving assertion to the contrary.

V. The properties involved were acquired by both parties through their actual joint contribution of money, property, or industry.[27]

Noticeably, the last argument is essentially a question of fact, which we feel has been squarely threshed out in the decisions of both the trial and appellate courts. We deem it wise not to disturb the findings of the lower courts on the said matter absent any showing that the instant case falls under the exceptions to the general rule that questions of fact are beyond the ambit of the Court's jurisdiction in petitions under Rule 45 of the 1997 Rules of Civil Procedure, as amended. The issues may be summarized into only three:

I. Whether an action for partition precludes a settlement on the issue of ownership;

II. Whether the Torrens title over the disputed properties was collaterally attacked in the action for partition; and

III. Whether respondent is estopped from repudiating co-ownership over the subject realties.

We find the petition bereft of merit.

Our disquisition in *Municipality of Biñan v. Garcia*[28] is definitive. There, we explained that the determination as to the existence of co-ownership is necessary in the resolution of an action for partition. Thus:

The **first phase of a partition** and/or accounting suit **is taken up with the determination of whether or not a co-ownership in fact exists, and a partition is proper** (*i.e.*, not otherwise legally proscribed) and

[27] *Id.* at 17-18, 21-22.

[28] G.R. No. 69260, December 22, 1989, 180 SCRA 576.

may be made by voluntary agreement of all the parties interested in the property. This phase may end with a declaration that plaintiff is not entitled to have a partition either because a co-ownership does not exist, or partition is legally prohibited. It may end, on the other hand, with an adjudgment that a co-ownership does in truth exist, partition is proper in the premises and an accounting of rents and profits received by the defendant from the real estate in question is in order. x x x

The second phase commences when it appears that "the parties are unable to agree upon the partition" directed by the court. In that event[,] partition shall be done for the parties by the [c]ourt with the assistance of not more than three (3) commissioners. This second stage may well also deal with the rendition of the accounting itself and its approval by the [c]ourt after the parties have been accorded opportunity to be heard thereon, and an award for the recovery by the party or parties thereto entitled of their just share in the rents and profits of the real estate in question. x x x[29] (Emphasis supplied.)

While it is true that the complaint involved here is one for partition, the same is premised on the existence or non-existence of co-ownership between the parties. Petitioner insists she is a co-owner *pro indiviso* of the five real estate properties based on the transfer certificates of title (TCTs) covering the subject properties. Respondent maintains otherwise. Indubitably, therefore, until and unless this issue of co-ownership is definitely and finally resolved, it would be premature to effect a partition of the disputed properties.[30] More importantly, the complaint will not even lie if the claimant, or petitioner in this case, does not even have any rightful interest over the subject properties.[31]

Would a resolution on the issue of ownership subject the Torrens title issued over the disputed realties to a collateral attack? Most definitely, it would not.

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[29] *Id.* at 584-585.

[30] See *Fabrica v. Court of Appeals*, No. L-47360, December 15, 1986, 146 SCRA 250, 255-256.

[31] *Catapusan v. Court of Appeals*, G.R. No. 109262, November 21, 1996, 264 SCRA 534, 538.

There is no dispute that a Torrens certificate of title cannot be collaterally attacked,[32] but that rule is not material to the case at bar. What cannot be collaterally attacked is the certificate of title and not the title itself.[33] The certificate referred to is that document issued by the Register of Deeds known as the TCT. In contrast, the title referred to by law means ownership which is, more often than not, represented by that document.[34] Petitioner apparently confuses title with the certificate of title. Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used.[35]

Moreover, placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. Ownership is different from a certificate of title, the latter only serving as the best proof of ownership over a piece of land. The certificate cannot always be considered as conclusive evidence of ownership.[36] In fact, mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title.[37] Needless to say, registration does not vest ownership over a property, but may be the best evidence thereof.

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[32] Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, states in full:

SEC. 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

[33] *Lee Tek Sheng v. Court of Appeals*, G.R. No. 115402, July 15, 1998, 292 SCRA 544, 547.

[34] *Id.*

[35] *Id.* at 548.

[36] *Id.* at 547-548.

[37] *Id.* at 548.

Finally, as to whether respondent's assent to the initial partition agreement serves as an admission against interest, in that the respondent is deemed to have admitted the existence of co-ownership between him and petitioner, we rule in the negative.

An admission is any statement of fact made by a party against his interest or unfavorable to the conclusion for which he contends or is inconsistent with the facts alleged by him.[38] Admission against interest is governed by Section 26 of Rule 130 of the Rules of Court, which provides:

> Sec. 26. *Admissions of a party*. – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

To be admissible, an admission must (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible.[39]

A careful perusal of the contents of the so-called Partition Agreement indicates that the document involves matters which necessitate prior settlement of questions of law, basic of which is a determination as to whether the parties have the right to freely divide among themselves the subject properties. Moreover, to follow petitioner's argument would be to allow respondent not only to admit against his own interest but that of his legal spouse as well, who may also be lawfully entitled co-ownership over the said properties. Respondent is not allowed by law to waive whatever share his lawful spouse may have on the disputed properties. Basic is the rule that rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, good customs or prejudicial to a third person with a right recognized by law.[40]

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[38] Regalado, *REMEDIAL LAW COMPENDIUM*, Vol. II, 2004 edition, p. 715, citing 31 C.J.S. 1022.

[39] *Id*.

[40] ART. 6, CIVIL CODE.

Curiously, petitioner herself admitted that she did not assent to the Partition Agreement after seeing the need to amend the same to include other matters. Petitioner does not have any right to insist on the contents of an agreement she intentionally refused to sign.

As to the award of damages to respondent, we do not subscribe to the trial court's view that respondent is entitled to attorney's fees. Unlike the trial court, we do not commiserate with respondent's predicament. The trial court ruled that respondent was forced to litigate and engaged the services of his counsel to defend his interest as to entitle him an award of ₱100,000.00 as attorney's fees. But we note that in the first place, it was respondent himself who impressed upon petitioner that she has a right over the involved properties. Secondly, respondent's act of representing himself and petitioner as husband and wife was a deliberate attempt to skirt the law and escape his legal obligation to his lawful wife. Respondent, therefore, has no one but himself to blame the consequences of his deceitful act which resulted in the filing of the complaint against him.

WHEREFORE, the petition is *DENIED*. The September 14, 2004 Decision of the Court of Appeals in CA-G.R. CV No. 67596 is *AFFIRMED with MODIFICATION*. Respondent Bayani S. Samoy, Jr. is hereby declared the sole owner of the disputed properties, without prejudice to any claim his legal wife may have filed or may file against him. The award of ₱100,000.00 as attorney's fees in respondent's favor is *DELETED*.

No costs.

SO ORDERED.

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

Brion, J., see separate opinion.

SEPARATE OPINION

BRION, *J.*:

This case stemmed from a complaint for judicial partition of several properties based on the petitioner's assertion of co-ownership. As in other civil cases, the burden of proof rests on the party (the petitioner in this case) who, as determined by the pleadings or the nature of the case, asserts the affirmative in the issue presented.[1]

Subject to my observations below, I find that the petitioner failed to discharge by clear preponderant evidence her co-ownership of the subject properties to warrant their judicial partition. I confine myself to this conclusion, however, as the issue before us is solely on whether a judicial partition should be made. Specifically and as articulated in my observations below, I cannot join the *ponencia*'s other rulings.

Article 148 of the Family Code which applies to the property relationship in a cohabitation situation, is clear on the conditions it imposes. The first sentence of this article states:

> In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. [underscoring supplied]

Thus, any property acquired during the cohabitation can only be considered common property if two (2) conditions are met: *first*, there must be evidence showing that the properties were acquired by the parties during their cohabitation; and *second*, there must be evidence that the properties were acquired through the parties' actual joint contribution of money, property, or industry. Stated plainly, co-ownership only arises when there is clear proof showing the acquisition of the property during the cohabitation of the parties, and the actual joint contribution

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[1] *Saguid v. Court of Appeals*, G.R. No. 150611, June 10, 2003, 403 SCRA 678.

of the parties to acquire the same. These two (2) conditions must concur.

On the contribution aspect of these elements, mere cohabitation under Article 148 of the Family Code, without proof of contribution, will not result in a co-ownership; proof of actual contribution must be established by clear evidence showing that the party either used his or her own money or that he or she actually contributed his or her own money to purchase the property.[2] Jurisprudence holds that this fact may be proven by evidence in the form of bank account statements and bank transactions as well as testimonial evidence proving the financial capacity of the party to purchase the property or contribute to the purchase of a property.[3]

In this case, the presumption of co-ownership over the subject properties between the petitioner and the respondent did not arise. While the first condition was duly proven by evidence, the second condition was not.

The records sufficiently establish the first condition showing the acquisition of the subject properties from 1978 to 1991 or during the cohabitation of the petitioner and the respondent. The second condition is not similarly established since no evidence was adduced showing the petitioner's actual contributions in the acquisition of the subject properties.

Since the petition asserts an affirmative allegation (*i.e.*, her co-ownership of the subject properties to which she bases her action for judicial partition) she carries the burden of substantiating her claim. She failed in this regard. The records show that she did not present any evidence showing that the funds or a portion of the funds used to purchase the subject properties came from her own earnings. On the contrary, the petitioner presented contradictory evidence when she admitted that the funds used to purchase the subject properties did not come from her own earnings but from the income of the manpower

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[2] *Villanueva v. Court of Appeals*, G.R. No. 143286, April 14, 2004, 427 SCRA 439.

[3] *Atienza v. De Castro*, G.R. No. 169698, November 29, 2006, 508 SCRA 593.

business which she managed. The Regional Trial Court found that she only owned 3.33% of share in this corporation.

Unless there is a clear showing to the contrary, income from a business cannot automatically be considered as personal earnings, especially in this case where the income the petitioner referred to is corporate income. The petitioner should have presented evidence showing that the income she referred to actually accrued to her in the form of salaries, bonuses, commissions and/or dividends from the manpower business. Otherwise, the rule regarding the corporation's distinct legal personality from its officers, stockholders and members applies.[4] Unless otherwise shown, the source of the earnings would be the corporation's, not the petitioner's.

I additionally observe that except for one, all the subject properties name the respondent as the exclusive registered owner. Although the mere issuance of a certificate of title in the name of any person does not foreclose the possibility that the real properties covered thereby may be under co-ownership with the petitioner and *vice-versa*, the fact remains that the subject properties are registered in the respondent's name. The rebuttable presumption is that these properties belong to the respondent or *to the conjugal partnership of the respondent*, in line with Article 116 of the Family Code and Article 160 of the Civil Code.[5]

In sum, the petitioner's case for judicial partition of the subject properties has no legal basis in the absence of a clear evidence of co-ownership proven under the circumstances. **Consequently, we must deny the petition for lack of merit without**.

As final observations, I disagree with the Majority's conclusion declaring the respondent as the sole owner of all the properties sought to be partitioned. Records show that the petitioner is a registered co-owner of one of the five (5) properties cited in this case, *i.e.*, the real estate under TCT No. 23301 registered

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[4] *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633.

[5] *Atienza v. De Castro, supra* note 3, at 603.

in the name of "Spouses Bayani S. Samoy and Betty Lacbayan." By the tenor of its decision, the Majority effectively (and unnecessarily) introduced a cloud over the petitioner's interests in this commonly-owned property. I note, too, that the complaint underlying this petition is an action for partition; the adjudication of this case should necessarily be limited to resolving the propriety of the partition sought. Notably, the Majority itself recognizes that registration in one's name is without prejudice to an action seeking to establish co-ownership.

In light of the undisputed joint ownership of the property commonly registered under the parties' names, this Decision should be ***without prejudice*** to an action for partition to divide up this property – a remedy we cannot now provide in the absence of any factual basis on how the parties contributed in acquiring this property. Alternatively, the actual partition of this commonly-owned property should be remanded to the trial court for determination of how partition should be made.

The phrase, "*without prejudice to any claim his legal wife may have filed or may file against him*" in the last part of the dispositive portion of the Decision, is similarly objectionable. For one, no issue exists in this case between the legitimate spouses regarding the nature of the properties they commonly or individually hold. Additionally, the phrase creates the impression that the Court is giving legal advice to the wife of the respondent on what course of action to take against her husband. This statement is beyond what this Court should properly state in its Decision given the facts and issues posed, and is plainly uncalled for.

Subject to these observations, I concur with the opinion of the Majority.

THIRD DIVISION

[G.R. No. 173780. March 21, 2011]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **MARINA B. CUSTODIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER. — In a petition for review on *certiorari* filed under Rule 45, the issues that can be raised are limited only to questions of law. Questions of fact are not reviewable in a Rule 45 petition. Nonetheless, this rule permits of exceptions, which the Court has long since recognized. Unless the party availing of the remedy clearly demonstrates at the first opportunity that the appeal falls under any of the established exceptions, a Rule 45 petition that raises pure questions of fact shall be subject to dismissal by the Court, since it is principally not a trier of facts. Although the emerging trend in the Court's rulings is to afford all party-litigants the amplest opportunity for the proper and just determination of their cause, this is not a license for erring litigants to violate the rules with impunity.

2. ID.; ID.; ID.; ID.; EXCEPTIONS; WHERE THERE IS CONFLICT IN FINDINGS BETWEEN THAT OF THE TRIAL COURT AND THAT OF THE APPELLATE COURT. — The difference in appreciation by the trial court and the appellate court of the evidence with respect to the circumstances surrounding the cash shortage is *prima facie* justification for the Court to review the facts and the records of the case. While factual issues are not within the province of this Court, as it is not a trier of facts and is not required to examine or contrast the oral and documentary evidence *de novo*, this Court has the authority to review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in conflict with those of the appellate court.

3. ID.; ID.; PLEADINGS; PETITIONS NOT PROPERLY FILED WILL NOT BE ENTERTAINED. — Courts will not entertain and act on petitions that have yet to be properly filed, even if a copy

has been served on the other party. Moreover, the separate Petition that came into the hands of respondent has no bearing on this case, since Atty. Cachapero has already withdrawn as counsel for petitioner Metrobank. Therefore, the Court will only confine itself to the instant Petition, which was duly filed by the bank's new counsel and submitted within the extended reglamentary period, after docket fees were paid and the Court had given due course to it.

4. ID.; ID.; ACTION FOR SUM OF MONEY; MUST BE ESTABLISHED BY PREPONDERANCE OF EVIDENCE. — In civil cases such as in the instant action for a sum of money, petitioner Metrobank carries the burden of proof and must establish its cause of action by a preponderance of evidence. The concept of preponderance of evidence refers to evidence that is of greater weight or more convincing, than that which is offered in opposition to it; at bottom, it means probability of truth.

5. ID.; ID.; ID.; ID.; ACTION FOR DAMAGES AGAINST THE BANK TELLER FOR CASH SHORTAGE NOT JUSTIFIED WHERE THE STANDARD OF DILIGENCE REQUIRED IS NOT VIOLATED; CASE AT BAR. — The relevant standard of diligence that we need to examine here is that of a bank teller who was entrusted monies by the bank and who may have failed to account for them. In this case, petitioner Metrobank was unable to prove that respondent Custodio failed to exercise the necessary degree of diligence that would justify the bank's action for damages. Respondent Custodio was not remiss in her duties as all her dealings with the bank's money were clearly reflected on the records of the bank. If petitioner bank had to attribute any negligence on the part of its employees, then it should have set its sights on the acts and/or omissions of Ms. Marinel Castro, the cash Custodian, and Mr. Hanibal Jara, the security guard. If theft of the money cannot be established, and negligence is the only legal phenomenon that is evident on the records, then the proximate cause of the loss of the bank's PhP600,000 is Ms. Castro, who, as cash custodian, disregarded established procedures and blindly signed the teller's cash transfer slips without counting the money turned over to her. Meanwhile, Mr. Jara failed to inspect respondent Custodio's belongings as she left the bank on that day for lunch. Despite his own suspicions of respondent teller's

conduct, he ignored them and decided not to check the bags. This omission can conceivably be considered as a grave omission of his duties as a security guard.

6. ID.; EVIDENCE; TESTIMONIES; STATEMENT ORDERED STRICKEN OUT DURING TRIAL CANNOT BE CONSIDERED IN THE DISPOSITION OF THE CASE. — During one of the hearings, Mr. Lucas, the branch manager, explained that it was unusual for respondent Custodio to have requested a cash transfer, considering that she had sufficient funds to cover the amount. However, as the appellate court explained, the trial court should not have considered his testimony in this respect, since the judge had ordered that particular statement stricken out during the trial court proceedings. A fact elicited from a witness during testimony cannot be considered in the disposition of the case if it has been ordered stricken out, unless it is established by any other evidence on record.

7. ID.; ID.; RULES OF ADMISSIBILITY; SIMILAR ACTS AS EVIDENCE; APPRECIATION THEREOF. — The general evidentiary rule is that evidence that one did or did not do a certain thing at one time is not admissible to prove that one did or did not do the same or a similar thing at another time. However, evidence of similar acts may be received to prove a specific intent or knowledge, identity, plan system, scheme, habit, custom or usage and the like. In *Citibank N.A., (Formerly First National City Bank) v. Sabeniano*, the Court explained the rationale for this rule: The rule is founded upon reason, public policy, justice and judicial convenience. The fact that a person has committed the same or similar acts at some prior time affords, as a general rule, no logical guaranty that he committed the act in question. This is so because, subjectively, a man's mind and even his modes of life may change; and, objectively, the conditions under which he may find himself at a given time may likewise change and thus induce him to act in a different way. Besides, if evidence of similar acts are to be invariably admitted, they will give rise to a multiplicity of collateral issues and will subject the defendant to surprise as well as confuse the court and prolong the trial. Evidence of similar acts may frequently become relevant, especially to actions based on fraud and deceit, because it sheds light on the state of mind or knowledge of a person; it provides insight

into such person's motive or intent; it uncovers a scheme, design or plan, or it reveals a mistake.

APPEARANCES OF COUNSEL

Sedigo & Associates for petitioner.
Lazo & Romero Law Offices for respondent.

D E C I S I O N

SERENO, *J.*:

This civil case is essentially a demand by a bank for the recovery of a sum of money from one of its tellers who allegedly failed to account for funds entrusted to her, amounting to six hundred thousand pesos (PhP600,000).

Petitioner Metropolitan Bank and Trust Company (Metrobank) is a banking corporation. On the other hand, respondent Marina Custodio is a bank teller employed at the Laoag City branch of petitioner Metrobank.[1]

On 13 June 1995 at 8:18 a.m.,[2] respondent Custodio reported for work in petitioner bank's branch in Laoag City.[3] At the start of the banking day, respondent Custodio received loose money (picos)[4] for the day's business and was assigned as Teller No. 3.[5] In the course of performing her duties, respondent Custodio handled several cash transactions with the customers on behalf of petitioner bank.[6]

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[1] RTC Pre-Trial Order dated 12 September 1995, RTC records at 60.

[2] Exhibit "A-4", *id.* at 262.

[3] RTC Pre-Trial Order dated 12 September 1995, *id.* at 60.

[4] On 13 June 1995, respondent Custodio received fifty-four thousand nine hundred twenty-nine and 19/100 Pesos (PhP54,929.19) as her *picos* from the cash custodian. (Exhibit "B-1", [*id.* at 268]; RTC Decision at 6-7 [*rollo* at 94-95])

[5] TSN, 11 December 1995, at 8-10; Exhibit "B-1", RTC records at 268.

[6] RTC Pre-Trial Order dated 12 September 1995 (*id.* at 60); Exhibit "B-1" (*id.* at 268).

At 12:10 p.m., a cash transfer of two hundred thousand pesos (PhP200,000) was made from Teller No. 1 to respondent Custodio.[7] Petitioner Metrobank explained that, usually, a transfer of money from one teller to another occurs if the latter "needs money, maybe to pay for the withdrawal."[8] However, petitioner bank pointed out that it was unnecessary for respondent Custodio to borrow from another teller at that time, since respondent had sufficient cash on hand to cover a withdrawal in the same amount as the cash transfer.[9]

At 12:25 p.m., respondent Custodio was reported to have taken her lunch break alone and returned to work thereafter at 1:12 p.m.[10]

The security guard for the Laoag City branch of petitioner Metrobank, Mr. Hannibal Jara, testified that respondent Custodio would ordinarily go out for lunch at noon with another teller, Ms. Mary Paula Castro.[11] However, he explained that the two employees did not go out for lunch together that day, since another teller was on leave.[12] Mr. Jara also noticed that when respondent Custodio went out for lunch, she was carrying a shoulder bag and a paper bag.[13] He, however, did not check the contents of the bags carried by respondent.[14]

At the close of banking hours, respondent Custodio balanced her transactions for the day and turned over the funds to the bank's cash custodian, Ms. Marinel Castro, in the amount of

[7] Exhibit "B-2", *id.* at 270.

[8] RTC Decision at 6; *rollo* at 94.

[9] At the time of the cash transfer, respondent Custodio had cash on hand amounting to one million one hundred thirty-nine thousand eight hundred seventy-four and 32/100 pesos (PhP1,139,874.32). (RTC Decision at 6-7 [*rollo* at 94-95]; Exhibit "B-3" [RTC records at 270]; TSN, 11 December 1995, at 15)

[10] Exhibits "A-5" and "A-6", RTC records at 262.

[11] TSN, 02 June 1998, at 64-67; RTC Decision at 8 (*rollo* at 96).

[12] TSN, 02 June 1998, at 66.

[13] TSN, 03 August 1998, at 83-84; RTC Decision at 14 (*rollo* at 102).

[14] *Id.*

two million one hundred thirteen thousand five hundred pesos (PhP2,113,500).[15] Ms. Marinel Castro acknowledged receipt of the bundled cash turned over and signed a Cash Transfer Slip.[16]

At around 5:05 p.m., after all tellers had turned over their cash on hand,[17] Ms. Castro discovered that there was a shortage amounting to PhP600,000.[18] She notified Mr. Adriano Lucas, the branch manager, of the missing money.[19] The latter then instructed the cashier and the accountant to review all cash transactions to find out the reason for the cash shortage.[20] However, no errors were found in the records of the transactions, and the shortage was confirmed.[21]

Thereafter, Mr. Lucas instructed all bank employees to check all desks, drawers and even personal bags.[22] The guards were likewise instructed to search anybody going out of the office from that time on.[23] However, the missing money was not found.[24] Thus, the amount "CASH IN VAULT" was reported to be short of PhP600,000.[25]

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[15] Part of the funds transferred by respondent Custodio are bundles of one-thousand-peso bills amounting to PhP400,000 and bundles of five-hundred-peso bills amounting to PhP1,100,00. (Exhibit "B-1", RTC records at 271)

[16] RTC Decision at 14-15; *rollo* at 102-103.

[17] On that day, there were four tellers who turned over cash to Castro: (1) Virginia Asañon; (2) Eliza Piedad; (3) respondent Custodio; and (4) Mary Paula Castro. (RTC Decision at 9, *rollo* at 97)

[18] The shortage is broken down as follows: (a) PhP200,000, consisting of one thousand peso bills; and (b) PhP400,000, consisting of five-hundred-peso bills. (RTC Decision at 13 [*rollo* at 101]; TSN, 11 December 1995, at 7)

[19] RTC Decision dated 25 July 2003, at 13 (*rollo* at 101); TSN, 11 December 1995, at 7-8.

[20] *Id*.

[21] *Id*.

[22] RTC Decision at 13; *rollo* at 101.

[23] RTC Decision at 10 (*id*. at 98); TSN, 11 December 1995, at 8.

[24] RTC Decision at 13; *id.* at 101.

[25] Brief for the Appellant, at 7 (*id.* at 116); TSN, 28 February 2000, at 97-98.

Respondent Custodio left work that day, together with some of the employees, at 8:30 p.m.[26]

Later on, petitioner Metrobank alleged that it was able to recover eight **bill wrappers only** for bundles of five-hundred-peso bills (without the bills thereunder) that purportedly corresponded to the missing four hundred thousand pesos (PhP400,000).[27] These bill wrappers bore a rubber stamp "PEPT-3" for Teller No. 3.[28] Respondent Custodio countered that the discovery of the bill wrappers being attributed to her care was never mentioned at the time the cash shortage occurred, and that these wrappers could have been obtained subsequently by stamping unmarked ones.[29]

Respondent Custodio was allowed to continue to render services as a teller in petitioner bank's Laoag City branch from 14 June 1995 to 23 June 1995.[30] She argued that had she been found responsible for the cash shortage, then she would not have been allowed to continue working as a teller on subsequent days.[31]

On 15 June 1995, investigators from the regional office of petitioner Metrobank as well as from its Department of Internal Affairs, Head Office, arrived at the Laoag City branch to investigate the cash shortage.[32] On a one-on-one basis, the investigators confronted the employees, including respondent Custodio.[33] After these meetings, Ms. Castro, the cash custodian, allegedly admitted that she received and acknowledged the cash

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[26] Exhibit "A-7"; RTC records at 262.

[27] Exhibits "G" to "G-8"; *id.* at 276.

[28] Exhibits "G" to "G-8"; *id.* at 276.

[29] Brief for the Appellant, at 13-14; *rollo* at 122-123.

[30] TSN, 27 September 2002, at 129-130; TSN, 09 July 1996, at 34.

[31] TSN, 27 September 2002 at 129-130.

[32] RTC Pre-Trial Order dated 12 September 1995, RTC records at 60.

[33] Answer, *id.* at 13.

bundles and signed the Cash Transfer Slip for the funds turned over by respondent Custodio.[34]

On 16 June 1995, employees of the Laoag City branch of petitioner Metrobank – including the new accounts clerk, the remittance clerk and all the other tellers – were made to take polygraph tests at the National Bureau of Investigation, except for respondent Custodio.[35] Respondent was eight months pregnant at that time and, thus, was not required to take the lie detector test.[36]

On 22 June 1995, petitioner Metrobank filed a Complaint for a sum of money with *ex-parte* application for a writ of preliminary attachment, praying that respondent Custodio pay the amount of PhP600,000, including attorney's fees and costs of suit.[37] The trial court subsequently granted the application for a writ of preliminary attachment against the properties of respondent Custodio.[38]

On 23 June 1995 at around 1:30 p.m., while respondent Custodio was performing her duties as a teller, she was served the trial court's summons[39] and a copy of petitioner Metrobank's Complaint, including the attachment writ.[40]

After she was served the summons, respondent Custodio was supposedly caught bringing out a teller's copy of the journal print transactions with the related cash transfer slips for that particular banking day (23 June 1995).[41] These bank records were confiscated from respondent Custodio, when they were

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[34] TSN, 22 August 2002, at 114.

[35] Answer, RTC records at 13.

[36] CA Decision at 2; *rollo* at 46.

[37] RTC records at 1-6.

[38] RTC Order dated 23 June 1995; *id.* at 17.

[39] *Id.* at 9.

[40] RTC records at 10.

[41] RTC Decision at 7-8; *rollo* at 95-96.

discovered in her dress pocket during a body search done on all employees leaving the office.[42]

Respondent teller later explained that she had mistakenly brought out these records because she was no longer allowed to go inside the teller's cage to file the transaction journal, after she was served the summons and Complaint.[43] She claimed that, at that time, she was confused by the bank's Complaint filed against her, so she placed the transaction journal in her right pocket.[44] It was admitted by the bank manager, however, that no cash shortage occurred on that day.[45]

Thereafter, respondent Custodio was relegated to a non-accountable position.[46]

Because of her alleged attempt to take the journal print transactions, Mr. Lucas, the branch manager, recommended that respondent Custodio be preventively suspended.[47] Thereafter, respondent received an Inter-Office Letter[48] requiring her to explain why no disciplinary action should be meted out to her for her attempt to "surreptiously bring out bank records."[49] After respondent teller filed her explanation, petitioner Metrobank found it unacceptable and suspended her from work for seven days without pay.[50]

On 27 June 1995, respondent Custodio requested from petitioner Metrobank a copy of the Cash Transfer Slip that

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[42] *Id*.

[43] RTC Decision at 11 (*rollo* at 99); TSN, 17 March 2000, at 105; TSN, 22 August 2002 at 112-113.

[44] RTC Decision at 11, *rollo* at 99.

[45] TSN, 12 December 1996, at 44.

[46] Respondent Custodio's Formal Offer of Evidence at 2-3, RTC records at 303-304; TSN, 12 December 1996, at 43.

[47] Exhibit "3" (RTC records at 88); RTC Decision at 8 (*rollo* at 96).

[48] Exhibit "C" (RTC records at 272); *id.*

[49] Pre-Trial Order at 1, RTC records at 60.

[50] Exhibit "D" (RTC records at 273); RTC Decision at 8 (*rollo* at 96).

was signed by the cash custodian, Ms. Castro.[51] In reply, Mr. Lucas notified respondent that her request would be sent to the Head Office of petitioner Metrobank for approval.[52] This request was, however, not acted upon by petitioner.[53] Despite respondent's motion to have the Cash Transfer Slip produced in the trial proceedings[54] and the manifestation of petitioner Metrobank's counsel that it would present the slip,[55] the document was not entered into the records.

On 06 July 1995, respondent Custodio filed an Answer with Compulsory Counterclaim, denying the allegations of petitioner Metrobank that she was responsible for the cash shortage.[56] Respondent argued that Ms. Castro, not she, was the one who incurred the cash shortage, since the loss was discovered only after the cash and other accountabilities were turned over to her, as cash custodian.[57]

After the case was submitted for decision,[58] the trial court rendered its Decision granting petitioner Metrobank's Complaint and ordering respondent Custodio to pay the amount of six hundred thousand pesos (PhP600,000) plus interest.[59]

[51] Exhibit "1" (RTC records at 308); Pre-Trial Order at 1 (RTC records at 60); RTC Decision at 11 (*rollo* at 99).

[52] Exhibit "2" (RTC records at 309); Pre-Trial Order at 1-2 (RTC records at 60-61); RTC Decision at 11 (*rollo* at 99).

[53] RTC Decision at 15 (*rollo* at 103).

[54] Motion for the Issuance of a *Subpoena Duces Tecum* dated 16 December 1996; RTC records at 104-107.

[55] RTC Order dated 12 March 1997, RTC records at 125.

[56] *Id.* at 11-16.

[57] RTC Decision at 11; *rollo* at 99.

[58] After petitioner Metrobank filed its Memorandum on 26 June 2003, the trial court deemed the case submitted for decision. Respondent Custodio failed to file a memorandum within the non-extendible forty-five (45) day period. (Order dated 02 July 2003; RTC records at 323)

[59] "WHEREFORE, the complaint is hereby GRANTED. The defendant is hereby directed to pay the plaintiff-bank the amount of six hundred thousand pesos (₱600,000.00) plus interest at the legal rate of 12% per annum beginning June 13, 1995 until fully paid." (RTC Decision at 18-19, *rollo* at 106-107)

On 06 August 2003, respondent teller subsequently filed a Notice of Appeal.[60]

On 29 July 2004, respondent Custodio, thru her counsel Atty. Oliver Cachapero, filed a Brief for the Appellant.[61] Meanwhile, petitioner Metrobank submitted a Brief for the Appellee on 15 September 2004.[62]

On 16 July 2006, the Court of Appeals (10th Division)[63] found respondent Custodio's appeal meritorious and reversed the trial court's Decision:

> WHEREFORE, the appeal being meritorious, the assailed decision dated July 25, 2003 of the RTC, Branch 11, Laoag City, in Civil Case No. 10814 is REVERSED and SET ASIDE. Consequently, the plaintiff-appellee's complaint against defendant-appellant is DISMISSED.[64]

On 10 August 2006, petitioner Metrobank, through the Sediego & Associates Law Office, in collaboration with Atty. Cachapero, filed in this Court a Motion for Extension of Time to File Petition for Review on *Certiorari*.[65] On 28 August 2006, Atty. Cachapero informed the Court that he had withdrawn as counsel for petitioner Metrobank.[66]

Respondent Custodio averred, however, that she received, through counsel, a separate Petition for Review on *Certiorari* filed by petitioner Metrobank's counsel, Atty. Cachapero, on 07 August 2006.[67]

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[60] RTC records at 357.

[61] CA Records at 36-57; *rollo* at 108-128.

[62] *Id.* at 77-95; *rollo* at 148-165.

[63] Composed of Justices Andres B. Reyes, Jr., Hakim S. Abdulwahid (*ponente*) and Estela M. Perlas-Bernabe.

[64] CA Decision dated 14 July 2006, CA Records at 98-107; *rollo* at 45-54.

[65] *Rollo* at 3-7.

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

[67] Comment at 1-3; *rollo* at 175-177. (See Annex "1" of the Comment)

Within the thirty-day extension period granted by the Court,[68] petitioner Metrobank filed the Petition for Review under Rule 45, through its new counsel of record, Sediego & Associates Law Office.[69] On 30 October 2007, respondent Custodio submitted her Comment on the instant Petition.[70] In response, petitioner Metrobank subsequently filed a Reply on 31 January 2008.[71]

After the instant Petition was given due course,[72] the parties submitted their respective memoranda.[73]

Before resolving the substantial legal issue, the Court will first resolve the procedural matters with respect to the propriety of raising questions of fact in the instant Petition and the receipt by respondent Custodio of another Petition through Atty. Cachapero.

In a petition for review on *certiorari* filed under Rule 45, the issues that can be raised are limited only to questions of law.[74] Questions of fact are not reviewable in a Rule 45 petition.[75] Nonetheless, this rule permits of exceptions, which the Court has long since recognized.[76]

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[68] Resolution dated 23 August 2006; *rollo* at 8.

[69] *Rollo* at 12-42.

[70] Comment dated 08 October 2007; *rollo* at 175-182.

[71] Reply dated 30 January 2008; *id.* at 230-235.

[72] Resolution dated 13 February 2008, *id.* at 242-243.

[73] Petitioner Metrobank's Memorandum dated 02 July 2008 (*Id.* at 271-285); Respondent Custodio's Memorandum dated 13 June 2009 (*Id.* at 299-311).

[74] *New Rural Bank Guimba (N.E.), Inc. v. Abad*, G.R. No. 161818, 20 August 2008, 562 SCRA 503; Rules of Court Rule, 45, Sec. 1.

[75] *Yokohama Tires Philippines, Inc. v. Yokohama Employees Union*, G.R. No. 163532, 12 March 2010.

[76] A question of fact can be entertained in a Rule 45 petition for the following exceptions/reasons: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the **judgment is based on a misapprehension of facts**; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are

Unless the party availing of the remedy clearly demonstrates at the first opportunity that the appeal falls under any of the established exceptions, a Rule 45 petition that raises pure questions of fact shall be subject to dismissal by the Court, since it is principally not a trier of facts. Although the emerging trend in the Court's rulings is to afford all party-litigants the amplest opportunity for the proper and just determination of their cause,[77] this is not a license for erring litigants to violate the rules with impunity.[78]

Respondent Custodio reasons that the bank's Petition before the Court seeks a review of factual issues, and that such kind of review is not countenanced by the Rules.[79] Although she recognizes the exceptions to the prohibition against raising a question of fact in a Rule 45 petition, respondent insists that the instant Petition fails to measure up to any of them, which would have permitted a review of the factual circumstances of the case.[80] Respondent Custodio's bare allegation that the present controversy[81] does not fall within the established exceptions fails to convince the Court.

The difference in appreciation by the trial court and the appellate court of the evidence with respect to the circumstances surrounding the cash shortage is *prima facie* justification for the Court to review the facts and the records of the case. While factual issues are not within the province of this Court, as it is

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based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) **the findings of the CA are contrary to the findings of the trial court**; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. (*Serrano v. People*, G.R. No. 175023, 05 July 2010 [footnote 13] citing *Pelonia v. People*, G.R. No. 168997, 13 April 2007, 521 SCRA 207)

[77] *Tabujara III v. People*, G.R. No. 175162, 29 October 2008, 570 SCRA 229.

[78] *Marohomsalic v. Cole*, G.R. No. 169918, 27 February 2008, 547 SCRA 98.

[79] Respondent Custodio's Comment at 4, *rollo* at 178.

[80] Memorandum for Respondent at 10-11; *id.* at 308-309.

[81] Petitioner Metrobank's Memorandum at 11, *id.* at 281.

not a trier of facts and is not required to examine or contrast the oral and documentary evidence *de novo*, this Court has the authority to review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in conflict with those of the appellate court.[82]

In her Comment, respondent Custodio likewise assails the separate Petition she received from Atty. Cachapero, the former counsel of petitioner Metrobank.[83] She claims that the separate Petition should not be entertained by the Court, since there is no proof of payment of the docket fees or proof of service. Moreover, the Petition coming from Atty. Cachapero should preclude the instant Petition filed by the bank's new counsel, Sediego & Associates. Aside from the fact that this issue is not raised in respondent's Memorandum, nothing in the record shows that the separate Petition signed by Atty. Cachapero was ever filed and docketed with the Court.

Courts will not entertain and act on petitions that have yet to be properly filed, even if a copy has been served on the other party. Moreover, the separate Petition that came into the hands of respondent has no bearing on this case, since Atty. Cachapero has already withdrawn as counsel for petitioner Metrobank. Therefore, the Court will only confine itself to the instant Petition, which was duly filed by the bank's new counsel and submitted within the extended reglamentary period, after docket fees were paid and the Court had given due course to it.[84]

The Court now proceeds to the substantial merits of the case.

The resolution of the instant Petition hinges on whether there is a preponderance of evidence to establish that respondent Custodio incurred a cash shortage of PhP600,000 at the close of the banking day on 13 June 1995 and is therefore liable to pay petitioner Metrobank the said amount.[85]

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[82] *Encinares v. Achero*, G.R. No. 161419, 25 August 2009, 597 SCRA 34.

[83] Comment at 1-3; *rollo* at 175-177.

[84] Resolution dated 13 February 2008; *rollo* at 242-243.

[85] *See* RTC Pre-Trial Order at 2, RTC records at 61.

In civil cases such as in the instant action for a sum of money, petitioner Metrobank carries the burden of proof and must establish its cause of action by a preponderance of evidence.[86] The concept of preponderance of evidence refers to evidence that is of greater weight or more convincing, than that which is offered in opposition to it; at bottom, it means probability of truth.[87]

The Court sustains the appellate court's finding that petitioner Metrobank failed to discharge its burden of proving that respondent Custodio was responsible for the cash shortage. Petitioner Metrobank's evidence on record does not sufficiently establish that respondent Custodio took the funds that were entrusted to her as a bank teller.

The issue of respondent Custodio's civil liability for the cash shortage turns on whether she is the proximate or direct cause of the loss. There is nothing on record that will show that there were any missing bundles of one-thousand-peso and five-hundred-peso bills when respondent Custodio turned over the funds to the cash custodian, Ms. Marinel Castro. As the appellate court correctly found, the Cash Transfer Slip was the best evidence that respondent Custodio had properly turned over the amounts in her care, and that the cash custodian received them without any shortage.[88]

Although the Cash Transfer Slip was not introduced in evidence, Ms. Castro admitted having signed it. Had there been any cash shortage at that point, then the cash custodian could have refused to sign the Cash Transfer Slip, and respondent Custodio could have been required to account for any missing funds. However,

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[86] Rules of Court, Rule 131, Sec. 1; *Spouses Monteclavo v. Primero*, G.R. No. 165168, 09 July 2010.

[87] *Rizal Commercial Banking Corporation v. Marcopper Mining Corporation*, G.R. No. 170738, 12 September 2008, 565 SCRA 125, citing *Jison v. Court of Appeals*, G.R. No. 124853, 24 February 1998, 286 SCRA 495, 532.

[88] "The cash transfer slip is the best evidence that appellant (Custodio) turned over the amount of ₱2,113,500.00 on June 13, 1995." (CA Decision at 6; *rollo* at 50)

having acknowledged receipt of the funds from respondent, it is reasonably presumed that Ms. Castro found nothing out of order in respondent's records of cash transactions and the amounts transferred.

Petitioner Metrobank admits the existence of the cash transfer slip and the custodian's signature thereon. It reasons, though, that it was not unusual for the custodian to sign the slip without counting the money, since she trusted her co-employees. Petitioner seeks to impress upon this Court that the custodian's negligence was in good faith and should not exonerate respondent Custodio from the cash shortage.

As the Court of Appeals correctly surmised, Ms. Castro's procedural lapse in trusting her co-employees by automatically signing the cash transfer slip without ensuring its correctness contributed significantly to the loss of the bank's money.[89] The proper accounting of funds through the cash transfer slip was precisely instituted as a safety mechanism to trace the flow of money from one employee to another. Specifically, the cash transfer slip was meant to ensure that the tellers had properly counted the money that they turned over to the cash custodian.[90] If Ms. Castro, as cash custodian, had not been remiss in her responsibilities, petitioner Metrobank would have been able to identify who among the tellers failed to turn over the proper amount as reflected in the Cash Transfer Slip. The cash custodian is not to be admonished for reposing her trust in her co-employees; nonetheless, she was negligent, insofar as ignoring established bank procedures meant to prevent loss, especially when one of her co-employees had broken that trust.

The Court of Appeals underscored the "highest degree of diligence" from the banking business, considering that it is

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[89] "But the cash custodian was negligent in not following the standard operating procedure of the bank. Her negligence was the root cause why the cash shortage was not discovered earlier because, had she counted first the money bills delivered to her before signing the cash transfer, the shortage could have been detected." (CA Decision at 9; *Id.* at 53)

[90] TSN, 27 September 2002, at 120.

impressed with public interest and of paramount importance.[91] However, as petitioner Metrobank pointed out,[92] the exacting standard of diligence required by the appellate court pertains to the relationship between a bank and a depositor, and not between a bank and its employees. In this case, no depositors were affected, as the transactions during that day were accounted for, and no error was found in the recording thereof. The relevant standard of diligence that we need to examine here is that of a bank teller who was entrusted monies by the bank and who may have failed to account for them.[93] In this case, petitioner Metrobank was unable to prove that respondent Custodio failed to exercise the necessary degree of diligence that would justify the bank's action for damages. Respondent Custodio was not remiss in her duties as all her dealings with the bank's money were clearly reflected on the records of the bank.

If petitioner bank had to attribute any negligence on the part of its employees, then it should have set its sights on the acts and/or omissions of Ms. Marinel Castro, the cash Custodian, and Mr. Hanibal Jara, the security guard. If theft of the money cannot be established, and negligence is the only legal phenomenon that is evident on the records, then the proximate cause of the loss of the bank's PhP600,000 is Ms. Castro, who, as cash custodian, disregarded established procedures and blindly signed the teller's cash transfer slips without counting the money turned over to her. Meanwhile, Mr. Jara failed to inspect respondent Custodio's belongings as she left the bank on that day for lunch. Despite his own suspicions of respondent teller's conduct, he ignored them and decided not to check the bags. This omission

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[91] CA Decision at 9 (*rollo* at 53) citing *Bank of the Philippine Islands v. Casa Montessori Internationale,* 430 SCRA 261, 283 (2004).

[92] Petitioner Metrobank's Memorandum at 9-11; *rollo* at 279-281.

[93] "A teller's relationship with the bank is necessarily one of trust and confidence. The teller as a trustee is expected to possess a high degree of fidelity to trust and must exercise utmost diligence and care in handling cash. A teller cannot afford to relax vigilance in the performance of his duties." (*Fuentes v. NLRC,* G.R. No. 75955, 28 October 1988, 166 SCRA 752, citing *Galsim v. PNB,* G.R. No. L-23921, 24 August 1969, 29 SCRA 293; *Allied Banking Corporation v. Castro, et al.*, G.R. No. 70608, 22 December 1987)

can conceivably be considered as a grave omission of his duties as a security guard. The Court of Appeals succinctly explained both matters in this wise:

> The foregoing circumstance is not sufficient basis for the court to assume that the said paper and should bag contained the cash shortage (₱600,000). Ordinary diligence dictates that as a security guard, Jara should have checked and inspected the things of all the bank employees, especially those who were in charge of handling money before going out of the premises. **Upon seeing a teller going out for lunch with an expandable shoulder bag and paper bag, prudence dictates that the security guard should have inspected and checked the teller's bags. Bu (sic) the security guard failed to do so**. It should be noted that the security guard's testimony reveals that the said shoulder bag had been used by appellant even prior to June 13, 1995, and on said days, there were no shortages.
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> x x x x x x x x x
>
> The signature of the cash custodian in the transfer slip means that the amount reflected therein corresponds to the bills turned over to her. The cash transfer slip is the best evidence that appellant turned over the amount of ₱2,113,500.00 on June 13, 1995. The cash transfer slip signed by the cash custodian was not presented despite the written requires of appellant. However, the existence of the signed transfer slip was admitted by the cash custodian. **She even admitted that she did not follow the bank's standard operating procedure to count the money delivered by the teller to her before signing the cash transfer slip**, x x x.
>
> x x x x x x x x x x x x
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> In her testimony, the cash custodian, attested that it was not only the cash transfer slip of appellant which she signed without counting the money submitted to her, but also those of the other tellers. Under the circumstance, it cannot be determined at what point of the transactions the shortage occurred. **But the cash custodian was negligent in not following the standard operating procedure of the bank. Her negligence was the root cause why the cash shortage was not discovered earlier because, had she counted first the money bills delivered to her before signing the cash transfer slip, the shortage could have been detected**. x x x[94] (Emphasis supplied)

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[94] CA Decision, at 6-9; *rollo* at 50-53.

Verily, it is highly doubtful that Ms. Castro and Mr. Jara had performed the necessary care and caution required of bank employees in this instance, which directly contributed to the loss of PhP600,000 for petitioner Metrobank.

Considering the failure of the cash custodian and the security guard to abide by the procedural safeguards, petitioner bank is now left to find other evidence to determine the person liable for the cash shortage. The Court, however, is not sufficiently convinced that petitioner Metrobank has introduced a preponderance of circumstantial evidence to show that respondent Custodio was liable for the missing bundles of cash worth PhP600,000.

As regards respondent's receipt of PhP200,000 from another teller during the course of the business day, it was never demonstrated that the cash transfer was highly irregular. Neither was it conclusively proven that respondent took the money that was transferred by the other teller.

During one of the hearings, Mr. Lucas, the branch manager, explained that it was unusual for respondent Custodio to have requested a cash transfer, considering that she had sufficient funds to cover the amount.[95] However, as the appellate court explained, the trial court should not have considered his testimony in this respect, since the judge had ordered that particular statement stricken out during the trial court proceedings.[96] A fact elicited from a witness during testimony cannot be considered in the disposition of the case if it has been ordered stricken out, unless it is established by any other evidence on record.[97]

Even if the Court were to take cognizance of the bank manager's statement, the unusual cash transfer does not tend

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[95] TSN, 11 December 1995, at 15.

[96] CA Decision at 5; *rollo* at 49.

[97] "Striking out answer. — Should a witness answer the question before the adverse party had the opportunity to voice fully its objection to the same, and such objection is found to be meritorious, the court shall sustain the objection and order the answer given to be stricken off the record."

to prove that respondent Custodio took the money. There was no reason why respondent Custodio would appropriate several bundles of cash from another teller, because the transfer would be reflected in her transaction journals and those of the other teller anyway. Besides, respondent would be held to account for all the transactions and funds at the end of the banking day. If at all, the cash transfer, which was reflected in the records, indicated a movement of funds from one teller to another, but did not establish the movement from the bank's coffers to respondent Custodio's pockets. In any case, based on the transaction journal, no error was found in the records, as all the entries were duly accounted for by respondent Custodio and the other teller.

The security guard's testimony that respondent Custodio left for lunch alone with an expandable shoulder bag and a paper bag is inadequate proof for the Court to believe that she carted away the missing cash. Although she ordinarily took her lunch break at noon with another teller – Ms. Mary Castro – the same security guard explained that respondent deviated from her usual practice, because one of the tellers was on leave. Presumably, respondent Custodio had to take her lunch alone, rather than go with Ms. Castro. Otherwise, the branch would have been left under-staffed and unable to serve the branch's clients fully. The daily time records submitted by petitioner Metrobank even show that there were other instances in which respondent did not have lunch together with her co-teller, yet, no cash shortage was reported.[98]

On the other hand, the bags carried by respondent Custodio when she went out for lunch were never inspected by the security guard. The latter failed to search these bags, which could have determined whether respondent teller had carried away the bank's missing money during her break. As it were, the security guard saw nothing unusual or out of the ordinary, with respect to

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"On proper motion, the court may also order the striking out of answers which are incompetent, irrelevant, or otherwise improper." (Rule 132, Sec. 39)

[98] Exhibit "4" (RTC records at 311-312); TSN, 03 August 1998, at 78-80.

respondent Custodio's bags that would have aroused his suspicion and prompt him to inspect her belongings before she left.

Meanwhile, the eight wrappers of five-hundred-peso bills allegedly recovered by petitioner Metrobank are likewise of doubtful credibility and are inconclusive in determining liability. The bill wrappers bear the stamp assigned to Teller No. 3, who is respondent Custodio. Yet, as respondent explains, these stamped wrappers can easily be procured by stamping unmarked bill wrappers with tools and materials that are readily available to petitioner Metrobank. Moreover, the wrappers offered into evidence by petitioner bank do not bear respondent Custodio's initials to prove that the bundles of money which these wrappers correspond to were in respondent's care, as is the common practice in the branch and as testified to by the cash custodian, Ms. Castro:

Q: Madam witness, going over Exhibit G, you claim that these bill wrappers belong to defendant Marina Custodio because all these bill wrappers are stamped "PEPT-3"?

A: Yes, sir.

Q: Despite the fact that Marina Custodio **did not affix her signature** on these bill wrappers, you claim that these belong to her just by the mere stamp?

A: Yes, sir.

Q: Is it not a fact, madam witness, that the **date when these ball wrappers are turned over to you** is supposed to be reflected?

A: **It is supposed to reflect the date, sir; in fact, it is supposed to contain their signatures**.[99]

Moreover, the circumstances surrounding the discovery of these bill wrappers by petitioner Metrobank remain unclear. Despite the bank manager's instructions and the bank employees' efforts in conducting a thorough search for the missing cash bundles, neither the money nor the bill wrappers were found

[99] TSN, 28 February 2000, at 95.

on the day of the cash shortage. The cash custodian who identified these bill wrappers did not explain how she came to discover them.[100]

In addition, respondent Custodio was never confronted with these wrappers when the cash shortage was discovered. Neither were the wrappers presented to her when the bank's investigators conducted a one-on-one meeting with the employees two days after the incident. Not even a report by the investigation team of petitioner Metrobank regarding the incident was submitted to show when the bill wrappers were discovered, or when respondent Custodio was suspected of taking the money.[101]

It appears highly unlikely that respondent Custodio would be able to cart away several bundles of cash without being detected at all, only to carelessly leave the purported wrappers of the stolen cash, wrappers stamped with marks that might lead to her identity. The sudden appearance of these bill wrappers begs the question as to where and when they were discovered by petitioner Metrobank. If these empty bill wrappers were allegedly found to be under the account of respondent Custodio soon after the cash shortage was discovered, then there was no reason for petitioner Metrobank to have allowed her to continue with her duties in handling bank funds. Yet, respondent Custodio was subsequently permitted to report for work after the incident until 23 June 1995.

Contrary to the bank's assertions in the Complaint,[102] respondent Custodio was never asked to account for and/or

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[100] *Id.* at 90-91.

[101] "Further, Mr. Lucas, the manager of appellee bank admitted that investigators from their Regional Office and from their head office, the Department of Internal Affairs conducted an investigation on the shortage and submitted a written report. Interestingly, the manager of appellee bank had to refer to the written investigation report during the cross-examination to refresh his memory. But appellant was not even furnished with a copy of the said report nor was such report presented to enlighten the trial court of what really transpired." (CA Decision at 9, *rollo* at 53)

[102] "4. That the plaintiff appealed and demanded from defendant to account and/or turn over the said sum of ₱600,00[0].00 but the latter refused and

turn over the missing money. Neither did the bank, prior to the service of the summons and the complaint, demand that she return the money. Respondent Custodio was only informed that she was accused of stealing the missing funds when the summons was served upon her on 23 June 1995.[103] Indeed, after the discovery of the cash shortage, every employee was held suspect,[104] and respondent was never singled out for the loss until petitioner bank filed the Complaint with the trial court.

Petitioner Metrobank also argues that respondent Custodio's prior involvement in a cash shortage in its Cubao branch is admissible as evidence to prove a scheme or habit on her part.[105]

The general evidentiary rule is that evidence that one did or did not do a certain thing at one time is not admissible to prove that one did or did not do the same or a similar thing at another time.[106] However, evidence of similar acts may be received to prove a specific intent or knowledge, identity, plan system, scheme, habit, custom or usage and the like.[107] In *Citibank N.A., (Formerly First National City Bank) v. Sabeniano*, the Court explained the rationale for this rule:

> The rule is founded upon reason, public policy, justice and judicial convenience. The fact that a person has committed the same or similar acts at some prior time affords, as a general rule, no logical guaranty that he committed the act in question. This is so because, subjectively, a man's mind and even his modes of life may change; and, objectively, the conditions under which he may find himself at a given time may likewise change and thus induce him to act in a different way. Besides, if evidence of similar acts are to be invariably admitted, they will give rise to a multiplicity of collateral issues and will subject the

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failed and still refuses and fails to honor plaintiff's demand." (Complaint at 2, RTC records at 2)

[103] TSN, 27 September 2002, at 130.

[104] TSN, 28 February 2000, at 97.

[105] Petition for Review at 25 (*rollo* at 36); Memorandum for Petitioner at 11 (*rollo* at 281).

[106] Rules of Court, Rule 130, Sec. 34.

[107] *Id*.

defendant to surprise as well as confuse the court and prolong the trial.[108]

Evidence of similar acts may frequently become relevant, especially to actions based on fraud and deceit, because it sheds light on the state of mind or knowledge of a person; it provides insight into such person's motive or intent; it uncovers a scheme, design or plan, or it reveals a mistake.[109]

In this case however, respondent Custodio's prior involvement in a cash shortage in the bank's Cubao branch does not conclusively prove that she is responsible for the loss of PhP600,000 in the Laoag City branch, subject of the instant case.

Although the previous cash shortage in Cubao could possibly shed light on the intent, scheme or habit of respondent Custodio, that previous cash shortage is not sufficient to affirm a definitive finding of fact that she took the funds in the Laoag City branch. If the prior cash shortage in Cubao showed a reasonable intent or habit on the part of respondent, then there was no reason for petitioner Metrobank to continue to employ her, considering the degree of trust and confidence required of a bank teller. Nevertheless, respondent Custodio continued to serve the bank even after the case in petitioner Metrobank's Cubao branch. Her continued employment was an affirmation that she was still worthy of the bank's trust, insofar as she was allowed to continue to handle sums of money in the Laoag City branch.

With respect to the taking of the journal transaction slip by respondent Custodio, no correlation was ever established between this incident and the cash shortage subject of the instant case. The same journal transaction slip, which respondent allegedly attempted to take away, has to do with transactions occurring on 23 June 1995. It does not pertain to the transactions on 13

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[108] G.R. No. 156132, 16 October 2006, 504 SCRA 378, citing J.A.R. SIBAL AND J.N. SALAZAR, JR., *COMPENDIUM ON EVIDENCE* 199-200 (4th ed., 1995).

[109] *Tanzo v. Drilon*, G.R. No. 106671, 30 March 2000, 329 SCRA 147, citing *Cruz v. Court of Appeals*, 293 SCRA 239, 255 (1998).

June 1995, the day of the cash shortage. No reasonable explanation has been offered regarding how this incident is relevant to the instant case or how it tends to prove that respondent Custodio was the one responsible for a cash shortage that occurred ten days earlier. This incident was distinct and separate from the cash shortage, as shown by the fact that she was subsequently penalized with a seven-day preventive suspension for the incident on 23 June 1995, a penalty that is not the subject of the instant proceedings.

In any event, respondent Custodio sufficiently explains that the incident arose from confusion on her part. It is understandable that at the time she was caught with the journal transaction slip, she was just confronted with petitioner Metrobank's serious accusations that she had taken the missing funds. When the complaint was presented to her and she was barred from entering the teller's cage, respondent must have been so confused that she mistakenly placed the transaction journals in her pocket. That no cash shortage occurred at that time emphasizes that there was no direct and causal link between the transaction journal slip and the cash shortage.

It is not denied that petitioner Metrobank discovered the lost money after all the tellers had turned over their cash for the day, and the cash custodian had signed the Cash Transfer Slip. Without the cash custodian counting the money before signing the Cash Transfer Slip, many probabilities arise.[110] The shortage may have occurred even prior to the turnover of the cash by respondent Custodio. The missing cash may have also resulted from the transfers done by the other tellers, and not necessarily by respondent Custodio. It may have been taken away during the counting of the money by the cash custodian and the other tellers themselves.

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[110] "In her testimony, the cash custodian, attested that it was not only the cash transfer slip of appellant (Custodio) which she signed without counting the money submitted to her, but also those of the other tellers of the bank. Under the circumstance, it cannot be determined at what point of the transactions the shortage occurred." (CA Decision at 9, *rollo* at 53)

Petitioner Metrobank even argued that respondent Custodio may have taken the money after the cash custodian had returned the amounts turned over to the tellers and other employees for sorting and counting.[111] To begin with, this position is directly contrary to petitioner Metrobank's theory that respondent Custodio carried away the money in the morning of 13 June 1995. In addition, the cash custodian had asked for assistance from the other bank employees to speed up the counting and sorting, which necessarily opens the possibility that any of those involved could have been a suspect as well.[112] Respondent Custodio even argued that the money she had counted and sorted were funds turned over by other tellers, and not the same funds she herself had given to the cash custodian.[113] More disconcerting is the failure of the cash custodian to even remember who were the employees who had helped her in counting the cash at that time, since everybody was in a hurry to go home.[114] The procedural shortcuts resorted to by petitioner bank's employees threw open the doors to a multitude of probable scenarios, leading to ambiguity in determining civil liability.

The secondary and incidental facts offered by petitioner Metrobank do not prove the primary factual issue that it wishes to establish in demanding the instant relief from the courts – that respondent Custodio took the money.

Regrettably, the evidence offered by petitioner Metrobank is insufficient to convince to the Court that the probability of respondent Custodio's having taken the money is greater than its having been taken by another employee. Verily, weighing the evidence on record, the Court finds that petitioner Metrobank failed in its burden of proving by a preponderance of evidence

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[111] Brief for the Appellee at 9, *rollo* at 158.

[112] "Q: Is it not a fact that on said date after all the bundles were turned over to you, when you made a bundle count before you placed these bundles of cash inside the vault, there were also bundles missing from other tellers in the person of Mary Paula Castro?

A: Yes, sir." (TSN, 28 February 2000, at 96)

[113] TSN, 27 September 2002, at 121.

[114] TSN, 12 May 2003, at 6.

that respondent Custodio took PhP600,000 from petitioner Metrobank and is liable to return the amount to the latter.

In view of the foregoing, the Court *DENIES* the instant Petition for Review filed by Metropolitan Bank and Trust Company. The Court of Appeals' 14 July 2006 Decision, which dismissed the complaint against respondent Marina Custodio, is hereby *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 174504. March 21, 2011]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. SANDIGANBAYAN (THIRD DIVISION) and MANUEL G. BARCENAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DEMURRER TO EVIDENCE; ORDER OF DISMISSAL ARISING FROM THE GRANT OF DEMURRER HAS THE EFFECT OF ACQUITTAL; MAY BE ASSAILED ONLY BY *CERTIORARI* UNDER RULE 65 WHERE ORDER WAS ISSUED WITH GRAVE ABUSE OF DISCRETION. — In criminal cases, the grant of a demurrer is tantamount to an acquittal and the dismissal order may not be appealed because this would place the accused in double jeopardy. Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court. For the writ to issue, the trial court must be shown to have acted with grave

abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham thus rendering the assailed judgment void. The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.

2. ID.; ID.; ID.; ID.; ID.; ACQUITTAL BASED ON ERROR OF JUDGMENT CAN NO LONGER BE RECTIFIED ON APPEAL; CASE AT BAR. — In the case at bar, the *Sandiganbayan* granted the demurer to evidence on the ground that the prosecution failed to prove that the government suffered any damage from private respondent's non-liquidation of the subject cash advance because it was later shown, as admitted by the prosecution's witness, that private respondent liquidated the same albeit belatedly. x x x As can be seen, contrary to the findings of the *Sandiganbayan*, actual damage to the government arising from the non-liquidation of the cash advance is not an essential element of the offense punished under the second sentence of Section 89 of P.D. No. 1445 as implemented by COA Circular No. 90-331. Instead, the mere failure to timely liquidate the cash advance is the gravamen of the offense. Verily, the law seeks to compel the accountable officer, by penal provision to promptly render an account of the funds which he has received by reason of his office. Nonetheless, even if the *Sandiganbayan* proceeded from an erroneous interpretation of the law and its implementing rules, the error committed was an error of judgment and not of jurisdiction. Petitioner failed to establish that the dismissal order was tainted with grave abuse of discretion such as the denial of the prosecution's right to due process or the conduct of a sham trial. In fine, the error committed by the *Sandiganbayan* is of such a nature that can no longer be rectified on appeal by the prosecution because it would place the accused in double jeopardy.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Public Attorney's Office for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The dismissal order arising from the grant of a demurrer to evidence amounts to an acquittal and cannot be appealed because it would place the accused in double jeopardy. The order is reviewable only by *certiorari* if it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

This is a Petition for *Certiorari* which seeks to nullify the *Sandiganbayan's* July 26, 2006 Resolution[1] which granted private respondent's demurrer to evidence.

Factual Antecedents

On May 21, 2004, private respondent was charged with violation of Section 89 of Presidential Decree (P.D.) No. 1445[2] before the *Sandiganbayan*. The Information reads —

> That on or about December 19, 1995, and for sometime prior or subsequent thereto at Toledo City, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused MANUEL G. BARCENAS, a high-ranking public officer, being a Vice-Mayor of Toledo City, and committing the offense in relation to office, having obtained cash advances from the City Government of Toledo in the total amount of SIXTY-ONE THOUSAND SEVEN HUNDRED SIXTY– FIVE PESOS (₱61,765.00), Philippine Currency, which he received by reason of his office, for which he is duty bound to liquidate the same within the period required by law, with deliberate intent and intent to gain, did then and there, willfully, unlawfully and criminally fail to liquidate said cash advances of ₱61,765.00, Philippine Currency, despite demands to the damage and prejudice of the government in the aforesaid amount.[3]

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[1] *Rollo*, pp. 22-28; penned by Associate Justice Godofredo L. Legaspi and concurred in by Associate Justices Efren N. Dela Cruz and Norberto Y. Geraldez.

[2] GOVERNMENT AUDITING CODE OF THE PHILIPPINES (June 11, 1978).

[3] Records, pp. 1-2.

The case was docketed as Criminal Case No. 27990 and raffled to the Third Division. On October 20, 2004, private respondent was arraigned for which he pleaded not guilty. The prosecution presented its lone witness, Manolo Tulibao Villad, Commission on Audit (COA) State Auditor. Thereafter, the prosecution filed its formal offer of evidence and rested its case.

On April 20, 2006, private respondent filed a motion[4] for leave to file demurrer to evidence. On June 16, 2006, the *Sandiganbayan* issued a Resolution[5] granting the motion. On June 30, 2006, private respondent filed his demurrer[6] to evidence.

Sandiganbayan's Ruling

On July 26 2006, the *Sandiganbayan* promulgated the assailed Resolution, *viz*:

> WE find the demurrer to evidence well taken.
>
> The testimony of the prosecution's lone witness City Auditor Manolo Tulibao confirming his Report (Exhibit "D") that the accused had indeed liquidated his cash advances did not help the prosecution but rather weakened its cause of action against the accused. At the time this case was filed in Court, the accused had already liquidated his cash advances subject matter hereof in the total amount of ₱61,765.00. Hence, We find the element of damages wanting in this case.
>
> PREMISES CONSIDERED, the Demurrer to Evidence is hereby granted and this case is hereby ordered **DISMISSED**.[7]

Issue

Whether the *Sandiganbayan* acted with grave abuse of discretion amounting to lack or excess of jurisdiction in giving due course to and eventually granting the demurrer to evidence.[8]

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[4] *Id.* at 277-279.

[5] *Id.* at 300.

[6] *Id.* at 303-310.

[7] *Rollo*, p. 27.

[8] *Id.* at 9.

Petitioner's Arguments

Petitioner contends that the prosecution was able to establish all the elements of the offense defined and penalized under Section 89 of P.D. No. 1445: (1) the private respondent, an accountable officer, received cash advances in the total amount of ₱120,000.00 to defray the expenses of the Public Assistance Committee and Committee on Police Matters covering the period January-March 1993, (2) the purpose of the cash advance has been served, (3) the private respondent settled his cash advances only in March 1996, (4) the city auditor sent a demand letter to the private respondent to settle the cash advance within 72 hours from receipt thereof, and (5) the private respondent received said letter on December 22, 1995 but failed to liquidate the same within the aforestated period.

Although it concedes that the private respondent eventually settled the subject cash advances sometime in March 1996, petitioner theorizes that damage is not one of the elements of the offense charged. Hence, the settlement of the cash advance would not exonerate the private respondent but only mitigate his criminal liability. Otherwise, the purpose of the law would be rendered futile since accountable officers can easily make cash advances and liquidate the same beyond the period prescribed by law without being penalized for doing so.

Finally, petitioner argues that double jeopardy does not lie in this case because the order of dismissal was issued with grave abuse of discretion amounting to lack of jurisdiction.

Private Respondent's Arguments

Private respondent counters that the grant of a demurrer to evidence is equivalent to an acquittal from which the prosecution cannot appeal as it would place the accused in double jeopardy. Further, assuming that the *Sandiganbayan* erroneously granted the demurrer, this would, at most, constitute an error of judgment and not an error of jurisdiction. Thus, *certiorari* does not lie to correct the grant of the demurrer to evidence by the *Sandiganbayan*.

Our Ruling

The petition lacks merit.

An order of dismissal arising from the grant of a demurrer to evidence has the effect of an acquittal unless the order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In criminal cases, the grant of a demurrer[9] is tantamount to an acquittal and the dismissal order may not be appealed because this would place the accused in double jeopardy.[10] Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court.[11] For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham thus rendering the assailed judgment void.[12] The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[13]

In the case at bar, the *Sandiganbayan* granted the demurrer to evidence on the ground that the prosecution failed to prove that the government suffered any damage from private

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[9] Section 23, Rule 119 of the RULES OF COURT provides:

Section 23. *Demurrer to evidence*. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court. x x x

[10] *Dayap v. Sendiong*, G.R. No. 177960, January 29, 2009, 577 SCRA 134, 147.

[11] *Id.*

[12] *Sanvicente v. People*, 441 Phil. 139, 147-148 (2002).

[13] *Id.*

respondent's non-liquidation of the subject cash advance because it was later shown, as admitted by the prosecution's witness, that private respondent liquidated the same albeit belatedly.

Sections 89 and 128 of P.D. No. 1445 provide—

SECTION 89. *Limitations on Cash Advance*. — No cash advance shall be given unless for a legally authorized specific purpose. **A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served.** No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.

SECTION 128. *Penal Provision*. — Any violation of the provisions of Sections 67, 68, **89**, 106, and 108 of this Code **or any regulation issued by the Commission [on Audit] implementing these sections**, shall be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court. (Emphasis supplied.)

On the other hand, COA Circular No. 90-331[14] or the "Rules and Regulations on the Granting, Utilization and Liquidation of Cash Advances" which implemented Section 89 of P.D. No. 1445 pertinently provided–

5. LIQUIDATION OF CASH ADVANCES

5.1 The AO (Accountable Officer) shall liquidate his cash advance as follows:

5.1.1 Salaries, Wages, etc. - within 5 days after each 15 day/ end of the month pay period.

5.1.2 Petty Operating Expenses and Field Operating Expenses - within 20 days after the end of the year; subject to replenishment during the year.

5.1.3 Foreign Travel - within 60 days after return to the Philippines.

Failure of the AO to liquidate his cash advance within

[14] Effective May 3, 1990.

the prescribed period shall constitute a valid cause for the withholding of his salary.

x x x x x x x x x

5.7 When a cash advance is no longer needed or has not been used for a period of two (2) months, it must be returned to or deposited immediately with the collecting officer.

5.8 All cash advances shall be fully liquidated at the end of each year. Except for petty cash fund, the AO shall refund any unexpended balance to the Cashier/Collecting Officer who will issue the necessary official receipt.

x x x x x x x x x

9. DUTIES AND RESPONSIBILITIES OF THE COA AUDITOR

x x x x x x x x x

9.6 Upon failure of the AO to liquidate his cash advance within one month for AOs within the station and three months for AOs outside the station from date of grantof the cash advance, the Auditor shall issue a letter demanding liquidation or explanation for non-liquidation.

7.7 If 30 days have elapsed after the demand letter is served and no liquidation or explanation is received, or the explanation received is not satisfactory, the Auditor shall advise the head of the agency to cause or order the withholding of the payment of any money due the AO. The amount withheld shall be applied to his (AO's) accountability. **The AO shall likewise beheld criminally liable for failure to settle his accounts**.[15] (Emphasis supplied.)

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[15] This provision is reiterated in COA Circular No. 92-382 (effective July 3, 1992) which specifically governs the cash advances of local government officials. Section 48 (k) states:

Sec. 48. Rules on grant, use, and liquidation of cash advances. - In the granting, utilization, and liquidation of cash advances the following shall be observed: x x x

x x x x x x x x x

(k) The cash advances shall be liquidated as follows:

As can be seen, contrary to the findings of the *Sandiganbayan*, actual damage to the government arising from the non-liquidation of the cash advance is not an essential element of the offense punished under the second sentence of Section 89 of P.D. No. 1445 as implemented by COA Circular No. 90-331. Instead, the mere failure to timely liquidate the cash advance is the gravamen of the offense. Verily, the law seeks to compel the accountable officer, by penal provision, to promptly render an account of the funds which he has received by reason of his office.[16]

Nonetheless, even if the *Sandiganbayan* proceeded from an erroneous interpretation of the law and its implementing rules,

- Salaries, wages, *etc*. — within 5 days after each 15 days/end of the month pay period.
- Petty operating expenses — within 20 days after the end of the year; subject to replenishment during the year.
- Foreign Travel - within 60 days after return to the Philippines.

[16] The rationale is similar to that of Article 218 (Failure of Accountable Officer to Render Accounts) of the Revised Penal Code where misappropriation is not an essential element of said felony (Luis B. Reyes, *THE REVISED PENAL CODE*, Book II [2001] at 409). In *United States v. Saberon* (19 Phil. 391 [1911] cited in Reyes at 409), Section 1 of Act No. 1740 punished, among others, the failure to render an account by an accountable public officer. In construing this penal provision, we ruled—

Section 1 of Act No. 1740, a violation of which is charged against the defendant, literally provides as follows:

"Any bonded officer or employee of the Insular Government, or of any provincial or municipal government, or of the city of Manila, and any other person who, having charge, by reason of his office or employment, of Insular, provincial, or municipal funds or property, or of funds or property of the city of Manila, or of trust or other funds by law required to be kept or deposited by or with such officer, employee, or other person, or by or with any public office, treasury, or other depositary, fails or refuses to account for the same, or makes personal use of such funds or property, or of any part thereof, or abstracts or misappropriates the same or any part thereof, or is guilty of any malversation with reference to such funds or property, or through his abandonment, fault, or negligence permits any other person to abstract, misappropriate, or make personal use of the same, shall, upon conviction, be punished by imprisonment for not less than two months nor more than ten years and, in the discretion of the court, by a fine of not more than the amount of such funds and the value of such property."

x x x [T]rue it is that the unjustified refusal to render an account may produce a suspicion that there are at least irregularities in the officer's bookkeeping, but neither is this in itself conclusive proof of misappropriation,

the error committed was an error of judgment and not of jurisdiction. Petitioner failed to establish that the dismissal order was tainted with grave abuse of discretion such as the denial of the prosecution's right to due process or the conduct of a sham trial. In fine, the error committed by the *Sandiganbayan* is of such a nature that can no longer be rectified on appeal by the prosecution because it would place the accused in double jeopardy.[17]

In *United States v. Kilayko*,[18] the accused was charged with a violation under Section 12 of the Chattel Mortgage Law[19] which prohibited the mortgagor from selling the mortgaged property without the consent of the mortgagee while the debt secured remained outstanding. The accused was arraigned for which he pleaded not guilty. Thereafter, he moved to dismiss the Information. After the prosecution and defense entered into a stipulation of facts, the trial court dismissed the case. On appeal by the prosecution to this Court, we acknowledged that the trial court erred in interpreting Section 12 when it ruled that the subsequent payment of the secured debt extinguished the accused's criminal liability arising from the unlawful sale of the mortgaged property. Nonetheless, we ruled that the judgment dismissing the Information, although based upon an

nor does the law in imposing punishment in any wise take into account the more or less correct condition of the funds which may be in his charge. The law makes the mere fact of that refusal a crime and punishes it as such, in absolute distinction from the other fact, entirely immaterial to the case, as to whether or not the funds in the safe entrusted to the officer are intact. So true is this that, although such funds are found to be intact and the official having them in charge is found not to have committed the smallest or most insignificant defalcation, still he would not be exempt from the criminal liability established by law if he refused or failed to render an account of said funds on being requested to do so by competent authority. The reason for this is that Act No. 1740, in so far as its provisions bearing on this point are concerned, does not so much contemplate the possibility of malversation as the need of enforcing by a penal provision the performance of the duty incumbent upon every public employee who handles government funds, as well as every depositary or administrator of another's property, to render an account of all he receives or has in his charge by reason of his employment. x x x" (*Id.* at 394-396).

[17] *Central Bank of the Philippines v. Court of Appeals*, 253 Phil. 39, 49 (1989).

[18] 32 Phil. 619 (1915).

[19] Act No. 1508.

erroneous interpretation of the law, was in effect a judgment on the merits from which no appeal lay on the part of the prosecution as it would place the accused in double jeopardy.[20]

In another case, *People v. City Court of Silay*,[21] after the prosecution had presented its evidence and rested its case, the accused filed a motion to dismiss for insufficiency of evidence. The trial court granted the motion and dismissed the case. On appeal by the prosecution to this Court, we were of the view that the dismissal order was erroneous and resulted to a miscarriage of justice. However, we ruled that such error cannot be corrected because double jeopardy had already set in:

> In the case of the herein respondents, however, the dismissal of the charge against them was one *on the merits of the case* which is to be distinguished from other dismissals at the instance of the accused. All the elements of double jeopardy are here present, to wit: (1) a valid information sufficient in form and substance to sustain a conviction of the crime charged, (2) a court of competent jurisdiction, and (3) an unconditional dismissal of the complaint after the prosecution had rested its case, amounting to the acquittal of the accused. The dismissal being one on the merits, the doctrine of waiver of the accused to a plea of double jeopardy cannot be invoked.
>
> It is clear to Us that the dismissal of the criminal case against the private respondents was erroneous.
>
> As correctly stated in the Comment of the Acting Solicitor General, the accused were not charged with substitution of genuine "*tarjetas*" with false ones. The basis for the accusation was that the accused entered false statements as to the weight of the sugar cane loaded in certain cane cars in "*tarjetas*" which were submitted to the laboratory section of the company. The act of making a false entry in the "*tarjetas*" is indoubtedly an act of falsification of a private document, the accused having made untruthful statements in a narration of facts which they were under obligation to accomplish as part of their duties — Ernesto de la Paz, as overseer of Hda. Malisbog, and the other accused as scalers of the offended party, the Hawaiian-Philippine Company, thereby causing damage to the latter.

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[20] *Supra* note 18 at 622-623.

[21] 165 Phil. 847 (1976).

However erroneous the order of respondent Court is, and although a miscarriage of justice resulted from said order, to paraphrase Justice Alex Reyes in *People vs. Nieto*, 103 Phil. 1133, such error cannot now be righted because of the timely plea of double jeopardy.[22]

WHEREFORE, the petition is *DISMISSED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182458. March 21, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REX NIMUAN *y* CACHO,** *appellant.*

SYLLABUS

CRIMINAL LAW; MURDER QUALIFIED BY TREACHERY; PENALTY. — 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. Alfredo's eyewitness account was corroborated by the *postmortem* report on the location and severity of the wounds sustained by the victim. Both the RTC and the CA correctly appreciated the qualifying circumstance of treachery because the attach 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 the mitigating circumstance of voluntary surrender cannot be appreciated in his favor; the records indicate that the appellant did not intend to assume responsibility for the death of the victim when he and his mother went with the *barangay* officials

[22] *Id.* at 854-855.

to the police station. While we affirm the CA's factual findings and the imprisonment imposed, we find it necessary to increase to ₱30,000 the amount of exemplary damages, to conform with prevailing jurisprudence.

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 appellant Rex Nimuan *y* Cacho from the August 16, 2007 decision of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 00844.[1]

THE FACTUAL ANTECEDENTS

On August 23, 2004, the appellant was accused[2] of murder[3] in the Regional Trial Court (*RTC*), Branch 31, Agoo, La Union.[4] The appellant pleaded not guilty on arraignment.[5] In the trial that followed, an eyewitness – Alfredo Ruiz, the brother of the victim (Jun Ruiz) and the appellant's first cousin – testified on the details of the crime.

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[1] Decision penned by Associate Justice Rebecca de Guia-Salvador, and concurred in by Associate Justices Magdangal M. de Leon and Ricardo R. Rosario of the Twelfth Division of the Court of Appeals. *Rollo*, pp. 2-18.

[2] The accusatory portion of the Information reads:

That on or about the 22nd day of July 2004, in the Municipality of Aringay, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and hack one JUN RUIZ from behind with the use of a bolo several times hitting the victim on the different fatal parts of his body and head which caused his instantaneous death, to the damage and prejudice of his family and heirs.

CONTRARY TO LAW. (*CA rollo*, p. 5.)

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

[4] Docketed as Criminal Case No. A-5079.

[5] Original records, p. 38.

In the afternoon of July 22, 2004, while Alfredo was talking with friends, he saw the victim, the appellant and a certain Boy Nieva drinking in a neighborhood store in *Barangay* San Eugenio, Aringay, La Union.[6] Later that afternoon, as Alfredo was walking home along a path inside a mango plantation in the *barangay*, he spotted the appellant and the victim about 30 meters ahead of him, walking in the same trail leading to their respective houses.[7] Unaware of his presence, the appellant – who was walking a meter behind the victim – suddenly hacked the latter with a bolo.[8] Alfredo ran away to seek help when he saw the victim fall to the ground after the attack.[9]

The postmortem report revealed that the victim died from massive loss of blood due to multiple hack wounds on his right forearm, face and head.[10]

The appellant, interposing alibi, claimed that between 3:00 and 5:00 p.m. of July 22, 2004, he was watching television at the house of his uncle, Manuel Dulay, at San Benito Sur when a certain *Barangay* Captain Cariño, along with a *barangay kagawad*, arrived and informed him that he was a suspect in the death of the victim. The appellant and his mother went with the *barangay* officials to the police station of Aringay, La Union, where he was detained.[11]

THE RTC RULING

In its December 29, 2004 Decision, the RTC found the appellant guilty of murder. It gave credence to Alfredo's positive identification of the appellant as the perpetrator of the killing, as supported by the *postmortem* examination of the victim. The RTC appreciated the qualifying circumstance of treachery because the appellant hacked the victim by surprise, leaving the latter no opportunity to defend himself. However, it

[6] TSN, November 10, 2004, pp. 7-9.

[7] *Id*. at 4-5 and 8-9.

[8] *Id*. at 11.

[9] *Id.* at 5 and 11.

[10] TSN, November 18, 2004, pp. 5-7; and original records, p. 61.

[11] TSN, December 14, 2004, pp. 8-13.

appreciated in the appellant's favor the mitigating circumstance of voluntary surrender. Applying the indeterminate sentence law, the RTC sentenced the appellant to suffer the penalty of 20 years of *reclusion temporal* maximum to 40 years of *reclusion perpetua* imprisonment, and to pay the heirs of the victim the lump sum of ₱100,000 as civil indemnity and damages.[12]

THE CA RULING

On intermediate appellate review, the CA affirmed the RTC's judgment, giving full respect to the RTC's assessment of the testimony and the credibility of the eyewitnesses. It rejected the appellant's alibi because the distance between San Benito Sur and the mango plantation where the victim was hacked, was merely 2 kilometers; this distance was not too far away to preclude the possibility of the appellant's presence at the *locus criminis*. The appellate court appreciated treachery as a qualifying circumstance because the victim was unarmed and defenseless when the appellant, without warning, attacked him from behind with a bolo. The CA also noted the number, location and severity of the hack wounds inflicted on the victim, one of which even cut through his brain and almost severed his head.

The appellate court found that the RTC erred in appreciating the mitigating circumstance of voluntary surrender because the appellant went with the *barangay* officials not to admit the alleged crime or to voluntarily surrender to the authorities, but only for verification purposes. Thus, the CA sentenced the appellant to *reclusion perpetua.* It clarified that the lump sum of ₱100,000 represented ₱50,000 as civil indemnity and ₱50,000 as moral damages. It also awarded ₱25,000 as temperate damages, in lieu of actual damages, and ₱25,000 as exemplary damages due to the attendance of the qualifying circumstance of treachery.[13]

We now rule on the final review of the case.

OUR RULING

We affirm the appellant's conviction.

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[12] Original records, pp. 101-130.

[13] *Supra* note 1.

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. Alfredo's eyewitness account was corroborated by the *postmortem* report on the location and severity of the wounds sustained by the victim. Both the RTC and the CA correctly appreciated the qualifying circumstance of treachery because the attack was deliberate, sudden and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or to defend himself.[14] The appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* since the mitigating circumstance of voluntary surrender cannot be appreciated in his favor; the records indicate that the appellant did not intend to assume responsibility for the death of the victim when he and his mother went with the *barangay* officials to the police station.[15]

While we affirm the CA's factual findings and the imprisonment imposed, we find it necessary to increase to ₱30,000 the amount of exemplary damages, to conform with prevailing jurisprudence.[16]

WHEREFORE, the August 16, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00844 is hereby *AFFIRMED* with *MODIFICATION.* Appellant Rex Nimuan *y* Cacho 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 Jun Ruiz ₱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.

Carpio Morales, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

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[14] *People v. Lacaden,* G.R. No. 187682, November 25, 2009, 605 SCRA 784, 804; and *Gandol v. People,* G.R. Nos. 178233 & 180510, December 4, 2008, 573 SCRA 108, 124.

[15] TSN, December 14, 2004, pp. 9-13. See *Dela Cruz v. Court of Appeals*, G.R. No. 139150, July 20, 2001, 361 SCRA 636, 650.

[16] *People v. Dela Cruz,* G.R. No. 188353, February 16, 2010, 612 SCRA 738, 752; and *People v. Gutierrez,* G.R. No. 188602, February 4, 2010, 611 SCRA 633, 647.

THIRD DIVISION

[G.R. No. 192821. March 21, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SIXTO PADUA *y* FELOMINA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED RAPE; NOT APPRECIATED AS MINORITY OF THE VICTIM NOT ESTABLISHED. — We agree with the CA that the appellant cannot be held liable for qualified, much less statutory, rape; the prosecution failed to prove by *independent evidence* the age of AAA, much less the allegation that she was under the age of 12 when she was raped.

2. ID.; RAPE; FORCE OR INTIMIDATION SUBSTITUTED BY MORAL ASCENDANCY, APPRECIATED. — The appellate court properly appreciated force and intimidation. In rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.

3. ID.; ID.; PROPER PENALTY FOR RAPE COMMITTED IN 1991 IS *RECLUSION PERPETUA*, UNDER THEN APPLICABLE LAW ART. 335 OF THE REVISED PENAL CODE. — The CA properly convicted the appellant for simple rape whose penalty is *reclusion perpetua.* We, however, clarify the applicable law. The CA held that the appellant was guilty of simple rape under Article 266-A(1) of the Revised Penal Code. However, the crime was committed in 1991, *i.e.*, prior to the passage of the law imposing the death penalty for rape cases and prior to the new rape law. The law then in place – Article 335 of the Revised Penal Code – should apply. Under this law, simple rape is punishable by *reclusion perpetua.*

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 appellant Sixto Padua *y* Felomina from the September 10, 2009 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR–H.C. No. 03023.

The Factual Antecedents

On June 20, 2001, the appellant was charged with rape before the Regional Trial Court (*RTC*), Branch 89, Quezon City,[2] committed against his 6-year old niece AAA[3] sometime in April 1991.[4] The appellant pleaded not guilty on arraignment. In the trial that followed, AAA testified on the details of the crime.

Sometime in April 1991, between 1:00 and 2:00 p.m., AAA, then six years old, was playing at the balcony of their house in *Barangay* Payatas, Quezon City. BBB (AAA's mother) was downstairs cleaning the house, while AAA's sisters were outside the house.[5] The appellant (*BBB's brother*) was watching TV.

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[1] Decision penned by Associate Justice Mariflor P. Punzalan Castillo, and concurred in by Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion of the Twelfth Division of the Court of Appeals. *Rollo*, pp. 2-22.

[2] In Criminal Case No. Q-01-103176.

[3] Consistent with *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), the real name of the rape victim is withheld. 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, are not disclosed.

[4] The accusatory portion of the Information reads:

That sometime in April, 1991, in Quezon City, Philippines, the above-named accused, an uncle of the complainant, and taking advantage of his moral ascendancy and the innocence of said complainant, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a minor, six years of age, in their house located at x x x Barangay Payatas, this City, against her will and without her consent.

CONTRARY TO LAW. (CA *rollo*, p. 9).

[5] TSN, October 21, 2002, pp. 2, and 4-5; and TSN, April 24, 2006, pp. 4-8.

The appellant called AAA and told her to lie beside him.[6] He then asked her to remove her shorts and underwear. He also removed his shorts, laid her down, and inserted his penis inside her vagina.[7] AAA felt pain but she did not cry out. Thereafter, the appellant told her not to report the incident to her mother or to anyone else.[8]

AAA did not tell anyone about the incident since she did not know that what had been done to her was wrong. AAA only realized that her sexual experience with her uncle was wrong when she was already 12 or 13 years old, or at about the time she was in Grade VI. She did not disclose the incident to anyone then as she was afraid.[9] It was not until after her graduation from elementary school that she finally disclosed the incident to CCC (*AAA's older sister*). CCC, in turn, also revealed that a similar incident had happened to her when she was at about the same age as AAA when the latter's experience happened.[10] AAA and CCC never before told their father about their experience because they feared for his health, but subsequently, the incident came to their father's knowledge after CCC had a bitter confrontation with him. Thereafter, AAA and her father went to the police station where she executed her sworn statement and underwent a medical examination that confirmed that she was no longer a virgin. [11]

The appellant, interposing denial and alibi, claimed that he was in San Vicente, Bicol, sometime in April 1991.[12]

The RTC Ruling

In its March 26, 2007 decision, the RTC found the appellant guilty of rape. It relied on AAA's clear, direct and positive

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[6] TSN, October 21, 2002, p. 2.

[7] *Id.* at 3.

[8] *Id.* at 4; and TSN, June 18, 2003, p. 5.

[9] TSN, June 18, 2003, pp. 3-4.

[10] *Id.* at 5-6.

[11] *Id.* at 7-9; TSN, February 2, 2004, pp. 8-10; TSN, April 24, 2006, pp. 8-10; and Exhibit "G", original records, p. 83.

[12] TSN, September 25, 2006, pp. 4-7.

testimony, and rejected the appellant's alibi for his failure to show that it was physically impossible for him to have committed the rape. It noted that AAA's delay in reporting the rape was not indicative of a fabricated charge, considering her young age and her family ties with the appellant; AAA only came to know that the sexual incident was wrong when she was in Grade VI, and she feared for her father's health should the latter learn of the incident. The RTC appreciated AAA's minority, noting that the appellant failed to rebut AAA's testimony that she was 6 years old when she was raped. With the abolition of the death penalty under Republic Act No. 9346,[13] the RTC sentenced the appellant to *reclusion perpetua*. It also ordered the appellant to pay AAA ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.[14]

The CA Ruling

On intermediate appellate review, the CA noted that AAA's minority cannot be appreciated as the prosecution failed to present the certificate of live birth or any other authentic document to prove the age of AAA at the time of the commission of the offense. It noted further that the appellant did not expressly admit AAA's age. Instead, the appellate court appreciated force and intimidation, noting that the appellant's relationship to AAA had been proven by his own admission. It stressed that in incestuous rape, the moral ascendancy of the accused over the victim takes the place of force and intimidation. Thus, it convicted the appellant of simple rape under Article 266-A(1) of the Revised Penal Code and sentenced him to *reclusion perpetua*, but reduced to ₱50,000.00 the civil indemnity to AAA.[15]

From the CA, the case was elevated to us for final review.

Our Ruling

We affirm the appellant's conviction.

[13] "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which took effect on June 30, 2006.

[14] Original records, pp. 201-216.

[15] *Supra* note 1.

We find no reason to deviate from the findings of the RTC and the CA. Jurisprudence is replete with rulings that an appellant can justifiably be convicted of rape based solely on the credible testimony of the victim. We consider, too, that nothing in the records indicates to us that the RTC and the CA overlooked or failed to appreciate facts that, if considered, would change the outcome of the case.

We agree with the CA that the appellant cannot be held liable for qualified, much less statutory, rape; the prosecution failed to prove by *independent evidence* the age of AAA, much less the allegation that she was under the age of 12 when she was raped. The appellate court properly appreciated force and intimidation. In rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[16]

Thus, the CA properly convicted the appellant for simple rape whose penalty is *reclusion perpetua*. We, however, clarify the applicable law. The CA held that the appellant was guilty of simple rape under Article 266-A(1) of the Revised Penal Code. However, the crime was committed in 1991, *i.e.*, prior to the passage of the law imposing the death penalty for rape cases[17] and prior to the new rape law.[18] The law then in place – Article 335 of the Revised Penal Code[19] – should apply. Under this law, simple rape is punishable by *reclusion perpetua*.

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[16] *People v. Corpuz*, G.R. No. 175836, January 30, 2009, 577 SCRA 465, 473.

[17] Republic Act No. 7659, entitled An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes, took effect on December 31, 1993.

[18] Republic Act No. 8353 or the Anti-Rape Law of 1997 took effect on October 22, 1997.

[19] Article 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

To conform with existing jurisprudence,[20] we reduce the amount of exemplary damages from ₱50,000.00 to ₱30,000.00.

WHEREFORE, the September 10, 2009 decision of the Court of Appeals in CA-G.R. CR–H.C. No. 03023 is hereby *AFFIRMED* with *MODIFICATION*. Appellant Sixto Padua *y* Felomina is found guilty beyond reasonable doubt of the crime of Simple Rape under Article 335 of the Revised Penal Code, and sentenced to suffer the penalty of *reclusion perpetua.* He is also ordered to pay AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio Morales, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

EN BANC

[A.M. No. SCC-98-4. March 22, 2011]

ASHARY M. ALAUYA, Clerk of Court, Shari'a District Court, Marawi City, *complainant, vs.* **JUDGE CASAN ALI L. LIMBONA, Shari'a Circuit Court, Lanao del Sur,** *respondent.*

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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 x x x.

The crime of rape shall be punished by *reclusion perpetua*.

[20] *People v. Sambahon,* G.R. No. 182789, August 3, 2010; *People v. Sobusa,* G.R. No. 181083, January 21, 2010, 610 SCRA 538, 559.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; FILING A CERTIFICATE OF CANDIDACY AS PARTY-LIST REPRESENTATIVE IN ELECTIONS WITHOUT GIVING UP HIS JUDICIAL POST IS A GRAVE OFFENSE. — We find the **OCA's recommendation to be well-founded**. Judge Limbona committed grave offenses which rendered him unfit to continue as a member of the Judiciary. When he was appointed as a judge, he took an oath to uphold the law, yet in filing a certificate of candidacy as a party-list representative in the May 1998 elections without giving up his judicial post, Judge Limbona violated not only the law, but the constitutional mandate that "no officer or employee in the civil service shall engage directly or indirectly, in any electioneering or partisan political campaign." x x x For his continued performance of his judicial duties despite his candidacy for a political post, Judge Limbona is guilty of grave misconduct in office. While we cannot interfere with Judge Limbona's political aspirations, we cannot allow him to pursue his political goals while still on the bench. We cannot likewise allow him to deceive the Judiciary.

2. ID.; ID.; ID.; ID.; CONCEALMENT OF DIRECT PARTICIPATION IN ELECTIONS, CLAIMING FORGERY OF HIS SIGNATURE TO MISLEAD THE COURT, ARE GRAVE MISCONDUCT AND DISHONESTY WARRANTING DISMISSAL FROM OFFICE; REFUND OF SALARIES/ALLOWANCES RECEIVED, PROPER. — We find relevant the OCA's observation on this point: "x x x Judge Limbona's concealment of his direct participation in the 1998 elections while remaining in the judiciary's payroll and his vain attempt to mislead the Court by his claim of forgery, are patent acts of dishonesty rendering him unfit to remain in the judiciary." In light of the gravity of Judge Limbona's infractions, we find OCA's recommended penalty of dismissal to be appropriate. Under the Rules of Court, dishonesty and gross misconduct are punishable by dismissal. We also approve the OCA recommendation that Judge Limbona be made to refund the salaries/allowances he received from March 26, 1998 to November 30, 1998. With this ruling, we

likewise resolve the charge against Judge Limbona — referred to us by the Court's Second Division in its June 16, 2003 Resolution in A.M. No. SCC-03-08 — that the respondent judge continued to perform judicial functions and to receive his salaries as judge after he had filed a certificate of candidacy in the May 1998 elections.

D E C I S I O N

PER CURIAM:

Before the Court is the present administrative matter against Judge Casan Ali Limbona, Tenth Shari'a Circuit Court (10th SCC), Tamparan, Lanao del Sur. This matter is the subject of the Memorandum/Report of the Office of the Court Administrator (OCA) dated August 7, 2000.[1]

The Factual Antecedents

The facts of the case, culled from the OCA report and the case record, are summarized below.

(1) The OCA received on July 31, 1998 a letter dated July 13, 1998 addressed to then Court Administrator Alfredo L. Benipayo,[2] signed by Datu Ashary M. Alauya (*Alauya*), Clerk of Court, 10th SSC, Marawi City.

Alauya reported that numerous verbal complaints had been received against Judge Casan Ali Limbona (*Judge Limbona*) for: (a) not reporting to his station at the SCC in Tamparan, Lanao del Sur; (b) having filed a certificate of candidacy as a party-list candidate of the Development Foundation of the Philippines (DFP) while serving in the Judiciary and while receiving his salary as a judge; and (c) obtaining from the post office, without sufficient authority, checks representing benefits for court employees.

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[1] *Rollo,* pp. 129-135.

[2] *Id.* at 1.

(2) A request from a "concerned citizen"[3] that the court in Tamparan, Lanao del Sur, be moved to Cotobato City where Judge Limbona resided since the judge had been reporting to Tamparan only once a year since 1994.

Upon the OCA's inquiry,[4] the Commission on Elections (COMELEC) confirmed that based on their records, a certain Casan Ali L. Limbona filed his certificate as a party-list candidate of the DFP in the May 11, 1998 elections.[5]

The OCA confirmed, too, that Judge Limbona failed to submit any notice or information about his candidacy; for this reason, the Judge continued to draw his salary as a judge. The OCA forthwith advised the Finance Services Office to discontinue the payment of Judge Limbona's salary.

On January 27, 1999, the Court resolved to: (1) treat Alauya's letter as an administrative complaint against Judge Limbona; (2) direct Judge Limbona to comment; (3) explain why he did not inform the OCA that he ran for public office in the May 1998 elections; and (4) immediately refund the salaries/allowances he received from March to November 1998.[6]

In a letter dated December 28, 1998 addressed to the OCA, Judge Limbona denied that he consented to be a nominee of DFP in the May 1998 elections. To prove his point, he submitted the affidavit[7] of Datu Solaiman A. Malambut, DFP's National President, admitting sole responsibility for his "honest mistake" and "malicious negligence and act of desperation" in including the name of Judge Limbona among the party's list of nominees.

While Judge Limbona professed awareness of the rule that appointed government officials are considered resigned on the date of the filing of their certificates of candidacy, he was not aware of any legal opinion or ruling applicable to his case.

[3] *Id*. at 2.

[4] *Id*. at 3; letter dated October 15, 1998.

[5] *Id*. at 4; letter dated November 5, 1998.

[6] *Id*. at 8; Resolution dated January 27, 1999.

[7] *Id*. at 28.

Alauya, on the other hand, denied authorship of the letter against Judge Limbona and requested that his name be stricken from the records as complainant in the case.[8]

In his comment dated April 26, 1998,[9] Judge Limbona branded as "purely malicious and unfounded" the allegations that he and his staff were not reporting at the 10th SCC in Tamparan, Lanao del Sur. In support of his claim, the judge submitted the joint affidavit[10] of several members of his staff certifying that the public had been transacting business daily with their office at the Memorial Building in Tamparan. Members of his staff also vouched for Judge Limbona's leadership, intelligence, diligence and contributions to the welfare of the community. The judge also submitted a certification dated April 8, 1999[11] from the municipal mayor of Tamparan, Datu Topa-an D. Disomimba, attesting that the establishment of the 10th SCC in Tamparan has contributed to the maintenance of peace and order in the area, and that Judge Limbona's leadership has been excellent.

Judge Limbona reiterated his denial that he filed a certificate of candidacy for the May 11, 1998 elections. He explained that he had no knowledge of his supposed candidacy until he learned about it from the OCA and this Court. Because he was never a candidate, he continued performing his duties as a judge.

Also on April 26, 1999, Judge Limbona filed a motion for reconsideration[12] of the Court's January 27, 1999 Resolution maintaining his lack of knowledge of the filing of his candidacy. On May 10, 1999, Judge Limbona filed another motion for reconsideration[13] of the same Resolution, submitting fresh arguments as follows:

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[8] *Id*. at 96.

[9] *Id*. at 60.

[10] *Id*. at 72-73.

[11] *Id*. at 48.

[12] *Id*. at 31-32; annexed to Judge Limbona's Comment.

[13] *Id*. at 33-35.

(1) his alleged certificate of candidacy and acceptance bore discrepancies in the signature, thumbprints and community tax certificate numbers;

(2) the Court's order withholding the release of his salaries without giving him the opportunity to be heard violated his right to due process; and

(3) the resolution of the Court ordering him to refund the salaries he received from March 26, 1998 to November 30, 1998 likewise deprived him of due process as it meant he had already been adjudged guilty of the charges.

In a Memorandum/Report dated October 18, 1999,[14] the OCA apprised the Court of developments in the case. The OCA noted that the charges against Judge Limbona that needed to be addressed were: (1) Judge Limbona's alleged filing of a certificate of candidacy as a party-list representative in the May 1998 elections, in violation of the rule on partisan political activity, and (2) Judge Limbona's neglect of his duties as a judge.

On the first charge, the OCA disbelieved Judge Limbona's assertion that he did not consent to the inclusion of his name in the certificate of candidacy filed before the COMELEC and that his inclusion was purely due to the carelessness of the person who prepared the certificate. The OCA nevertheless took the view that a positive identification of the judge's participation in the filing of the certificate of candidacy was needed to fully resolve the matter.

The OCA, however, found that the second charge of non-performance or neglect of duty (due to absenteeism) stood unsubstantiated and was, in fact, negated by the joint affidavit[15] of the staff members of the 10th SCC in Tamparan, Lanao del Sur and the certification[16] of the municipal mayor vouching for the judge's leadership, diligence and contribution to the maintenance of peace and order in the community.

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[14] *Id*. at 100-104.

[15] *Supra* note 10.

[16] *Supra* note 11.

The OCA recommended that the National Bureau of Investigation (NBI) be asked to determine the authenticity of Judge Limbona's signatures on the certificate of candidacy as DFP representative in the May 1998 congressional elections, and that Judge Limbona be suspended as a judge until the matter is finally resolved.

The Court (Third Division) approved the OCA recommendation.[17]

On July 7, 2000, the NBI, through Deputy Director Sancho K. Chan, Jr., submitted to the OCA its report on the matter[18] with the following findings:

FINDINGS: Comparative examination of the specimens received under the stereocopic microscope, hand lens and with the aid of photographic enlargement reveals significant similarities in habit handwriting characteristics existing between the questioned and the standard sample signatures of Casan Ali Limbona, to wit:

- structural pattern of letter elements —
- Directions of strokes –
- Manner of execution –
- Other identifying details –

CONCLUSION: The questioned and the standard sample signatures Casan Ali L. Limbona WERE WRITTEN by one and the same person.

The NBI findings and conclusion that Judge Limbona himself signed the certificate of candidacy validated the OCA's initial doubts on Judge Limbona's avowals of innocence about his participation in the May 1998 elections and his claim that the signatures appearing on the certificate of candidacy were forged.

The OCA Recommendation and Related Incidents

The OCA recommended that Judge Limbona be found guilty of dishonesty and be dismissed from the service with forfeiture of retirement and other privileges, if any, and be barred from re-employment in the public service, and that he be made to refund all salaries/allowances he received from March 26, 1998

[17] *Rollo*, p. 107.

[18] *Id.* at 123-125.

to November 30, 1998 without prejudice to the filing of an appropriate case in court.

In a related development, the Court (Second Division) issued a Resolution dated June 16, 2003 in A.M. No. SCC-03-08, entitled *Emelyn A. Limbona v. Judge Casan Ali Limbona*, forwarding to the Third Division for consideration under the present case, the charge that the respondent judge continued to perform his functions and to receive his salaries as judge after he had filed a certificate of candidacy in the May 1998 elections.

The Court's Ruling

We find the **OCA's recommendation to be well-founded**. Judge Limbona committed grave offenses which rendered him unfit to continue as a member of the Judiciary. When he was appointed as a judge, he took an oath to uphold the law, yet in filing a certificate of candidacy as a party-list representative in the May 1998 elections without giving up his judicial post, Judge Limbona violated not only the law, but the constitutional mandate that "no officer or employee in the civil service shall engage directly or indirectly, in any electioneering or partisan political campaign."[19]

The NBI investigation on the authenticity of Judge Limbona's signatures on the certificate of candidacy unqualifiedly established that the judge signed the certificate of candidacy for the May 1998 elections, thus negating his claim that his signatures were forged. The filing of a certificate of candidacy is a partisan political activity as the candidate thereby offers himself to the electorate for an elective post.

For his continued performance of his judicial duties despite his candidacy for a political post, Judge Limbona is guilty of grave misconduct in office. While we cannot interfere with Judge Limbona's political aspirations, we cannot allow him to pursue his political goals while still on the bench. We cannot

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[19] CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, Article IX B (4); see also Book V, Section 55.

likewise allow him to deceive the Judiciary. We find relevant the OCA's observation on this point:

> "x x x Judge Limbona's concealment of his direct participation in the 1998 elections while remaining in the judiciary's payroll and his vain attempt to mislead the Court by his claim of forgery, are patent acts of dishonesty rendering him unfit to remain in the judiciary."

In light of the gravity of Judge Limbona's infractions, we find OCA's recommended penalty of dismissal to be appropriate. Under the Rules of Court, dishonesty and gross misconduct are punishable by dismissal.[20] We also approve the OCA recommendation that Judge Limbona be made to refund the salaries/allowances he received from March 26, 1998 to November 30, 1998. With this ruling, we likewise resolve the charge against Judge Limbona — referred to us by the Court's Second Division in its June 16, 2003 Resolution in A.M. No. SCC-03-08 — that the respondent judge continued to perform judicial functions and to receive his salaries as judge after he had filed a certificate of candidacy in the May 1998 elections.

WHEREFORE, premises considered, Judge Casan Ali L. Limbona is declared *GUILTY OF GROSS MISCONDUCT* and *DISHONESTY* and is declared *DISMISSED* from the service effective March 26, 1998, the date of the filing of his certificate of candidacy, with *FORFEITURE* of all accrued retirement benefits and other monetary entitlements, if any. He is *BARRED* from re-employment in the government, including government-owned and controlled corporation. Judge Limbona is *DIRECTED TO REFUND* the salaries, allowances and other benefits he received from March 26, 1998 to November 30, 1998, within 10 days from the finality of this Decision.

This Decision is without prejudice to appropriate criminal and civil cases that may be filed against Judge Limbona for the acts he committed. Let a copy of this Decision be served on the Ombudsman for whatever action it may deem appropriate.

SO ORDERED.

[20] Rule 140, Sections 2 and 3.

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

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

Mendoza, J., on leave.

EN BANC

[A.M. No. MTJ-08-1727. March 22, 2011]
(Formerly A.M. OCA I.P.I. No. 03-1465-MTJ)

MILAGROS VILLACERAN and OMAR T. MIRANDA, *complainants, vs.* **Judge MAXWEL S. ROSETE and Process Server EUGENIO TAGUBA, Municipal Trial Court in Cities, Branch 2, Santiago City, Isabela,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; IMPORTANCE OF PROPER DECORUM, EMPHASIZED. — Court personnel, from the lowliest employee, are involved in the dispensation of justice; parties seeking redress from the courts for grievances look upon court personnel, irrespective of rank or position, as part of the Judiciary. In performing their duties and responsibilities, these court personnel serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's trust and confidence in this institution. Therefore, they are expected to act and behave in a manner that should uphold the honor and dignity of the Judiciary, if only to maintain the people's confidence in the Judiciary.

2. ID.; ID.; CODE OF CONDUCT OF COURT PERSONNEL; PROHIBITION AGAINST SOLICITING OR ACCEPTING ANY GIFT. — Section 2, Canon I of the Code of Conduct for Court Personnel mandates that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions." Section 2(e), Canon III, on the other hand, mandates that "[c]ourt personnel shall not x x x [s]olicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties." The acts addressed are strictly prohibited to avoid the perception that court personnel can be influenced to act for or against a party or person in exchange for favors.

3. ID.; ID.; COURT EMPLOYEES; COLLECTING OR RECEIVING MONEY FROM LITIGANT IS GRAVE MISCONDUCT IN OFFICE WARRANTING DISMISSAL FROM SERVICE. — Respondent Taguba's act of collecting or receiving money from a litigant constitutes grave misconduct in office. Grave misconduct is a grave offense that carries the extreme penalty of dismissal from the service even on a first offense, pursuant to Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. Dismissal carries with it the forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service.

4. ID.; ID.; ID.; ID.; RETIREMENT BENEFITS SUBJECT TO FORFEITURE WHEN DISMISSAL FROM SERVICE CANNOT BE IMPOSED. — At any rate, the penalty of dismissal can no longer be imposed because on August 6, 2007, the Court approved respondent Taguba's application for disability retirement under Republic Act No. 8291, effective September 1, 2006. In lieu of dismissal, we believe it appropriate – given the gravity of respondent Taguba's offense – that the disability retirement benefits still due him be declared forfeited. By Resolution of this Court, the release of these benefits was withheld pending the final resolution of this case and the other cases pending against respondent Taguba.

APPEARANCES OF COUNSEL

Emerito M. Agcaoili for complainants.
Abraham Sable for Eugenio Taguba.

D E C I S I O N

PER CURIAM:

Before the Court is an administrative complaint[1] for violation of Republic Act No. 3019[2] filed, on August 12, 2003, by complainants Milagros Villaceran and Omar T. Miranda against respondents Presiding Judge Maxwel S. Rosete[3] and Process Server Eugenio Taguba of the Municipal Trial Court in Cities (*MTCC*), Branch 2, Santiago City, Isabela.

The Factual Antecedents

The antecedent facts, gathered from the records, are summarized below.

Complainant Villaceran and her husband Jose Villaceran were the accused in Criminal Case Nos. 1-4210 and 1-4211,[4] for violation of *Batas Pambansa Blg*. 22,[5] with the MTCC, Santiago City, Isabela. Judge Ruben R. Plata of Branch 1 initially heard the case, but upon his inhibition, the cases were re-raffled to Branch 2 of the same court presided over by the respondent Judge.[6]

In her affidavit dated July 25, 2003, complainant Villaceran alleged that her lawyer, Atty. Edmar Cabucana, assured her

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

[2] Otherwise known as the Anti-Graft and Corrupt Practices Act.

[3] On April 8, 2008, the Court *en banc*, in A.M. No. MTJ-08-1702, dismissed Judge Rosete from the service with forfeiture of all benefits, except accrued leave credits, with prejudice to reinstatement or appointment to any public office, for Dishonesty and Gross Misconduct.

[4] Referred to as Criminal Case Nos. 4781 and 4782 in the MTCC joint decision dated July 30, 2002; *rollo,* p. 40.

[5] Otherwise known as the Bouncing Checks Law.

[6] *Rollo,* p. 3.

that the change of judge was advantageous to them because the respondent Judge was easier to talk to, was an associate in their law firm, and was his brother's schoolmate. After their presentation of evidence, Atty. Cabucana told her to produce ₱25,000.00 for the respondent Judge. Respondent Taguba subsequently asked about the money and informed her that the respondent Judge had drafted a decision acquitting them. After the promulgation of the decision on August 1, 2002, Atty. Cabucana asked her to produce another ₱25,000.00, supposedly the balance of the ₱50,000.00 promised to the respondent Judge in exchange for the favorable decision. Her husband advised her to ask for a receipt for the additional ₱25,000.00. On the same day, she instructed complainant Miranda (their driver) to deliver the ₱25,000.00 to the office of Atty. Cabucana, and to demand a receipt therefor. Complainant Miranda subsequently returned with a provisional receipt[7] duly signed by respondent Taguba.[8]

In a separate affidavit also dated July 25, 2003, complainant Miranda corroborated complainant Villaceran's material allegations.[9]

In his comment dated November 3, 2003, the respondent Judge denied that he was a partner or an associate in the Cabucana law office; that he talked to anyone about the Villacerans' cases; or that he received, directly or indirectly, any amount from the Villacerans during the pendency or after the termination of their cases with him. He claimed that he decided cases based on the merits and the evidence presented at the trial. The Villacerans fabricated the administrative case against him out of spite after he found them civilly liable despite their acquittal in the criminal cases.[10]

For his part, respondent Taguba, in an affidavit dated October 16, 2003, admitted having received ₱25,000.00, but insisted

[7] *Id.* at 9.

[8] *Id.* at 3-5.

[9] *Id.* at 6-8.

[10] *Id.* at 33-39.

that it was not in exchange for the respondent Judge's favorable decision. He explained that the ₱25,000.00 represented a personal loan he obtained from complainant Villaceran.[11]

The Administrative Investigation

The Court referred[12] the administrative case to three judges in Isabela for investigation, but, at complainant Villaceran's instance,[13] they successively inhibited themselves.[14]

The Court subsequently referred[15] the case to Judge Henedino P. Eduarte, Regional Trial Court (*RTC*), Branch 20, Cauayan City, Isabela, who conducted hearings on the case until he retired on May 14, 2006.[16]

The Court later referred[17] the case to Judge Raul V. Babaran, RTC, Branch 19, Cauayan City, Isabela, but the latter inhibited himself since the respondent Judge was his fraternity brother.[18]

The Court then designated Judge Menrado V. Corpuz (*Investigating Judge*), RTC, Branch 38, Maddela, Quirino, to continue the investigation.[19]

Report of the Investigating Judge

In his report and recommendation dated January 21, 2008,[20] the Investigating Judge recommended that the respondent Judge be exonerated from the charge against him for insufficiency of evidence. He noted that complainant Villaceran had no personal

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[11] *Id.* at 62.

[12] *Id.* at 70, 113 and 143.

[13] *Id.* at 79-80, 126 and 149-150.

[14] *Id.* at 81, 127-128 and 160.

[15] *Id.* at 166.

[16] *Id.* at 242.

[17] *Id.* at 244.

[18] *Id.* at 247.

[19] *Id.* at 253.

[20] *Id.* at 428-434.

knowledge of the corrupt practice attributed to the respondent Judge. The Investigating Judge also noted that the affidavits of Atty. Cabucana, dated October 14, 2003, and respondent Taguba, dated October 16, 2003 disputed complainant Villaceran's allegation of corruption against the respondent Judge.[21]

As to respondent Taguba, the Investigating Judge recommended that he be held guilty of corruption and be dismissed from the service. He noted that the charge against respondent Taguba was uncontroverted; he failed to prove his innocence and to clear his name, despite numerous opportunities to do so.[22]

The Court referred the Investigating Judge's Report to the Office of the Court Administrator (*OCA*) for evaluation, report and recommendation.[23]

The OCA Memorandum

In a memorandum dated April 10, 2008, the OCA agreed with the findings and recommendations of the Investigating Judge. It noted that the complainants failed to substantiate the alleged corrupt practice of the respondent Judge since complainant Villaceran admitted that she and her husband never talked to the respondent Judge during the pendency of their cases, nor did they give him any money or token in connection with the criminal cases filed against them.[24]

As to respondent Taguba, the OCA noted that he admitted that he received ₱25,000.00 from complainant Villaceran, through the latter's driver, complainant Miranda; he clearly acted on his own without the intervention of the respondent Judge. It found that respondent Taguba violated Canon 1 of the Code of Conduct for Court Personnel. This Canon provides that court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.[25]

[21] *Id.* at 406-412.

[22] *Ibid.*

[23] *Id.* at 443.

[24] *Id.* at 444-446.

[25] *Id.* at 446.

Thus, the OCA recommended that: (a) the administrative complaint be re-docketed as a regular administrative matter; (b) the complaint against the respondent Judge be dismissed for insufficiency of evidence; and, (c) respondent Taguba be held guilty of corruption and be dismissed from the service.[26]

In a Resolution dated December 10, 2008, the Court re-docketed the complaint as an administrative matter and dismissed the complaint against the respondent Judge. With respect to the complaint against respondent Taguba, the Court required the parties to manifest whether they were willing to submit the case for resolution based on the pleadings and the records.[27]

Respondent Taguba submitted the case for resolution on March 16, 2009.[28] Complainants Villaceran and Miranda failed to comply with the Court's directive.[29]

Our Ruling

After considering the OCA memorandum and the entire records, we find the OCA memorandum to be substantially supported by the evidence on record, and by applicable law and jurisprudence. We, therefore, adopt the findings and recommendations of the OCA memorandum, subject to the modifications indicated below.

Court personnel, from the lowliest employee, are involved in the dispensation of justice; parties seeking redress from the courts for grievances look upon court personnel, irrespective of rank or position, as part of the Judiciary.[30] In performing their duties and responsibilities, these court personnel serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary

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[26] *Ibid.*

[27] *Id.* at 448.

[28] *Id.* at 452.

[29] *Id.* at 448, note on the bottom right-hand corner of the December 10, 2008 resolution.

[30] 3rd Whereas Clause, Code of Conduct for Court Personnel.

and the people's trust and confidence in this institution.[31] Therefore, they are expected to act and behave in a manner that should uphold the honor and dignity of the Judiciary, if only to maintain the people's confidence in the Judiciary.

This expectation is enforced, among others, by Section 2, Canon I of the Code of Conduct for Court Personnel which mandates that "[c]ourt personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions." Section 2(e), Canon III, on the other hand, mandates that "[c]ourt personnel shall not x x x [s]olicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties." The acts addressed are strictly prohibited to avoid the perception that court personnel can be influenced to act for or against a party or person in exchange for favors.[32]

In the present case, respondent Taguba clearly violated the above norms of conduct as the complainants' allegations against him stood completely uncontroverted. Respondent Taguba's proffered explanation that the ₱25,000.00 was a personal loan from complainant Villaceran strains belief; it is a lame attempt to exculpate himself from administrative liability. It is extremely difficult to believe that for a personal loan, respondent Taguba would arrange to meet complainant Villaceran at her lawyer's office. What rather appears, given the prevailing facts of this case, is that respondent Taguba extracted money from complainant Villaceran for his personal gain, in exchange for the favorable treatment that he was perceived to be capable of delivering because he was a court employee.

Respondent Taguba's act of collecting or receiving money from a litigant constitutes grave misconduct in office. Grave

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[31] 4th Whereas Clause, Code of Conduct for Court Personnel.

[32] *In re: Improper Solicitation of Court Employees – Rolando H. Hernandez, Executive Assistant I, Legal Office, Office of the Administrator*, A.M. Nos. 2008-12-SC & P-08-2510, April 24, 2009, 586 SCRA 325.

misconduct is a grave offense that carries the extreme penalty of dismissal from the service even on a first offense, pursuant to Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.[33] Dismissal carries with it the forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service.[34]

We note that this is not the first administrative infraction of respondent Taguba. In 2003, he was suspended for one (1) month for simple misconduct.[35] In 2005, he was suspended for six (6) months for conduct prejudicial to the best interest of the service.[36] In 2008, he was fined ₱2,000.00 for simple misconduct.[37]

At any rate, the penalty of dismissal can no longer be imposed because on August 6, 2007, the Court approved respondent Taguba's application for disability retirement[38] under Republic Act No. 8291,[39] effective September 1, 2006.[40] In lieu of dismissal, we believe it appropriate – given the gravity of respondent Taguba's offense – that the disability retirement benefits still due him be declared forfeited. By Resolution of

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[33] Section 52. Classification of Offenses.

A. The following are grave offenses with their corresponding penalties:

x x x x x x x x x

3. Grave Misconduct

1st offense – Dismissal

[34] Section 58, Rule IV, Uniform Rules on Administrative Cases in the Civil Service.

[35] *Albano-Madrid v. Apolonio,* A.M. No. P-01-1517, February 7, 2003, 397 SCRA 120.

[36] *Adoma v. Gatcheco,* A.M. No. P-05-1942, January 17, 2005, 448 SCRA 299.

[37] *Lacanilao v. Judge Rosete,* A.M. No. MTJ-08-1702, April 8, 2008, 550 SCRA 542.

[38] He is suffering from "brain tumor (*Oligodendroglioma*), Pulmonary Tuberculosis (PTB), both upper lung lobes"; per verification with the Retirement Division, Office of the Court Administrator, Office of Administrative Services.

[39] Otherwise known as The Government Service Insurance System Act of 1997.

[40] Application for Disability Retirement under Section 16(a) of Republic Act No. 8291 of Mr. Eugenio P. Taguba, Process Server, Municipal Trial

this Court, the release of these benefits was withheld pending the final resolution of this case and the other cases pending against respondent Taguba.[41]

As a final note, the affidavit itself of complainant Villaceran points to the complicity (or at least, the willing participation) of her lawyer Atty. Edmar Cabucana in the corruption that attended her criminal case. This matter, to the Court's mind, deserves attention as his participation in the corruption that attended this case is no less real than the participation of respondent Taguba. For this reason, we believe it proper to refer this case to the Office of the Bar Confidant for its appropriate action.

WHEREFORE, premises considered, the Court finds respondent Eugenio Taguba *GUILTY* of Grave Misconduct. His disability retirement benefits are hereby declared forfeited as penalty for his offense, in lieu of dismissal the Court can no longer impose. He is likewise barred from re-employment in any branch or instrumentality of government, including government-owned or controlled corporations.

The matter of Atty. Edmar Cabucana's possible complicity or willing participation in an illegality affecting the Court, is referred to the Office of the Bar Confidant for its consideration and appropriate action, with the directive to report back to this Court on this matter within 30 days from receipt of this Decision.

SO ORDERED.

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

Mendoza, J., on leave.

Court in Cities (MTCC), Branch 2, Santiago City, Isabela, A.M. No. 12713-Ret.; per verification with the Retirement Division, Office of the Court Administrator, Office of Administrative Services.

[41] OCA IPI No. 01-1008-MTJ, OCA IPI No. 03-1465-MTJ, A.M. No. P-04-1771, OMB-L-C-03-0774-F, and OMB-L-C-05-04650-E (per the August 6, 2007 Resolution in A.M. No. 12713-Ret.).

EN BANC

[G.R. No. 166471. March 22, 2011]

TAWANG MULTI-PURPOSE COOPERATIVE, *petitioner, vs.* **LA TRINIDAD WATER DISTRICT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; THAT NO FRANCHISE FOR THE OPERATION OF PUBLIC UTILITY SHALL BE EXCLUSIVE IN CHARACTER; INDIRECTLY VIOLATED UNDER SECTION 47 OF PD 198 CREATING EXCLUSIVE FRANCHISE FOR THE OPERATION OF WATER SERVICE IN A DISTRICT. — What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory. x x x The President, Congress and the Court cannot create directly franchises for the operation of a public utility that are exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly prohibit the creation of franchises that are exclusive in character. x x x When the law is clear, there is nothing for the courts to do but to apply it x x x the way it is worded. x x x Thus, the President, Congress and the Court cannot create indirectly franchises that are exclusive in character by allowing the Board of Directors (BOD) of a water district and the Local Water Utilities Administration (LWUA) to create franchises that are exclusive in character. x x x Section 47 [of PD No. 198] states that, "No franchise shall be granted to any other person or agency x x x **unless and except to the extent that the board of directors consents thereto** x x x **subject to review by the Administration**." Section 47 creates a glaring exception to the absolute prohibition in the Constitution. Clearly, it is patently unconstitutional. Section 47 gives the BOD and the LWUA the authority to make an exception to the absolute prohibition in the Constitution. In short, the BOD and the LWUA are given the discretion to create franchises that are exclusive in character. The BOD and the LWUA are not even legislative

bodies. The BOD is not a regulatory body but simply a management board of a water district. Indeed, neither the BOD nor the LWUA can be granted the power to create any exception to the absolute prohibition in the Constitution, a power that Congress itself cannot exercise. x x x The effect of Section 47 violates the Constitution, thus, it is void.

2. ID.; ID.; ID.; ID.; IN CASE OF CONFLICT BETWEEN THE CONSTITUTION AND A STATUTE, THE CONSTITUTION ALWAYS PREVAILS. — In case of conflict between the Constitution and a statute, the Constitution always prevails because the Constitution is the basic law to which all other laws must conform to. The duty of the Court is to uphold the Constitution and to declare void all laws that do not conform to it. In *Social Justice Society v. Dangerous Drugs Board*, the Court held that, "It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution."

3. ID.; ID.; POLICE POWER; DOES NOT INCLUDE THE POWER TO VIOLATE THE CONSTITUTION. — Police power does not include the power to violate the Constitution. Police power is the plenary power vested in Congress to make laws **not repugnant** to the Constitution. This rule is basic. In *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, the Court held that, "Police power is the plenary power vested in the legislature to make, ordain, and establish wholesome and reasonable laws, statutes and ordinances, **not repugnant to the Constitution**."

4. ID.; ID.; JUDICIARY; DUTY TO DEFEND AND UPHOLD THE CONSTITUTION. — In *Strategic Alliance Development Corporation v. Radstock Securities Limited*, the Court held that, "This Court must perform its duty to defend and uphold the Constitution." In *Bengzon*, the Court held that, "The Constitution expressly confers on the judiciary the power to maintain inviolate what it decrees."

ABAD*, J., concurring opinion:*

POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; POWER OF REVIEW DOES NOT PERMIT THE COURT TO

DECLARE CONSTITUTIONAL A LAW PREVIOUSLY RULED AS UNCONSTITUTIONAL. — Paragraph 2, Article 7 of the New Civil Code provides that "when the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern." Since the Court, exercising its Constitutional power of judicial review, has declared Section 47 of P.D. 198 void and unconstitutional, such section ceased to become law from the beginning. The Supreme Court's power of review does not permit it to rewrite P.D. 198 in a subsequent case and breathe life to its dead provisions. Only Congress can. Besides, such course of action is unwise. The Court will be establishing a doctrine whereby people and the other branches of government will not need to treat the Court's declaration of nullity of law too seriously. They can claim an excuse for continuing to enforce such law since even the Court concedes that it can in another case change its mind regarding its nullity. I fully subscribe to the majority opinion, penned by Justice Antonio T. Carpio that there exists no justification for abandoning the Court's previous ruling on the matter.

BRION*, J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; THAT NO FRANCHISE FOR THE OPERATION OF PUBLIC UTILITY SHALL BE EXCLUSIVE IN CHARACTER; NOT VIOLATED BY SECTION 47 OF PD 198 WHICH REQUIRES THE CONSENT OF LOCAL WATER DISTRICT'S BOARD OF DIRECTORS BEFORE ANOTHER FRANCHISE WITHIN THE DISTRICT IS GRANTED. — The majority insists that Section 47 of P.D. 198 *indirectly* grants an exclusive franchise in favor of local water districts. In their reading, the law "allows the board of directors of a water district and the Local Water Utilities Administrator (LWUA) to create franchises that are exclusive in character." I disagree, as the majority opinion does not at all specify and is unclear on how any franchise can be indirectly exclusive. What the law allows is merely the regulation of the *grant of subsequent franchises* so that the government – through government-owned and controlled corporations – can protect itself and the general public it serves in the operation of public utilities. An exclusive franchise, in its plainest meaning, signifies that no other entity, apart from the

grantee, could be given a franchise. Section 47 of P.D. No. 198, by its clear terms, does not provide for an exclusive franchise in stating that: Sec. 47. *Exclusive Franchise* – No franchise shall be granted to any other person or agency for domestic, industrial, or commercial water service within the district or any portion thereof **unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration**. ***Despite its title, the assailed provision does not absolutely prohibit other franchises for water service from being granted to other persons or agencies. It merely requires the consent of the local water district's Board of Directors before another franchise within the district is granted.*** x x x To say that a legal provision is unconstitutional simply because it enables a grantee, a government instrumentality, to determine the soundness of granting a subsequent franchise in its area is contrary to the government's inherent right to exercise police power in regulating public utilities for the protection of the public and the utilities themselves.

2. ID.; ID.; ID.; ID.; ID.; SAFEGUARDS AGAINST ABUSE OF AUTHORITY BY THE WATER DISTRICTS' BOARD OF DIRECTORS AND THE LWUA. — The refusal of the local water district or the LWUA to consent to other franchises would carry with it the legal presumption that public officers regularly perform their official functions. If, on the other hand, the officers, directors or trustees of the local water districts and the LWUA act arbitrarily and unjustifiably refuse their consent to an applicant of a franchise, they may be held liable for their actions. The local water districts and the LWUA are government-owned and controlled corporations (GOCCs). The directors of the local water districts and the trustees of the LWUA are government employees subject to civil service laws and anti-graft laws. Moreover, the LWUA is attached to the Office of the President which has the authority to review its acts. Should these acts in the Executive Department constitute grave abuse of discretion, the Courts may strike them down under its broad powers of review. Any abuse of authority that the local water districts may be feared to commit is balanced by the control that the government exerts in their creation and operations. The government creates and organizes local water districts in accordance with a specific law, P.D. No. 198. *There is no private*

party involved as a co-owner in the creation of local water districts. Prior to the local water districts' creation, the national or local government directly owns and controls all their assets. The government's control over them is further asserted through their board of directors, who are appointed by the municipal or city mayor or by the provincial governor. The directors are not co-owners of the local water district but, like other water district personnel, are government employees subject to civil service laws and anti-graft laws. *Under this set-up, the control that exists over the grant of franchises, which originally belongs to the State, simply remained and is maintained with the State acting through the local government units and the government-owned and controlled corporations under them.*

3. ID.; ID.; ID.; ID.; ID.; PUBLIC POLICY BEHIND SECTION 47 OF PD 198. — Without a clear showing that the Constitution was violated by the enactment of Section 47 of P.D. 198, the Court cannot invalidate it without infringing on government policy, especially when Congress had not seen fit to repeal the law and when the law appears to be based on sound public policy. P.D. No. 198 requires an applicant to first obtain the consent of the local water district and the LWUA for important reasons. *First*, it aims to protect the government's investment. *Second*, it avoids a situation where ruinous competition could compromise the supply of public utilities in poor and remote areas.

4. ID.; ID.; ID.; ID.; ID.; REVISITING THE CASE OF *METROPOLITAN CEBU WATER DISTRICT V. MARGARITA A. ADALA* WITH REVERSAL, PROPER. — Based on the foregoing discussion, I submit that there exists ample justification to reverse our ruling in *Metropolitan Cebu Water District* (*MCWD*) *v. Margarita A. Adala*. As in the present *ponencia*, there was no discussion in *Metro Cebu Water District* of what constitutes a grant of an exclusive franchise as opposed to a valid regulation of franchises by the government or how the questioned provision violated the constitutional mandate against exclusive franchises. ***It was simply presumed that there was a violation.*** It is worth noting **that the Court disposed of the issue in just one paragraph** that stated: Since Section 47 of P.D. 198, which vests an "*exclusive franchise*" upon public utilities, is clearly repugnant to Article XIV, Section 5 of the 1973 Constitution, it is unconstitutional and

> may not, therefore, be relied upon by [MCWD] in support of its opposition against [Adala's] application for CPC and the subsequent grant thereof by the NWRB. In a legal system that rests heavily on precedents, this manner of reasoning would not only be unfair to the parties; it would also confuse and bewilder the legal community and the general public regarding the interpretation of an important constitutional provision. This kind of approach should always be subject to our continuing review and examination.

APPEARANCES OF COUNSEL

Abansi and Felipe for petitioner.
Peter C. Fianza for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court. The petition[1] challenges the 1 October 2004 Judgment[2] and 6 November 2004 Order[3] of the Regional Trial Court (RTC), Judicial Region 1, Branch 62, La Trinidad, Benguet, in Civil Case No. 03-CV-1878.

The Facts

Tawang Multi-Purpose Cooperative (TMPC) is a cooperative, registered with the Cooperative Development Authority, and organized to provide domestic water services in Barangay Tawang, La Trinidad, Benguet.

La Trinidad Water District (LTWD) is a local water utility created under Presidential Decree (PD) No. 198, as amended. It is authorized to supply water for domestic, industrial and

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[1] *Rollo*, pp. 9-19.

[2] *Id.* at 22-40. Penned by Judge Fernando P. Cabato.

[3] *Id.* at 41-44.

commercial purposes within the municipality of La Trinidad, Benguet.

On 9 October 2000, TMPC filed with the National Water Resources Board (NWRB) an application for a certificate of public convenience (CPC) to operate and maintain a waterworks system in Barangay Tawang. LTWD opposed TMPC's application. LTWD claimed that, under Section 47 of PD No. 198, as amended, its franchise is exclusive. Section 47 states that:

> Sec. 47. *Exclusive Franchise*. No franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration.

In its Resolution No. 04-0702 dated 23 July 2002, the NWRB approved TMPC's application for a CPC. In its 15 August 2002 Decision,[4] the NWRB held that LTWD's franchise cannot be exclusive since exclusive franchises are unconstitutional and found that TMPC is legally and financially qualified to operate and maintain a waterworks system. NWRB stated that:

> With respect to LTWD's opposition, this Board observes that:
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> 1. It is a substantial reproduction of its opposition to the application for water permits previously filed by this same CPC applicant, under WUC No. 98-17 and 98-62 which was decided upon by this Board on April 27, 2000. The issues being raised by Oppositor had been already resolved when this Board said in pertinent portions of its decision:
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> "The authority granted to LTWD by virtue of P.D. 198 is not Exclusive. While Barangay Tawang is within their territorial jurisdiction, this does not mean that all others are excluded in engaging in such service, especially, if the district is not capable of supplying water within the area. This Board has time and again ruled that the "Exclusive Franchise" provision under P.D. 198 has misled most water districts to believe that it likewise extends to be [sic] the waters

[4] *Id.* at 45-49.

within their territorial boundaries. Such ideological adherence collides head on with the constitutional provision that "ALL WATERS AND NATURAL RESOURCES BELONG TO THE STATE." (Sec. 2, Art. XII) and that "No franchise, certificate or authorization for the operation of public [sic] shall be exclusive in character".

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All the foregoing premises all considered, and finding that Applicant is legally and financially qualified to operate and maintain a waterworks system; that the said operation shall redound to the benefit of the homeowners/residents of the subdivision, thereby, promoting public service in a proper and suitable manner, the instant application for a Certificate of Public Convenience is, hereby, GRANTED.[5]

LTWD filed a motion for reconsideration. In its 18 November 2002 Resolution,[6] the NWRB denied the motion.

LTWD appealed to the RTC.

The RTC's Ruling

In its 1 October 2004 Judgment, the RTC set aside the NWRB's 23 July 2002 Resolution and 15 August 2002 Decision and cancelled TMPC's CPC. The RTC held that Section 47 is valid. The RTC stated that:

The Constitution uses the term "exclusive in character." To give effect to this provision, a reasonable, practical and logical interpretation should be adopted without disregard to the ultimate purpose of the Constitution. What is this ultimate purpose? It is for the state, through its authorized agencies or instrumentalities, to be able to keep and maintain ultimate control and supervision over the operation of public utilities. Essential part of this control and supervision is the authority to grant a franchise for the operation of a public utility to any person or entity, and to amend or repeal an existing franchise to serve the requirements of public interest. Thus, what is repugnant to the Constitution is a grant of franchise "exclusive in character" so as to preclude the State itself from granting

[5] *Id.* at 48-49.

[6] *Id.* at 50-52.

a franchise to any other person or entity than the present grantee when public interest so requires. In other words, no franchise of whatever nature can preclude the State, through its duly authorized agencies or instrumentalities, from granting franchise to any person or entity, or to repeal or amend a franchise already granted. Consequently, the Constitution does not necessarily prohibit a franchise that is exclusive on its face, meaning, that the grantee shall be allowed to exercise this present right or privilege to the exclusion of all others. Nonetheless, the grantee cannot set up its exclusive franchise against the ultimate authority of the State.[7]

TMPC filed a motion for reconsideration. In its 6 November 2004 Order, the RTC denied the motion. Hence, the present petition.

Issue

TMPC raises as issue that the RTC erred in holding that Section 47 of PD No. 198, as amended, is valid.

The Court's Ruling

The petition is meritorious.

What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.

In *Alvarez v. PICOP Resources, Inc.*,[8] the Court held that, "What one cannot do directly, he cannot do indirectly."[9] In *Akbayan Citizens Action Party v. Aquino*,[10] quoting *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,[11] the Court held that, "This Court has long and consistently adhered to the

[7] *Id.* at 35.

[8] G.R. Nos. 162243, 164516 and 171875, 3 December 2009, 606 SCRA 444.

[9] *Id.* at 485.

[10] G.R. No. 170516, 16 July 2008, 558 SCRA 468.

[11] 450 Phil. 744 (2003).

legal maxim that those that cannot be done directly cannot be done indirectly."[12] In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[13] the Court held that, "No one is allowed to do indirectly what he is prohibited to do directly."[14]

The President, Congress and the Court cannot create directly franchises for the operation of a public utility that are exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly prohibit the creation of franchises that are exclusive in character. Section 8, Article XIII of the 1935 Constitution states that:

> No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, **nor shall such franchise**, certificate or authorization **be exclusive in character** or for a longer period than fifty years. (Emphasis supplied)

Section 5, Article XIV of the 1973 Constitution states that:

> No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, **nor shall such franchise**, certificate or authorization **be exclusive in character** or for a longer period than fifty years. (Emphasis supplied)

Section 11, Article XII of the 1987 Constitution states that:

> No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens, **nor shall such franchise**, certificate or

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[12] *Supra* note 10 at 540.

[13] 487 Phil. 531 (2004).

[14] *Id.* at 579.

authorization **be exclusive in character** or for a longer period than fifty years. (Emphasis supplied)

Plain words do not require explanation. The 1935, 1973 and 1987 Constitutions are clear — franchises for the operation of a public utility cannot be exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly state that, **"nor shall such franchise x x x be exclusive in character."** There is no exception.

When the law is clear, there is nothing for the courts to do but to apply it. The duty of the Court is to apply the law the way it is worded. In *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61*,[15] the Court held that:

> Basic is the rule of statutory construction that **when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language**. As we have held in the case of *Quijano v. Development Bank of the Philippines*:
>
> > "x x x We cannot see any room for interpretation or construction in the clear and unambiguous language of the above-quoted provision of law. **This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms**, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. **Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed**."[16] (Emphasis supplied)

In *Republic of the Philippines v. Express Telecommunications Co., Inc.*,[17] the Court held that, "The Constitution is quite

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[15] G.R. No. 113926, 23 October 1996, 263 SCRA 483.

[16] *Id.* at 488.

[17] 424 Phil. 372 (2002).

emphatic that the operation of a public utility shall not be exclusive."[18] In *Pilipino Telephone Corporation v. National Telecommunications Commission*,[19] the Court held that, "Neither Congress nor the NTC can grant an exclusive 'franchise, certificate, or any other form of authorization' to operate a public utility."[20] In *National Power Corp. v. Court of Appeals*,[21] the Court held that, "Exclusivity of any public franchise has not been favored by this Court such that in most, if not all, grants by the government to private corporations, the interpretation of rights, privileges or franchises is taken against the grantee."[22] In *Radio Communications of the Philippines, Inc. v. National Telecommunications Commission*,[23] the Court held that, "The Constitution mandates that a franchise cannot be exclusive in nature."[24]

Indeed, the President, Congress and the Court cannot create directly franchises that are exclusive in character. What the President, Congress and the Court cannot legally do directly they cannot do indirectly. Thus, the President, Congress and the Court cannot create indirectly franchises that are exclusive in character by allowing the Board of Directors (BOD) of a water district and the Local Water Utilities Administration (LWUA) to create franchises that are exclusive in character.

In PD No. 198, as amended, former President Ferdinand E. Marcos (President Marcos) created indirectly franchises that are exclusive in character by allowing the BOD of LTWD and the LWUA to create directly franchises that are exclusive in character. Section 47 of PD No. 198, as amended, allows the BOD and the LWUA to create directly franchises that are exclusive in character. Section 47 states:

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[18] *Id.* at 400.

[19] 457 Phil. 101 (2003).

[20] *Id.* at 117.

[21] 345 Phil. 9 (1997).

[22] *Id.* at 34.

[23] 234 Phil. 443 (1987).

[24] *Id.* at 451.

Sec. 47. *Exclusive Franchise*. **No franchise shall be granted to any other person or agency** for domestic, industrial or commercial water service within the district or any portion thereof **unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration**. (Emphasis supplied)

In case of conflict between the Constitution and a statute, the Constitution always prevails because the Constitution is the basic law to which all other laws must conform to. The duty of the Court is to uphold the Constitution and to declare void all laws that do not conform to it.

In *Social Justice Society v. Dangerous Drugs Board*,[25] the Court held that, "It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution."[26] In *Sabio v. Gordon*,[27] the Court held that, "the Constitution is the highest law of the land. It is the 'basic and paramount law to which all other laws must conform.'"[28] In *Atty. Macalintal v. Commission on Elections*,[29] the Court held that, "The Constitution is the fundamental and paramount law of the nation to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. Laws that do not conform to the Constitution shall be stricken down for being unconstitutional."[30] In *Manila Prince Hotel v. Government Service Insurance System*,[31] the Court held that:

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[25] G.R. Nos. 157870, 158633 and 161658, 3 November 2008, 570 SCRA 410.

[26] *Id.* at 422-423.

[27] G.R. No. 174340, 17 October 2006, 504 SCRA 704.

[28] *Id.* at 731.

[29] 453 Phil. 586 (2003).

[30] *Id.* at 631.

[31] 335 Phil. 82 (1997).

Under the doctrine of constitutional supremacy, **if a law** or contract **violates any norm of the constitution that law** or contract **whether promulgated by the legislative or by the executive branch** or entered into by private persons for private purposes **is null and void and without any force and effect**. Thus, **since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute** and contract."[32] (Emphasis supplied)

To reiterate, the 1935, 1973 and 1987 Constitutions expressly prohibit the creation of franchises that are exclusive in character. They uniformly command that "**nor shall such franchise** x x x **be exclusive in character**." This constitutional prohibition is absolute and accepts no exception. On the other hand, PD No. 198, as amended, allows the BOD of LTWD and LWUA to create franchises that are exclusive in character. Section 47 states that, "No franchise shall be granted to any other person or agency x x x **unless and except to the extent that the board of directors consents thereto** x x x **subject to review by the Administration**." Section 47 creates a glaring exception to the absolute prohibition in the Constitution. Clearly, it is patently unconstitutional.

Section 47 gives the BOD and the LWUA the authority to make an exception to the absolute prohibition in the Constitution. In short, the BOD and the LWUA are given the discretion to create franchises that are exclusive in character. The BOD and the LWUA are not even legislative bodies. The BOD is not a regulatory body but simply a management board of a water district. Indeed, neither the BOD nor the LWUA can be granted the power to create any exception to the absolute prohibition in the Constitution, a power that Congress itself cannot exercise.

In *Metropolitan Cebu Water District v. Adala*,[33] the Court categorically declared Section 47 void. The Court held that:

Nonetheless, while the prohibition in **Section 47 of P.D. 198** applies to the issuance of CPCs for the reasons discussed above, the same

[32] *Id.* at 101.

[33] G.R. No. 168914, 4 July 2007, 526 SCRA 465.

provision **must be deemed void *ab initio* for being irreconcilable with Article XIV, Section 5 of the 1973 Constitution** which was ratified on January 17, 1973 — the constitution in force when P.D. 198 was issued on May 25, 1973. Thus, **Section 5 of Art. XIV of the 1973 Constitution reads**:

> "SECTION 5. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, **nor shall such franchise**, certificate, or authorization **be exclusive in character** or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Batasang Pambansa when the public interest so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital thereof."

This provision has been substantially reproduced in Article XII, Section 11 of the 1987 Constitution, including the prohibition against exclusive franchises.

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Since Section 47 of P.D. 198, which vests an "exclusive franchise" upon public utilities, is clearly repugnant to Article XIV, Section 5 of the 1973 Constitution, it is unconstitutional and may not, therefore, be relied upon by petitioner in support of its opposition against respondent's application for CPC and the subsequent grant thereof by the NWRB.

WHEREFORE, **Section 47 of P.D. 198 is unconstitutional**.[34] (Emphasis supplied)

The dissenting opinion declares Section 47 valid and constitutional. In effect, the dissenting opinion holds that (1) President Marcos can create indirectly franchises that are exclusive in character; (2) the BOD can create directly franchises that

[34] *Id.* at 479-482.

are exclusive in character; (3) the LWUA can create directly franchises that are exclusive in character; and (4) the Court should allow the creation of franchises that are exclusive in character.

Stated differently, the dissenting opinion holds that (1) President Marcos can violate indirectly the Constitution; (2) the BOD can violate directly the Constitution; (3) the LWUA can violate directly the Constitution; and (4) the Court should allow the violation of the Constitution.

The dissenting opinion states that the BOD and the LWUA can create franchises that are exclusive in character "based on reasonable and legitimate grounds," and such creation "should not be construed as a violation of the constitutional mandate on the non-exclusivity of a franchise" because it "merely refers to regulation" which is part of "the government's inherent right to exercise police power in regulating public utilities" and that their violation of the Constitution "would carry with it the legal presumption that public officers regularly perform their official functions." The dissenting opinion states that:

> To begin with, a government agency's refusal to grant a franchise to another entity, based on reasonable and legitimate grounds, should not be construed as a violation of the constitutional mandate on the non-exclusivity of a franchise; this merely refers to regulation, which the Constitution does not prohibit. To say that a legal provision is unconstitutional simply because it enables a government instrumentality to determine the propriety of granting a franchise is contrary to the government's inherent right to exercise police power in regulating public utilities for the protection of the public and the utilities themselves. The refusal of the local water district or the LWUA to consent to the grant of other franchises would carry with it the legal presumption that public officers regularly perform their official functions.

The dissenting opinion states two "reasonable and legitimate grounds" for the creation of exclusive franchise: (1) protection of "the government's investment,"[35] and (2) avoidance of "a

[35] *Id*. at 13.

situation where ruinous competition could compromise the supply of public utilities in poor and remote areas."[36]

There is no "reasonable and legitimate" ground to violate the Constitution. The Constitution should never be violated by anyone. Right or wrong, the President, Congress, the Court, the BOD and the LWUA have no choice but to follow the Constitution. Any act, however noble its intentions, is void if it violates the Constitution. This rule is basic.

In *Social Justice Society*,[37] the Court held that, "In the discharge of their defined functions, **the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed**."[38] In *Sabio*,[39] the Court held that, "the Constitution is the highest law of the land. **It is 'the basic and paramount law to which** x x x **all persons, including the highest officials of the land, must defer. No act shall be valid, however noble its intentions, if it conflicts with the Constitution**.'"[40] In *Bengzon v. Drilon*,[41] the Court held that, "the three branches of government must discharge their respective functions within the limits of authority conferred by the Constitution."[42] In *Mutuc v. Commission on Elections*,[43] the Court held that, "**The three departments of government in the discharge of the functions with which it is** [sic] **entrusted have no choice but to yield obedience to** [**the Constitution's**] **commands. Whatever limits it imposes must be observed**."[44]

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[36] *Id*.

[37] *Supra* note 25.

[38] *Id.* at 423.

[39] *Supra* note 27.

[40] *Id.* at 731.

[41] G.R. No. 103524, 15 April 1992, 208 SCRA 133.

[42] *Id.* at 142.

[43] 146 Phil. 798 (1970).

[44] *Id.* at 806.

Police power does not include the power to violate the Constitution. Police power is the plenary power vested in Congress to make laws **not repugnant** to the Constitution. This rule is basic.

In *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*,[45] the Court held that, "Police power is the plenary power vested in the legislature to make, ordain, and establish wholesome and reasonable laws, statutes and ordinances, **not repugnant to the Constitution**."[46] In *Carlos Superdrug Corp. v. Department of Social Welfare and Development*,[47] the Court held that, police power "is 'the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances x x x **not repugnant to the constitution**.'"[48] In *Metropolitan Manila Development Authority v. Garin*,[49] the Court held that, "police power, as an inherent attribute of sovereignty, is the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances x x x **not repugnant to the Constitution**."[50]

There is no question that the effect of Section 47 is the creation of franchises that are exclusive in character. Section 47 expressly allows the BOD and the LWUA to create franchises that are exclusive in character.

The dissenting opinion explains why the BOD and the LWUA should be allowed to create franchises that are exclusive in character — to protect "the government's investment" and to avoid "a situation where ruinous competition could compromise the supply of public utilities in poor and remote areas." The

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[45] G.R. Nos. 170656 and 170657, 15 August 2007, 530 SCRA 341.

[46] *Id.* at 362.

[47] G.R. No. 166494, 29 June 2007, 526 SCRA 130.

[48] *Id.* at 144.

[49] 496 Phil. 83 (2005).

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

dissenting opinion declares that these are "reasonable and legitimate grounds." The dissenting opinion also states that, "The refusal of the local water district or the LWUA to consent to the grant of other franchises would carry with it the legal presumption that public officers regularly perform their official functions."

When the effect of a law is unconstitutional, it is void. In *Sabio*,[51] the Court held that, "**A statute may be declared unconstitutional because** it is not within the legislative power to enact; or it creates or establishes methods or forms that infringe constitutional principles; or **its** purpose or **effect violates the Constitution** or its basic principles."[52] The effect of Section 47 violates the Constitution, thus, it is void.

In *Strategic Alliance Development Corporation v. Radstock Securities Limited*,[53] the Court held that, "This Court must perform its duty to defend and uphold the Constitution."[54] In *Bengzon*,[55] the Court held that, "The Constitution expressly confers on the judiciary the power to maintain inviolate what it decrees."[56] In *Mutuc*,[57] the Court held that:

> The concept of the Constitution as the fundamental law, setting forth the criterion for the validity of any public act whether proceeding from the highest official or the lowest functionary, is a postulate of our system of government. That is to manifest fealty to the rule of law, with priority accorded to that which occupies the topmost rung in the legal hierarchy. The three departments of government in the discharge of the functions with which it is [sic] entrusted have no choice but to yield obedience to its commands. Whatever limits it imposes must be observed. Congress in the enactment of statutes must ever be on guard lest the restrictions on its authority, whether

[51] *Supra* note 27.

[52] *Id.* at 730.

[53] G.R. Nos. 178158 and 180428, 4 December 2009, 607 SCRA 413.

[54] *Id.* at 528.

[55] *Supra* note 41.

[56] *Id.* at 142.

[57] *Supra* note 43.

substantive or formal, be transcended. The Presidency in the execution of the laws cannot ignore or disregard what it ordains. In its task of applying the law to the facts as found in deciding cases, the judiciary is called upon to maintain inviolate what is decreed by the fundamental law. Even its power of judicial review to pass upon the validity of the acts of the coordinate branches in the course of adjudication is a logical corollary of this basic principle that the Constitution is paramount. It overrides any governmental measure that fails to live up to its mandates. Thereby there is a recognition of its being the supreme law.[58]

Sustaining the RTC's ruling would make a dangerous precedent. It will allow Congress to do indirectly what it cannot do directly. In order to circumvent the constitutional prohibition on franchises that are exclusive in character, all Congress has to do is to create a law allowing the BOD and the LWUA to create franchises that are exclusive in character, as in the present case.

WHEREFORE, we *GRANT* the petition. We *DECLARE* Section 47 of Presidential Decree No. 198 *UNCONSTITUTIONAL*. We *SET ASIDE* the 1 October 2004 Judgment and 6 November 2004 Order of the Regional Trial Court, Judicial Region 1, Branch 62, La Trinidad, Benguet, in Civil Case No. 03-CV-1878 and *REINSTATE* the 23 July 2002 Resolution and 15 August 2002 Decision of the National Water Resources Board.

SO ORDERED.

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

Carpio Morales, J., concurs consistent with her position in Metropolitan Cebu . . . v. Adala.

Abad, J., see concurring opinion.

Leonardo-de Castro, J., join the dissent of Justice Brion.

Brion, J., see dissenting opinion.

Mendoza. J., on official leave.

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[58] *Id.* at 806-807.

CONCURRING OPINION

ABAD, *J.*:

On October 9, 2000 petitioner Tawang Multi-Purpose Cooperative (TMPC), a registered cooperative established by *Barangay* Tawang, La Trinidad residents for the purpose of operating a domestic drinking water service, applied with the National Water Resources Board (the Board) for a Certificate of Public Convenience (CPC) to maintain and operate a waterworks system within its *barangay*.

But respondent La Trinidad Water District (LTWD), a government-owned corporation[1] that supplied water within La Trinidad for domestic, industrial, and commercial purposes, opposed the application. LTWD claimed that its franchise was exclusive in that its charter provides that no separate franchise can be granted within its area of operation without its prior written consent. Still, the Board granted TMPC's application on July 23, 2002, resulting in the issuance of a five-year CPC in its favor.

LTWD contested the grant before the Regional Trial Court (RTC) of La Trinidad which, after hearing, rendered judgment setting aside the Board's decision and canceling the CPC it issued to TMPC. The RTC denied TMPC's motion for reconsideration, prompting the latter to come to this Court on petition for review.

The Court has previously held in *Metropolitan Cebu Water District v. Adala*[2] that Section 47[3] of P.D. 198,[4]

[1] Created pursuant to Presidential Decree (P.D.) 198, also known as the Provincial Water Utilities Act of 1973.

[2] G.R. No. 168914, July 4, 2007, 526 SCRA 465.

[3] Sec. 47. Exclusive Franchise. No franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration.

[4] "Declaring a National Policy Favoring Local Operation and Control of Water Systems; Authorizing the Formation of Local Water Districts and

is unconstitutional for being contrary to Article XIV, Section 5 of the 1973 Constitution and Article XII, Section 11 of the 1987 Constitution. Some in the Court would, however, have its above ruling reexamined based on the view that Section 47 does not actually provide for an exclusive franchise which would violate the Constitution.

The Court's conclusion and ruling in the *Adala* case read:

> **Since Section 47 of P.D. 198, which vests an "exclusive franchise" upon public utilities, is clearly repugnant to Article XIV, Section 5 of the 1973 Constitution, it is unconstitutional and may not, therefore, be relied upon by petitioner in support of its opposition against respondent's application for CPC and the subsequent grant thereof by the NWRB.**
>
> WHEREFORE, **Section 47 of P.D. 198 is unconstitutional.**

Paragraph 2, Article 7 of the New Civil Code provides that "when the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern."

Since the Court, exercising its Constitutional power of judicial review, has declared Section 47 of P.D. 198 void and unconstitutional, such section ceased to become law from the beginning. The Supreme Court's power of review does not permit it to rewrite P.D. 198 in a subsequent case and breathe life to its dead provisions. Only Congress can.

Besides, such course of action is unwise. The Court will be establishing a doctrine whereby people and the other branches of government will not need to treat the Court's declaration of nullity of law too seriously. They can claim an excuse for continuing to enforce such law since even the Court concedes that it can in another case change its mind regarding its nullity.

I fully subscribe to the majority opinion, penned by Justice Antonio T. Carpio that there exists no justification for abandoning

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Providing for the Government and Administration of such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting said Administration such Powers as Are Necessary to Optimize Public Service from Water Utility Operations, and for Other Purposes." This took effect upon its issuance by then President Marcos on May 25, 1973.

the Court's previous ruling on the matter.

I vote to **GRANT** TMPC's petition for review and **SET ASIDE** the decision of the trial court.

DISSENTING OPINION

BRION, *J.*:

I dissent.

Lest this Dissent be misunderstood, I shall clarify at the outset that I do not dispute the majority position that an exclusive franchise is forbidden by the Constitution. The prohibition is in an express words of the Constitution and cannot be disputed.

My misgiving arises from the majority's failure to properly resolve the issue of whether or not Section 47 of P.D. No. 198 embodies a prohibited exclusive franchise. I believe that the Court must carefully examine and analyze the application of the constitutional command to Section 47 and explain the exact legal basis for its conclusion. We must determine what an exclusive franchise really means to avoid overextending the prohibition to unintended areas. In the process, we must determine whether government – instead of the grant of an exclusive franchise – can regulate the grant of subsequent franchises. In the present case, I take the view that the law can so allow in order to efficiently and effectively provide its citizens with the most basic utility.

Respondent La Trinidad Water District (*LTWD*) is a local water utility created under Presidential Decree (*P.D.*) No. 198.[1]

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[1] Entitled "*Declaring a National Policy Favoring Local Operation and Control of Water Systems; Authorizing the Formation of Local Water Districts and Providing for the Government and Administration of such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting said Administration such Powers as are Necessary to Optimize Public Service from Water Utility Operations, and for other Purposes,*" promulgated May 25, 1973, as amended by P.D. No. 1479.

It is a government-owned and controlled corporation[2] authorized by law to supply water for domestic, industrial, and commercial purposes within the Municipality of La Trinidad. On the other hand, the petitioner Tawang Multi-Purpose Cooperative (*TMPC*) is an applicant for a certificate of public convenience (*CPC*) to operate and maintain a waterworks system in Barangay Tawang in the Municipality of La Trinidad.

The RTC ruled that a CPC in favor of TMPC cannot be issued without the latter having applied for the consent of the local water district in accordance with Section 47 of P.D. No. 198. In effect, the RTC ruled that Section 47 does not involve the grant of an exclusive franchise. Thus, the TMPC filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court, questioning the validity of Section 47 of P.D. No. 198, which provides:

> Sec. 47. *Exclusive Franchise* — No franchise shall be granted to any other person or agency for domestic, industrial, or commercial water service within the district or any portion thereof unless and **except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration.**[3] [Emphasis supplied]

The invalidity of exclusive franchises is not in dispute

I reiterate that, contrary to the majority's statements, I do not dispute that both the 1973 and the 1987 Constitutions clearly mandate that no franchise certificate, or any other form of authorization, for the operation of a public utility shall be exclusive in character. I fully support the position that the legislative entity that enacted Section 47 of P.D. 198 (in this case, former President Ferdinand E. Marcos in the exercise of his martial law legislative powers) must comply with Article XIV, Section 5 of the 1973 Constitution[4]

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[2] *Baguio Water District v. Trajano,* G.R. No. 65428, February 20, 1984, 127 SCRA 730.

[3] *Supra* note 1, at 28.

[4] Sec. 5, Art. XIV of the 1973 Constitution provides:

(the Constitution in force when P.D. No. 198 was enacted). This constitutional provision has been carried over to the 1987 Constitution as Article XII, Section 11 and states:

> No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; **nor shall such franchise, certificate, or authorization be exclusive in character** or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

For the majority to characterize the Dissent as an argument for the grant of exclusive franchises by former President Marcos, by the water district's board of directors, by the LWUA, and by this Court would be to misread the Dissent and blur the issues that it raises.[5]

Section 47 of P.D. 198 does not violate Section 5, Article XIV of the 1973 Constitution

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No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, **nor shall such franchise, certificate or authorization be exclusive in character** or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration or repeal in by the Batasang Pambansa when the public interest so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital thereof.

[5] *Ponencia*, p. 11.

The majority insists that Section 47 of P.D. 198 *indirectly* grants an exclusive franchise in favor of local water districts. In their reading, the law "allows the board of directors of a water district and the Local Water Utilities Administrator (LWUA) to create franchises that are exclusive in character."[6] I disagree, as the majority opinion does not at all specify and is unclear on how any franchise can be indirectly exclusive. What the law allows is merely the regulation of the *grant of subsequent franchises* so that the government – through government-owned and controlled corporations – can protect itself and the general public it serves in the operation of public utilities.

An exclusive franchise, in its plainest meaning, signifies that no other entity, apart from the grantee, could be given a franchise. Section 47 of P.D. No. 198, by its clear terms, does not provide for an exclusive franchise in stating that:

> Sec. 47. *Exclusive Franchise* – No franchise shall be granted to any other person or agency for domestic, industrial, or commercial water service within the district or any portion thereof **unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration**.[7]

Despite its title, the assailed provision does not absolutely prohibit other franchises for water service from being granted to other persons or agencies. It merely requires the consent of the local water district's Board of Directors before another franchise within the district is granted. Thus, it is a regulation on the grant of any subsequent franchise where the local water district, as original grantee, may grant or refuse its consent. If it consents, the non-exclusive nature of its franchise becomes only too clear. Should it refuse, its action does not remain unchecked as the franchise applicant may ask the LWUA to review the local water district's refusal. It is thus the LWUA (on the Office of the President in case of further appeal) that grants a subsequent franchise if one will be allowed.

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[6] *Ponencia,* p. 8.

[7] *Supra* note 1.

Under this arrangement, I submit that the prerogative of the local water district's board of directors or the LWUA to give or refuse its consent to the application for a CPC cannot be considered as a constitutional infringement. A government agency's refusal to consent to the grant of a franchise to another entity, based on reasonable and legitimate grounds, should not be construed as a violation of the constitutional mandate on the non-exclusivity of a franchise where the standards for the grant or refusal are clearly spelled out in the law. Effectively, what the law and the State (acting through its own agency or a government-owned or controlled corporation) thereby undertake is merely an act of regulation that the Constitution does not prohibit. To say that a legal provision is unconstitutional simply because it enables a grantee, a government instrumentality, to determine the soundness of granting a subsequent franchise in its area is contrary to the government's inherent right to exercise police power in regulating public utilities for the protection of the public and the utilities themselves.[8]

It should also be noted that even after the Marcos regime, constitutional experts have taken the view that the government can and should take a strong active part in ensuring public access to basic utilities. The deliberations of the Constitutional Commission for the 1987 Constitution (which contains the same provision found in the 1973 Constitution on the non-exclusivity of public utility franchises) regarding monopolies regulated by the state may guide, though not necessarily bind, us:

MR. DAVIDE: If the idea is really to promote the private sector, **may we not provide here that the government can, in no case, practice monopoly except in certain areas**?

MR. VILLEGAS. No, because **in the economic field, there are definitely areas where the State can intervene and can actually get involved in monopolies for the public good.**

MR. DAVIDE. Yes, we have provisions here allowing such a monopoly in times of national emergency.

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[8] *Kilusang Mayo Uno Labor Center v. Garcia, Jr.*, G.R. No. 115381, December 23, 1994, 239 SCRA 386, 412.

MR. VILLEGAS. Not even in emergency; for the continuing welfare of consumers.

MR. MONSOD. May we just make a distinction? As we know, there are natural monopolies or what we call "structural monopolies." Structural monopolies are monopolies not by the nature of their activities, like electric power, for example, but by the nature of the market. There may be instances when the market has not developed to such extent that it will only allow, say, one steel company. Structural monopoly is not by the nature of the business itself. **It is possible under these circumstances that the State may be the appropriate vehicle for such a monopoly.**[9]

If, indeed, the Constitutional Commission in discussing the non-exclusivity clause had accepted the merits of government monopolies, should this Court consider unconstitutional a provision that allows a lesser degree of regulation—*i.e.*, a government agency giving its consent to the application of a CPC with the protection of the viability of the government agency and public good as the standards of its action?

Safeguards against abuse of authority by the water districts' board of directors and the LWUA

The refusal of the local water district or the LWUA to consent to other franchises would carry with it the legal presumption that public officers regularly perform their official functions.[10] If, on the other hand, the officers, directors or trustees of the local water districts and the LWUA act arbitrarily and unjustifiably refuse their consent to an applicant of a franchise, they may be held liable for their actions. The local water districts[11] and the

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[9] Record of the Constitutional Commission, Volume 3, 262-263.

[10] *First United Constructors Corporation v. Poro Point Management Corporation (PPMC)*, G.R. No. 178799, January 19, 2009, 576 SCRA 311, 321; *Gatmaitan v. Gonzales*, G.R. No. 149226, June 26, 2006, 492 SCRA 591, 604; and *PAMECA Wood Treatment Plant, Inc. v. Court of Appeals*, 369 Phil. 544, 555 (1999).

[11] *Davao City Water District v. Civil Service Commission*, G.R. Nos. 95237-38, September 13, 1991, 201 SCRA 593, 602; see also *Feliciano v. Commission on Audit*, 464 Phil. 439, 453-464 (2004).

LWUA[12] are government-owned and controlled corporations (GOCCs). The directors of the local water districts and the trustees of the LWUA are government employees subject to civil service laws and anti-graft laws.[13] Moreover, the LWUA is attached to the Office of the President[14] which has the authority to review its acts. Should these acts in the Executive Department constitute grave abuse of discretion, the Courts may strike them down under its broad powers of review.[15]

Any abuse of authority that the local water districts may be feared to commit is balanced by the control that the government exerts in their creation and operations. The government creates and organizes local water districts in accordance with a specific law, P.D. No. 198.[16] *There is no private party involved as a*

[12] Section 49 of P.D. No. 198.

[13] *Engr. Feliciano v. Commission on Audit*, *supra* note 10, at 462-463.

[14] Section 49 of P.D. No. 198.

[15] CONSTITUTION, Article VII, Section 1.

[16] Francisco, Pepito, "*Provincial Water Utilities Act of 1973*, as amended," 2008 ed., pp. 25-26, citing the LWUA-Water District Primer. The steps to be undertaken for the creation of a duly-organized water districts are as follows:

(1) LWUA conducts preliminary talks and consultation with interested local government entities.

(2) The local government conducts public hearings to arrive at a consensus on whether to form a water district or not.

(3) The local legislative body (*the Sangguniang Bayan/Lungsod or Sangguniang Panlalawigan, as the case may be*) secures nominations for candidates for the water district board of directors from business, civic, professional, education and women sectors of the community concerned.

(4) The Sanggunian secretary collates all nominations and forwards the same to the appointing authority.

(5) The Mayor or Governor appoints the directors.

(6) The local legislative body deliberates and enacts a resolution to form a water district stating therein the names and terms of office of the duly appointed board of directors.

(7) Mayor or Governor approves the resolution, submits the same to LWUA.

(8) LWUA reviews the resolution to determine compliance with Presidential Decree No. 198, as amended (Provincial Water Utilities Act of 1973) and LWUA requirements.

co-owner in the creation of local water districts. Prior to the local water districts' creation, the national or local government directly owns and controls all their assets. The government's control over them is further asserted through their board of directors, who are appointed by the municipal or city mayor or by the provincial governor. The directors are not co-owners of the local water district but, like other water district personnel, are government employees subject to civil service laws and anti-graft laws.[17] *Under this set-up, the control that exists over the grant of franchises, which originally belongs to the State, simply remained and is maintained with the State acting through the local government units and the government-owned and controlled corporations under them.*

Because of the government's extensive financial support to these entities, it is part of the law's policy to scrutinize their expenditures and outlays. Section 20 of P.D. No. 198 states that the local water districts are subject to annual audits performed by independent auditors and conducted by the LWUA.[18] Section 41 of P.D. No. 198 even limits the authority of the board of directors of local water districts in the manner in which it can dispose of their income: (1) as payment for obligations and essential current operating expenses; (2) as a reserve for debt service, and for operations and maintenance to be used during periods of calamities, *force majeure* or unforeseen events; and (3) as a reserve exclusively for the expansion and improvement of their facilities. In this manner, the law ensures that their officers or directors do not profit from local water districts and that the operations thereof would be focused on improving public service. The possibility that the officers would refuse their consent to another franchise applicant for reasons of personal gain is, thus, eliminated.

Public policy behind Section 47 of P.D. No. 198

Without a clear showing that the Constitution was violated by the enactment of Section 47 of P.D. 198, the Court cannot

[17] *Engr. Feliciano v. Commission on Audit*, *supra* note 10, at 462-463.

[18] *Ibid*.

invalidate it without infringing on government policy, especially when Congress had not seen fit to repeal the law and when the law appears to be based on sound public policy. P.D. No. 198 requires an applicant to first obtain the consent of the local water district and the LWUA for important reasons. *First*, it aims to protect the government's investment. *Second*, it avoids a situation where ruinous competition could compromise the supply of public utilities in poor and remote areas.

A first reason the government seeks to prioritize local water districts is the protection of its investments — it pours its scarce financial resources into these water districts. The law primarily establishes the LWUA as a specialized lending institution for the promotion, development and financing of water utilities.[19] Section 73 of P.D. No. 198 also authorizes the LWUA to contract loans and credits, and incur indebtedness with foreign governments or international financial institutions for the accomplishment of its objectives. Moreover, the President of the Philippines is empowered not only to negotiate or contract with foreign governments or international financial institutions on behalf of the LWUA; he or she may also absolutely and unconditionally guarantee, in the name of the Republic of the Philippines, the payment of the loans. In addition, the law provides that the General Appropriations Act shall include an outlay to meet the financial requirements of non-viable local water districts or the special projects of local water districts.[20]

The law also adopts a policy to keep the operations of local water districts economically secure and viable. The "whereas" clauses of the law explain the need to establish local water districts: the lack of water utilities in provincial areas and the poor quality of the water found in some areas. The law sought to solve these problems by encouraging the creation of local water districts that the national government would support through technical advisory services and financing.[21] These local water

[19] Section 50 of P.D. 198.

[20] Sections 76 and 77 of P.D. No. 198.

[21] WHEREAS, domestic water systems and sanitary sewers are two of the most basic and essential elements of local utility system, which, with a

districts are heavily regulated and depend on government support for their subsistence. If a private entity provides stiff competition against a local water district, causes it to close down and, thereafter, chooses to discontinue its business, the problem of finding a replacement water supplier for a poor, remote area will recur. Not only does the re-organization of a local water district drain limited public funds; the residents of these far-flung areas would have to endure the absence of water supply during the considerable time it would take to find an alternative water supply.

Thus, as a matter of foresight, Section 47 of P.D. No. 198 and other provisions within the law aim to avert the negative effects of competition on the financial stability of local water districts. These sections work hand in hand with Section 47 of P.D. No. 198. **Section 31 of P.D. No. 198**, which is very similar to Section 47 of P.D. No. 198, directly prohibits persons from selling or disposing water for public purposes within the service area of the local water district:

> Section 31. Protection of Waters and Facilities of District. – A district shall have the right to:
>
> x x x x x x x x x
>
> (c) Prohibit any person, firm or corporation from vending selling, or otherwise disposing of water for public purposes within the service area of the district where district facilities are available to provide such service, or fix terms and conditions by permit for such sale or disposition of water.

Thus, Section 47 of P.D. No. 198 provides that before a person or entity is allowed to provide water services where the local

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few exceptions, do not exist in provincial areas in the Philippines;

WHEREAS, existing domestic water utilities are not meeting the needs of the communities they serve; water quality is unsatisfactory; pressure is inadequate; and reliability of service is poor; in fact, many persons receive no piped water service whatsoever;

x x x x x x x x x

WHEREAS, local water utilities should be locally-controlled and managed, as well as have support on the national level in the area of technical advisory services and financing[.]

water district's facilities are already available, one must ask for the consent of the board of directors of the local water district, whose action on the matter may be reviewed by the LWUA.

Even after a CPC is granted and the entity becomes qualified to provide water services, **Section 39 of P.D. No. 198** still allows a local water district to charge other entities producing water for commercial or industrial uses with a production assessment, to compensate for financial reverses brought about by the operations of the water provider; failure to pay this assessment results in liability for damages and/or the issuance of an order of injunction.

> Section 39. Production Assessment.—In the event the board of a district finds, after notice and hearing, that production of ground water by other entities within the district for commercial or industrial uses i[s] injuring or reducing the district's financial condition, the board may adopt and levy a ground water production assessment to compensate for such loss. In connection therewith, the district may require necessary reports by the operator of any commercial or industrial well. Failure to pay said assessment shall constitute an invasion of the waters of the district and shall entitle this district to an injunction and damages pursuant to Section [31] of this Title.

From these, it can be seen that Article XIV, Section 5 of the 1973 Constitution and P.D. No. 198 share the same purpose of seeking to ensure regular water supply to the whole country, particularly to the remote areas. By requiring a prospective franchise applicant to obtain the consent of the local water district or the LWUA, the law does not thereby grant it an exclusive franchise; it simply gives the water district the opportunity to have a say on the entry of a competitor whose operations can adversely affect its viability and the service it gives to consumers. *This is far from an exclusive franchise that allows no other entity, apart from the only grantee, to have a franchise.* Section 47 of P.D. No. 198 does not bar other franchise applicants; it merely regulates the grant of subsequent franchises to ensure that the market is not too saturated to the point of adversely affecting existing government water suppliers, all with the end of ensuring the public the water supply it needs.

Revisiting Metropolitan Cebu Water District (MCWD) v. Margarita A. Adala

Based on the foregoing discussion, I submit that there exists ample justification to reverse our ruling in *Metropolitan Cebu Water District* (*MCWD*) *v. Margarita A. Adala*.[22] As in the present *ponencia*, there was no discussion in *Metro Cebu Water District* of what constitutes a grant of an exclusive franchise as opposed to a valid regulation of franchises by the government or how the questioned provision violated the constitutional mandate against exclusive franchises. ***It was simply presumed that there was a violation.*** It is worth noting **that the Court disposed of the issue in just one paragraph** that stated:

> Since Section 47 of P.D. 198, which vests an "*exclusive franchise*" upon public utilities, is clearly repugnant to Article XIV, Section 5 of the 1973 Constitution, it is unconstitutional and may not, therefore, be relied upon by [MCWD] in support of its opposition against [Adala's] application for CPC and the subsequent grant thereof by the NWRB.[23]

In a legal system that rests heavily on precedents, this manner of reasoning would not only be unfair to the parties; it would also confuse and bewilder the legal community and the general public regarding the interpretation of an important constitutional provision. This kind of approach should always be subject to our continuing review and examination.

In reversing a previous ruling issued by the Court, we are not unmindful of the legal maxim *stare decisis et non quieta movere* (literally, to stand by the decision and disturb not what is settled). This maxim is a very convenient practice that the conclusion reached in one case can be applied to subsequent cases where the facts are substantially the same, even though the parties are different. However, the doctrine is not set in stone; the Court may wisely set it aside upon a showing that

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[22] G.R. No. 168914, July 4, 2007, 526 SCRA 465.

[23] *Ibid*.

circumstances attendant in a particular case override the benefits brought about by *stare decisis*.[24]

In our Resolution in *de Castro v. Judicial and Bar Council*,[25] we explained why *stare decisis* is not considered inflexible with respect to this Court:

> The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification. The adherence to precedents is strict and rigid in a common-law setting like the United Kingdom, where judges make law as binding as an Act of Parliament. But ours is not a common law system; hence judicial precedents are not always strictly and rigidly followed. A judicial pronouncement in an earlier decision may be followed as a precedent in subsequent case only when its reasoning and justification are relevant, and the Court in the latter case accepts such reasoning and justification to be applicable in the case. The application of the precedent is for the sake of convenience and stability.
>
> For the intervenors to insist that *Valenzuela* ought not to be disobeyed, or abandoned, or reversed, and that its wisdom should guide, if not control, the Court in this case is, therefore, devoid of rationality and foundation. They seem to conveniently forget that **the Constitution itself recognizes the innate authority of the Court *en banc* to modify or reverse a doctrine or principle of law laid down in any decision rendered *en banc* or in division**.

Thus, this Court had seen it fit to overturn or abandon the rulings set in its previous decisions. In *Philippine Guardians Brotherhood, Inc. v. Commission on Elections*,[26] *we reversed our earlier ruling in Philippine Mines Safety Environment*

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[24] *Philippine Guardians Brotherhood, Inc. v. Commission on Elections*, G.R. No. 190529, April 29, 2010.

[25] G.R. Nos. 191002, 191032, 191057, 191149, 191342 and 191420, and A.M. No. 10-2-5-SC, April 20, 2010, citing *Limketkai Sons Milling, Inc. v. Court of Appeals*, G.R. No. 118509, September 5, 1996, 261 SCRA 464, 467.

[26] *Supra* note 23.

Association v. Commission on Elections.[27] *And in De Castro,*[28] *we re-examined our decision in In re appointments of Hon. Valenzuela and Hon. Vallarta*[29] *although the re-examination failed for lack of the necessary supporting votes.*

During the deliberations of the present case, a respected colleague hesitated at the idea of overturning a former ruling that has declared a law unconstitutional on the ground that this Court, once it declares a law null, cannot breathe life into its already dead provisions. It raises fears that the people and the other branches of government will not treat the Court's declarations of nullity of laws seriously.[30]

We cannot hold that the Court is empowered to reverse its established doctrines but is powerless to review laws that have been declared void; no justification simply exists for such distinctions. In reversing its decisions, this Court's primary consideration is to arrive at a just and judicious ruling and avoiding the ill effects of a previous ruling. It is by pursuing such objectives that this Court earns the respect of the people and the other branches of government. Precisely, this Court has taken a contrary view in *Kilosbayan, Inc. v. Morato,*[31] when it noted that the US Supreme Court declared the Legal Tender Acts void in *Hepburn v. Griswold*,[32] but subsequently declared these statutes as valid in *Knox v. Lee.*[33] We lauded the American jurists who voted for the validity of the Legal Tender Acts, which had been formerly declared void, and noted that a change of composition in the Court could prove the means of undoing an erroneous decision.[34]

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[27] G.R. No. 177548, Resolution dated May 10, 2007.

[28] *Supra* note 24.

[29] 358 Phil. 896 (1998).

[30] Justice Abad's Dissenting Opinion, p. 2.

[31] 320 Phil. 171, 181-182 (1995).

[32] 8 Wall. 603 (1869).

[33] 12 Wall. 457 (1871).

[34] *Supra* note 30. The Court declared that:

In all, Section 47 of P.D. No. 198 does not violate the constitutional proscription against exclusive franchises as other persons and entities may still obtain franchises for water utilities within the district upon the consent of the local water district or upon a favorable finding by the LWUA, which, in turn, is accountable to the Office of the President. By granting this privilege to local water districts, the law does not seek to favor private interests as these districts are GOCCs whose profits are exclusively for public use and whose expenditures the law subjects to the strictest scrutiny. The restrictions applied to other private persons or entities are intended to protect the government's considerable investment in local water districts and to promote its policy of prioritizing local water districts as a means of providing water utilities throughout the country. *The protectionist approach that the law has taken towards local water districts is not per se illegal as the Constitution does not promote a total deregulation in the operation of public utilities and is a proper exercise by the government of its police power.*

Thus, the TMPC should have first sought the consent of LTWD's Board of Directors, as directed under Section 47 of P.D. No. 198. Had the Board of Directors refused to give its consent, this action may still be reviewed by the LWUA, the entity most able to determine the financial and technical capacity of LTWD in order to decide whether another water service provider is needed in the municipality. Accordingly, it is my view that TMPC's CPC is invalid as it was issued without notice to the LTWD's Board of Directors.

History has vindicated the overruling of the Hepburn case by the new majority. The *Legal Tender Cases* proved to be the Court's means of salvation from what Chief Justice Hughes later described as one of the Court's "self-inflicted wounds."

EN BANC

[G.R. No. 190529. March 22, 2011]

PHILIPPINE GUARDIANS BROTHERHOOD, INC., represented by its Secretary-General GEORGE "FGBF GEORGE" DULDULAO, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; COMMISSION ON ELECTIONS; INDIRECT CONTEMPT OF COURT; COMMITTED FOR FAILURE TO COMPLY WITH THE *STATUS QUO* ORDER. — The incidents arose from our *Status Quo* Order directing the Comelec to restore and maintain the PGBI to its situation prior to the issuance of Comelec Resolution No. 8679, pending the resolution of the petition for *certiorari* that PGBI filed to challenge this Comelec Resolution. Our *Status Quo* Order, in short, directly ordered the Comelec to include PGBI in the list of candidates under the party-list system in the May 10, 2010 elections pending the final determination of PGBI's qualification to be voted upon as a party-list organization. x x x Based on the antecedent facts, **it cannot be disputed that the Comelec did not comply with our *Status Quo* Order**; it simply pleaded *insurmountable and tremendous operational constraints and costs implications* as reasons for its avoidance of our Order. It essentially posited that compliance with our *Status Quo* Order was rendered impossible by the automation of the May 10, 2010 elections. However, we find this explanation unacceptable, given the Comelec's own self-imposed deadline of February 4, 2010 for the correction of errors and omissions, prior to printing, of the published list of participating party-list groups and organizations in the May 10, 2010 elections. The Comelec deadline could only mean that the Comelec had determined that changes in the official ballot could still be made at any time prior to the deadline. In the context of the cases then pending involving the registration of party-list organizations, the deadline was a clear signal from the Comelec that the cases would have to be resolved before the deadline; otherwise, the Comelec could not be held liable for their non-inclusion. We fully read and

respected the Comelec's signal, fully aware that we have to balance the interests the Comelec has to protect, with PGBI's intent to be voted as a party-list organization. Thus, on February 2, 2010, we issued our *Status Quo* Order after a preliminary but judicious evaluation of the merits of PGBI's motion for reconsideration, only to receive the Comelec's response on February 3, 2010 manifesting that it could no longer change the ballots because of the nature of an automated election. In an exercise as important as an election, the Comelec cannot make a declaration and impose a deadline, and, thereafter, expect everyone to accept its excuses when it backtracks on its announced declaration. The Comelec knew very well that there were still cases pending for judicial determination that could have been decided before the deadline was set. x x x ***The Comelec Chair and Members are guilty of indirect contempt of Court.***

2. ID.; ID.; ID.; ID.; PENALTY OF REPRIMAND, IMPOSED. — Section 7, Rule 71 of the Rules of Court provides the penalty for indirect contempt. x x x Evidently, the Rule does not provide that reprimand may be imposed on one found guilty of indirect contempt. However, we have in recent cases imposed a penalty less than what is provided under the Rules **if the circumstances merit such**. x x x In the present case, special circumstances exist which call for our leniency and compel us to impose the penalty of severe reprimand instead of imprisonment and/or fine under Section 7, of Rule 71 of the Rules of Court as we have ruled in *Ang Bagong Bayani-OFW Labor Party*. We emphasize that although automation is a special circumstance that should be considered in the present incidental matter, however, its effect on the Comelec's non-compliance is merely to **mitigate, not to totally exculpate,** the Comelec from liability for its failure to comply with our *Status Quo* Order. In other words, even if we grant that automation might have posed some difficulty in including a new party in the party-list listing, the Comelec still failed to prove to our satisfaction that the PGBI's inclusion was technically impossible and could not have been done even if the Comelec had wanted to. Thus, at the most, we can give the Comelec the benefit of the doubt to the extent of recognizing its excuse as a mitigating factor.

3. ID.; ID.; ID.; ID.; ID.; NOT RENDERED MOOT AND ACADEMIC WITH THE DEPARTURE OF COMELEC OFFICIALS FROM

GOVERNMENT SERVICE. — At this juncture, we take judicial notice of Comelec Chairperson Jose A.R. Melo's resignation effective January 15, 2011 and Commissioners Nicodemo T. Ferrer and Gregorio Y. Larrazabal's retirement on February 2, 2011. We hasten to clarify that their departure from government service, however, do not render moot and academic their liability for indirect contempt, since "contempt of court applies to all persons, whether in or out of government."

ABAD, *J., dissenting opinion:*

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; INDIRECT CONTEMPT OF COURT; NOT PRESENT WHEN THE COMELEC FAILED TO RESTORE PGBI's NAME IN THE FINAL LIST OF PARTY-LIST CANDIDATES AS THE SAME WILL INCUR SERIOUS SET BACK IN THE PREPARATIONS FOR THE ELECTRONIC ELECTIONS AND INCUR HUGE COSTS. — [T]he issue is whether or not it was still in fact feasible for the COMELEC to restore PGBI's name on the final list of party-list candidates without seriously setting back its preparations for the electronic elections and incurring huge costs. x x x The majority simply rejects the COMELEC explanation, stating that this is belied by the fact that the COMELEC published the final list of candidates on January 30, with notice that any concerned candidate could still call its Law Department to correct "misspelling, omission or other errors" in the published list of candidates within five days of such publication, with the last day falling on February 4. But, clearly, the opportunity provided above was only for "errors" extant on the final list like misspelling, omission or other errors. It may be assumed that such errors do not affect the main configuration of the final list of candidates, thus, permitting last minute corrections. Here, the insertion of a new name in the fixed, electronically arranged or configured, list of names, said the COMELEC, was not possible without undoing many things that depended on such configuration. x x x PGBI has presented no expert opinion that putting its name in the electronic configuration of the list at such late date was technically feasible without throwing the whole COMELEC timetable into disarray. x x x Also, PGBI could not rely on the notice since the permitted correction was reserved only to "concerned candidates."

Having been officially disqualified from running for elections, PGBI cannot be regarded as a concerned candidate covered by the announcement.

2. ID.; ID.; ID.; ID.; NOT PRESENT AS THE COMELEC WAS NOT INDIFFERENT TO THE COURT'S *STATUS QUO* ORDER, HAVING PROMPTLY FILED AN EXTREMELY URGENT MOTION FOR RECONSIDERATION TO LIFT THE ORDER. — The COMELEC was not indifferent to the Court's *status quo* order that was served on it late afternoon of February 2, 2010. On the next day February 3, the COMELEC promptly filed an "extremely urgent" motion for reconsideration and to lift status quo order, pleading for understanding and explaining why complying with the order was operationally and financially impossible. COMELEC acted responsibly and with appropriate deference to the Court.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

BRION, *J.*:

We resolve in this Resolution all the pending incidents in this case, specifically:

(a) the contempt charge[1] against the respondent Commission on Elections (*Comelec*) for its alleged disobedience to this Court's Status Quo Order[2] dated February 2, 2010; and

(b) the issue of whether the petitioner, Philippine Guardians Brotherhood, Inc. (*PGBI*), should be declared to have participated in the party-list elections of May 10, 2010, in light of the Comelec's failure to obey our *Status Quo* Order and our subsequent Resolution[3] granting PGBI's petition to annul its

[1] *Rollo*, p. 186.

[2] *Id.* at 83.

[3] Dated April 29, 2010, *id.* at 161-172.

delisting from the roster of accredited party-list groups or organizations.[4]

FACTUAL ANTECEDENTS

These incidents arose from our *Status Quo* Order directing the Comelec to restore and maintain the PGBI to its situation prior to the issuance of Comelec Resolution No. 8679, pending the resolution of the petition for *certiorari* that PGBI filed to challenge this Comelec Resolution. Our *Status Quo* Order, in short, directly ordered the Comelec to include PGBI in the list of candidates under the party-list system in the May 10, 2010 elections pending the final determination of PGBI's qualification to be voted upon as a party-list organization.

We issued the *Status Quo* Order on February 2, 2010. It was served on the Comelec on the same date,[5] *i.e.*, within the period that the Comelec itself gave for the correction of any error or omission in its published official list of party-list participants in the May 10, 2010 elections. The Comelec itself declared:

> On January 30, 2010 at 3:00 o'clock (sic) in the afternoon, pursuant to Comelec Minute Resolution No. 10-0042 dated January 19, 2010, the Information Technology Department of Comelec published a list of candidates with the instruction that "**(s)hould there be any misspelling, omission or other errors, the concerned candidate must call the Law Department's attention within five (5) days from this publication for the purpose of correction**. Thereafter, Comelec shall be relieved from liability"[6] and the final list shall then be prepared for printing.[7]

The Comelec responded the next day (February 3, 2010) to our *Status Quo* Order by asking for its reconsideration and/or recall, based on the following grounds/arguments:

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[4] PGBI Manifestation Cum Comment dated July 19, 2010, *id.* at 201-207.

[5] *Id.* at 88-B.

[6] *Id.* at 192-193. Significantly, the Comelec conveniently omitted the underlined phrases in its Compliance.

[7] See Annex "A" of PGBI's Manifestation (of Continuing Objection to Comelec's Defiance of the Order of the Honorable Supreme Court), *id.* at 181.

1) There will be insurmountable and tremendous operational constraints and costs implications in complying with the status quo order.

2) To add the petitioner's party/acronym in the database of the List of Candidates for sectoral party/organization or coalition participating in the party-list system of representation will have a critical impact on the already tight and overstretched election timelines of the Commission. Copy of the Revised Automation Implementation Calendar is hereto attached as Annex "1".

3) Printing of the ballots is an intricate and complicated process. It is not a simple process of encoding data in a computer and printing the ballots using a printer attached to the computer.

4) Prior to the printing of the ballots, several technical and mechanical preparatory activities have to be done which include among other things:

a. Generation and back-up of database containing the candidates[']information;

b. Configuration of Precinct Count Optical Scan (PCOS) machines and Consolidation and Canvassing System (CCS);

c. Creation and design of one thousand six hundred seventy-four (1,674) ballot templates;

d. Production of the ballot templates;

e. Verification of each and every ballot template to ensure that it contains the accurate names of candidates for the national positions and acronyms of sectoral party/organization or coalition participating in the party-list system of representation and their corresponding assignments to the correct districts, provinces, municipalities/cities, and clustered precincts. Since the ballots are precinct-specific to ensure the security of the voting and counting, this means verification of seventy six thousand three hundred forty (76,340) variations of the one thousand six hundred seventy-four (1,674) ballot templates; and

f. Placing several security markings in the ballots.

5) In fact, the installation of the Election Management System, which is used to generate the PCOS machines configuration and ballot templates production have already been in place as of January 25, 2010.

6) To comply with the status quo order will not only affect the printing of the ballots but also have serious implications on other activities of the Commission, such as:

a. The setting of configuration of the PCOS and CCS machines;

b. Testing of PCOS machines in their actual configuration with the ballots;

c. Deployment of PCOS and CCS machines and transmission equipments;

d. Checking/testing, demos, and sealing of the PCOS and CCS machines; and

e. Shipment of the ballots to all parts of the country.

7) Due to several re-scheduling of the timelines of the Commission, Smartmatic-TIM cautioned that it is extremely risky to change the database containing the candidates' information at this point in time. Any change in the database and other preparatory activities would mean:

a. Twelve thousand (12,000) PCOS might not be configured and dispatched to the field on time; and

b. Four million eight hundred thousand (4,800,000) ballots might not be printed before the deadline and shipped out on time.

Even if the Commission will resort to contingency measures to configure and ship out the twelve thousand (12,000) PCOS machines on time, the printing of the ballots cannot be completed before May 10, 2010. This means that four million eight hundred thousand (4,800,000) voters might not be able to vote due to lack of ballots, thus disenfranchising them.

x x x x x x x x x

10) Hence, the Commission fervently requests the understanding and forbearance of the Honorable Court which is the bastion of our justice system, protector of the democratic processes and our last resort in ensuring a clean, peaceful, orderly and credible May 10, 2010 elections, to take a second look on the status quo order issued on February 2, 2010.[8]

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[8] Extremely Urgent Motion for Reconsideration and To Lift *Status Quo* Order filed by the Comelec on February 3, 2010, *id.* at 90-94.

In its Comment to Comelec's Motion for Reconsideration with Manifestation,[9] PGBI essentially alleged that the Comelec posited seemingly misleading and innocuous reasons in seeking reconsideration. Among other arguments, it claimed that the Comelec had been less than candid in its submissions: *first*, compliance with the *Status Quo* Order at that point would not disrupt the timetable or entail additional and costly expenditures given that the Comelec had yet to terminate all related activities and preparations for the May 10, 2010 elections;[10] *second*, the Comelec had yet to promulgate, on February 11, 2010, its decisions on several pending disqualification cases and recently accredited six other party-list organizations to add to the more than 154 previously accredited sectoral parties and/or organizations. PGBI also manifested that the ballot template that the Comelec published in its website on February 8, 2010 did not include the name or acronym of PGBI, in contravention of the *Status Quo* Order; and *third*, the Comelec's blatant disregard of the *Status Quo* Order reeked of official arrogance, given this Court's determination that it should be included in the ballot pending resolution of PGBI's petition for *certiorari*.[11]

In our Resolution of April 29, 2010,[12] we granted PGBI's petition and, accordingly, annulled the assailed Comelec Resolutions in SPP No. 09-004 (MP)[13] which delisted PGBI from the roster of duly registered national, regional and sectoral parties, organizations or coalitions. We declared at the same time that PGBI is qualified to be voted upon as a party-list group or organization in the May 10, 2010 elections. **Despite the *Status Quo* Order and the Resolution, however, PGBI was never included in the ballot as one of the accredited**

[9] *Id.* at 112-126.

[10] *Id.* at 113.

[11] *Id.* at 115.

[12] *Id.* at 161-172.

[13] Regarding PGBI's motion for reconsideration of the Comelec Resolution (No. 8679 dated October 13, 2009) deleting it from the roster of accredited party-list groups or organizations.

party-list groups or organizations eligible for election under the party-list system. Hence, PGBI was never voted upon as a party-list candidate in the May 10, 2010 elections.

Before the elections or on April 28, 2010, PGBI filed a Manifestation (of Continuing Objection to Comelec's Defiance of the Order of the Honorable Supreme Court).[14] It claimed that Comelec Resolution No. 8815, dated April 5, 2007, excluded the nominees of PGBI in the official list of party-list/coalitions/ sectoral organizations participating in the May 10, 2010 Automated National and Local Elections. Acting on this Manifestation, we required the Comelec, *via* our Resolution of May 7, 2010, to explain and show cause, within a non-extendible period of ten (10) days from receipt of the Resolution, why it should not be held in CONTEMPT of COURT for its alleged defiance of our *Status Quo* Order.[15]

In its Compliance[16] to the Show Cause Order (submitted on May 21, 2010), the Comelec reiterated the arguments it raised in its Extreme Urgent Motion for Reconsideration and To Lift *Status Quo* Order. Specifically, it reiterated that there were *"insurmountable and tremendous operational constraints and cost implications in complying with the* status quo *order," which order (referring to the* Status Quo *Order) is tantamount to technical, legal, and physical impossibility for respondents to comply*.[17] The Comelec asked the Court to note the explanation and accept it as sufficient compliance with the Show Cause Order.

Required to comment on the Comelec's Compliance, PGBI filed a Manifestation Cum Comment,[18] asserting that a careful reading of the Compliance reveals that the Comelec simply

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[14] *Rollo*, pp. 177-183.

[15] *Id.* at 186-187.

[16] *Id.* at 194.

[17] See the Grounds for the Comelec's Motion for Reconsideration quoted at pp. 3-4 of this Resolution.

[18] *Rollo*, pp. 201-211.

deftly skirted and, ultimately, never obeyed the *Status Quo* Order, and thus wantonly and contumaciously disregarded the same. The PGBI additionally manifested that *via* a letter to the Comelec on May 4, 2010, it raised the following concerns:

> The preceding pronouncement [referring to the Court's Resolution granting PGBI's petition] may appear to be inconsequential and a pyrrhic victory in view of the error and omission to include the name of the petitioner in the ballots for the scheduled elections. **How this Honorable Commission will find the means and/or alternative to comply with and/or implement the directive in said decision is a matter left to its judgment and discretion.**
>
> Be that as it may, it is the petitioner's considered view that a definitive ruling, *including the grant of its Motion for Reconsideration in SPP No. 09-004 (MP)*, be expressly made in order that the limitation prescribed in Section 6(8) of R.A. No. 7941, replicated in COMELEC Resolution No. 2847, promulgated on June 25, 1996, will not apply to herein petitioner for purposes of the May 2013 elections.
>
> While the implementation of the dispositions in the said Resolution has become a physical impossibility, **it is petitioner's respectful submittal that it should not be penalized for not being able to participate in the coming May 10, 2010 party-list election.** [parenthetical note at 1st paragraph supplied; underscoring in the original].

Based on its apprehension that it might end up twice in jeopardy of not being able to participate in the party-list elections of 2013 in view of Section 6(8) of Republic Act (R.A.) No. 7941, PGBI requested that the matter of its participation in the May 2013 party-list elections be given a categorical ruling.[19]

In its Reply,[20] the Comelec asserted that a discussion on PGBI's eligibility for the 2013 elections – *i.e.*, whether its declared eligibility for the 2010 elections and its eventual inability to participate thereto should be considered as a failure to participate in the last two (2) elections, as defined in R.A. No. 7941 – is

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[19] *Id*.

[20] *Id.* at 213-219.

purely academic, and is purely an advisory opinion that this Court has no jurisdiction to grant. Judicial power, the Comelec claimed, is limited to the determination and resolution of actual cases and controversies involving existing conflicts that are appropriate or ripe for judicial determination; it does not extend to hypothetical, conjectural or anticipatory questions. It claimed additionally that as the specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall, PGBI's question is a matter within its competence and primary jurisdiction to decide once it becomes ripe for adjudication.

OUR RULING

After due consideration of the attendant facts and the law, we find the Comelec guilty of indirect contempt of this Court.

The Comelec Chair and Members are guilty of indirect contempt of Court

We explained in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*[21] the Court's contempt power as follows:

> The power to punish contempt is inherent in all courts, because it is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, orders and mandates of the courts; and, consequently, to the due administration of justice.
>
> Under our Rules of Court, contempt is classified into direct and indirect. Direct contempt, which may be summary, is committed "in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so."
>
> Indirect contempt, on the other hand, is not committed in the presence of the court and can be punished only after notice and

[21] *En banc* Resolution in G.R. No. 147589 & G.R. No. 147613 (*Bayan Muna v. Commission on Elections, et al.*), February 18, 2003.

hearing. Disobedience or resistance to a lawful writ, process, order or judgment of a court or injunction granted by a court or judge constitutes indirect contempt. We quote Section 3, Rule 71 of the Rules of Court, enumerating the acts punishable as indirect contempt, as follows:

> "SEC. 3. Indirect contempt to be punished after charge and hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:
>
> (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
>
> (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
>
> (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;
>
> (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
>
> (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
>
> (f) Failure to obey a subpoena duly served;
>
> (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.
>
> But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings."

Based on the recited antecedent facts, **it cannot be disputed that the Comelec did not comply with our *Status Quo* Order**; it simply pleaded *insurmountable and tremendous operational constraints and costs implications* as reasons for its avoidance of our Order. It essentially posited that compliance with our *Status Quo* Order was rendered impossible by the automation of the May 10, 2010 elections.

However, we find this explanation unacceptable, given the Comelec's own self-imposed deadline of February 4, 2010 for the correction of errors and omissions, prior to printing, of the published list of participating party-list groups and organizations in the May 10, 2010 elections.

The Comelec deadline could only mean that the Comelec had determined that changes in the official ballot could still be made at any time prior to the deadline. In the context of the cases then pending involving the registration of party-list organizations, the deadline was a clear signal from the Comelec that the cases would have to be resolved before the deadline; otherwise, the Comelec could not be held liable for their non-inclusion.

We fully read and respected the Comelec's signal, fully aware that we have to balance the interests the Comelec has to protect, with PGBI's intent to be voted as a party-list organization. Thus, on February 2, 2010, we issued our *Status Quo* Order after a preliminary but judicious evaluation of the merits of PGBI's motion for reconsideration, only to receive the Comelec's response on February 3, 2010 manifesting that it could no longer change the ballots because of the nature of an automated election.

In an exercise as important as an election, the Comelec cannot make a declaration and impose a deadline, and, thereafter, expect everyone to accept its excuses when it backtracks on its announced declaration. The Comelec knew very well that there were still cases pending for judicial determination that could have been decided before the deadline was set.

Although the recent case of *Liberal Party v. Commission on Elections*,[22] involved the registration of political parties, we found that the Comelec gravely abused its discretion in allowing the out of time registration of the NP-NPC coalition despite the mandatory deadline the Comelec itself had set. In this case, we underscored the significance of the Comelec's compliance with its self-imposed deadlines, particularly in the implementation of the first-ever automated elections of May 10, 2010.

To be excused, the Comelec needed more than its generalized descriptions of the process of ballot printing and the alleged problems it faced. We needed reasons on how and why the deadline was set, as well as detailed and specific reasons why PGBI could no longer be listed while other errors and omissions could still be remedied.

Unfortunately for the Comelec, we did not see that kind of justification in its Compliance before us. Like the Comelec, we expect obedience to and respect for our Orders and Resolutions, and we cannot be sidetracked based solely on supposed operational constraints caused by the automated polls. Its treatment of our *Status Quo* Order simply meant that even before the Comelec deadline, a definitive ruling that a party-list organization should be included in the list to be voted upon would have been for naught as the Comelec would have anyway pleaded automation constraints. Even if its excuse had been meritorious, the Comelec effectively would have been guilty of misrepresentation on an election matter and in dealing with this Court.

Although we have recognized the validity of the automation of the May 10, 2010 elections in *Roque, Jr. v. Comelec*,[23] we stress that automation is not the end-all and be-all of an electoral process. An equally important aspect of a democratic electoral exercise is the right of free choice of the electorates on who shall govern them; the party-list system, in the words of *Ang*

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[22] G.R. No. 191771, May 6, 2010.

[23] G.R. No. 188456, September 10, 2009, 599 SCRA 69.

Bagong Bayani–OFW Labor Party v. Comelec,[24] affords them this choice, as it gives the marginalized and underrepresented sectors the opportunity to participate in governance. Wittingly or unwittingly, the Comelec took this freedom of choice away and effectively disenfranchised the members of the sector that PGBI sought to represent when it did not include PGBI in the list of qualified parties vying for a seat under the party-list system of representation. This is a consideration no less weighty than the automation of the election and cannot be simply disregarded on mere generalized allegations of automation difficulties.

The Appropriate Penalty

Section 7, Rule 71 of the Rules of Court provides the penalty for indirect contempt. Section 7 of Rule 71 reads:

> SEC. 7. *Punishment for indirect contempt*. — If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. x x x

In the past, we have found the Chairman and members of the Comelec guilty of indirect contempt in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*.[25] In that case, we held that the Chairman and members of the COMELEC guilty of contempt and required them to pay a fine in the amount of ₱20, 000.00 for "degrading the dignity of th[e] Court;[26] for brazen disobedience to its lawful directives, in particular its Temporary Restraining

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[24] G.R. No. 147589, June 26, 2001, 359 SCRA 698.

[25] *Supra* note 21.

[26] Comelec Chairman Benjamin S. Abalos Sr., Commissioners Luzviminda G. Tancangco, Rufino S.B. Javier, Ralph C. Lantion and Mehol K. Sadain were each fined in the sum of ₱20,000.00 while Commissioners Resurreccion Z. Borra and Florentino A. Tuason Jr. were each fined ₱5,000.00. In the case of Commissioners Borra and Tuason, Jr., the Court noted that "the actions committed by both commissioners are less serious in degree when compared with those of their colleagues," thus "a lesser penalty [was] meted out to them," *ibid.*

Order dated May 9, 2001; and for delaying the ultimate resolution of the many incidents of the case, to the prejudice of the litigants and of the country." We also warned the Comelec that a repetition of the same or similar acts shall be dealt with more severely in the future.[27]

Evidently, the Rule cited above does not provide that reprimand may be imposed on one found guilty of indirect contempt. However, we have in recent cases imposed a penalty less than what is provided under the Rules **if the circumstances merit such**.[28]

In *Alcantara v. Ponce*,[29] the Court, instead of citing the respondent Atty. Escareal-Sandejas for contempt, chose to reprimand her (and warned her that her commission of the same act would be more drastically dealt with) noting her apparent inexperience in practice of the profession, especially in appellate proceedings before the Court. Similarly, in *Racines v. Judge Morallos*,[30] the Court, after finding Jaime Racines guilty of indirect contempt, merely reprimanded him because "he is not learned in the intricacies of the law."

In the present case, special circumstances exist which call for our leniency and compel us to impose the penalty of severe reprimand instead of imprisonment and/or fine under Section 7, of Rule 71 of the Rules of Court as we have ruled in *Ang Bagong Bayani-OFW Labor Party*. We emphasize that although automation is a special circumstance that should be considered in the present incidental matter, however, its effect on the Comelec's non-compliance is merely to **mitigate, not to totally exculpate,** the Comelec from liability for its failure to comply

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[27] See *Jainal v. Commission on Elections*, G.R. No. 174551, March 7, 2007, 517 SCRA 799.

[28] *In the Matter of the Contempt Orders Against Lt. Gen. Jose Calimlim and Atty. Domingo A. Doctor, Jr.*, G.R. No. 141668, August 20, 2008, 562 SCRA 393,401.

[29] G.R. No. 131547, December 15, 2005, 478 SCRA 27.

[30] A.M. No. MTJ-08-1698 (Formerly OCA I.P.I. No. 04-1523-MTJ), March 3, 2008, 547 SCRA 295.

with our *Status Quo* Order. In other words, even if we grant that automation might have posed some difficulty in including a new party in the party-list listing, the Comelec still failed to prove to our satisfaction that the PGBI's inclusion was technically impossible and could not have been done even if the Comelec had wanted to. Thus, at the most, we can give the Comelec the benefit of the doubt to the extent of recognizing its excuse as a mitigating factor.

Therefore, instead of imposing the penalty of imprisonment and/or fine provided under Section 7, Rule 71 of the Revised Rules of Court, we deem it proper to impose upon the Comelec, particularly on its Chair and Members the penalty of severe reprimand, with a stern warning that a repetition of the same offense shall be dealt with more severely.

At this juncture, we take judicial notice of Comelec Chairperson Jose A.R. Melo's resignation effective January 15, 2011[31] and Commissioners Nicodemo T. Ferrer and Gregorio Y. Larrazabal's retirement on February 2, 2011.[32] We hasten to clarify that their departure from government service, however, do not render moot and academic their liability for indirect contempt, since "contempt of court applies to all persons, whether in or out of government." Thus, in *Curata v. Philippine Ports Authority*,[33] we held:

> Contempt of court applies to all persons, whether in or out of government. Thus, it covers government officials or employees who retired during the pendency of the petition for contempt. Otherwise, a civil servant may strategize to avail himself of an early retirement to escape the sanctions from a contempt citation, if he perceives that he would be made responsible for a contumacious act. The higher interest of effective and efficient administration of justice dictates

[31] See Kimberly Jane T. Tan, *Comelec Chief moves up resignation to Jan. 15*, January 15, 2011, available at http://www.gmanews.tv/story/210671/comelec-chief-moves-up-resignation-to-jan-15, last visited February 14, 2011.

[32] See Riziel Ann A. Cabreros, *2 Comelec commissioners retire*, February 1, 2011, available at http://www.newsbreak.ph/2011/02/01/2-comelec-commissioners-retire/, last visited February 21, 2011.

[33] G.R. Nos. 154211-12, June 22, 2009, 590 SCRA 214, 345.

that a petition for contempt must proceed to its final conclusion despite the retirement of the government official or employee, more so if it involves a former member of the bench.

PGBI's Participation in the May 10, 2010 Party-List Elections

We partly agree with the Comelec that we cannot recognize PGBI to be a party-list organization fully qualified to run under the party-list system in the coming 2013 party-list elections. The question of full and total qualification is not ripe for judicial determination as this is not before us for resolution. Participation in a previous election and the level of votes in favor of a participating organization are not the only qualification issues that can arise in a party-list election, and we cannot assume that PGBI shall meet all other legal standards to qualify as a party-list organization in the 2013 elections.[34]

But separate from the question of PGBI's overall qualification is the narrower question of its participation in the May 10, 2010 elections – an issue that is subsumed by the issues in the main *certiorari* case. As shown above, PGBI intended to participate in the May 10, 2010 elections but it was not able to do so because the Comelec did not – contrary to our express directive – include it in the list of party-list organizations to be voted upon in the May 10, 2010 elections. As it was the Comelec itself which prevented PGBI from participating in the May 10, 2010 party-list elections when it deleted PGBI, with grave abuse of discretion, from the list of accredited party-list groups or organizations and, thereafter, refused to return it to the list despite our directive, PGBI should, at the very least, be deemed to have participated in the May 10, 2010 elections, and cannot be disqualified for non-participation or for failure to garner the votes required under Section 6(8) of R.A. No. 7941. To conclude otherwise is to effectively recognize the ineffectiveness of our

[34] See for example the requirements of Sections 4, 5 and 6(1) to 6(7) of R.A. No. 7941. See also *Mariano, Jr. v. Comelec*, G.R. No. 118577, March 7, 1995, 242 SCRA 211.

Status Quo Order, of our April 29, 2010 Decision, and of this Court.

As a final note, the subject of the Court's action is the COMELEC's disobedience to our *Status Quo* Order of February 2, 2010 in the case in caption. The composition of the COMELEC has since then changed. We therefore clarify that this Resolution affects and reflects on the COMELEC and its membership as then constituted as they were the ones directly responsible for the disobedience.

WHEREFORE, premises considered, the Comelec Chair[35] and Members[36] are hereby found *GUILTY of CONTEMPT of the Supreme Court* for their disobedience to our lawful directive, specifically the *Status Quo* Order dated February 2, 2010. They are accordingly *SEVERELY REPRIMANDED* for this disobedience. They are further *WARNED* that a repetition of the same or similar acts shall be dealt with more severely in the future.

The Philippine Guardians Brotherhood, Inc. shall be deemed not to have transgressed the participation and level of votes requirements under Section 6(8) of Republic Act No. 7941 with respect to the May 10, 2010 elections.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Peralta, Bersamin, del Castillo, and *Villarama, Jr., JJ.,* concur.

Velasco, Jr., Leonardo-de Castro, Perez, and *Sereno, JJ.,* join the dissent of *J.* Abad.

Abad, J., see dissenting opinion.

*Mendoza, J.,*on leave.

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[35] Honorable Chairperson Jose A.R. Melo.

[36] Honorable Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Gregorio Y. Larrazabal.

DISSENTING OPINION

ABAD, *J.*:

The majority would have the Court severely reprimand the Chairman and Members of the Commission on Elections (COMELEC) for failing to comply with the Court's order of February 2, 2010 that directed that body to maintain the *status quo* in the case of petitioner Philippine Guardians Brotherhood, Inc. (PGBI). The order meant placing its name in the list of registered and accredited party-list organizations vying for congressional seats in the May 10, 2010 elections pending adjudication of the case.

I am compelled to disagree with the majority since, in my view, the facts do not warrant such condemnation.

On October 13, 2009 the COMELEC issued Resolution 8679, deleting on various grounds the names of several party-list groups, including PGBI, from the list of registered parties, organizations or coalitions. This gave PGBI and the others with it ample opportunity to seek redress from this Court before the window for possible reinstatement was to be permanently shut out by the need to finalize such list in time for an electronic election.

In the case of *Ang Ladlad*,[1] a party similarly excluded from the list, it filed its petition for *certiorari* with this Court on January 4, 2010. On January 12, 2010 the Court found sufficient reason to issue a temporary restraining order (TRO) against the COMELEC pending a decision of the case on its merits, which TRO effectively placed *Ang Ladlad* back into the COMELEC list. *Ang Ladlad* was thus voted for in the May 10 elections even when the Court had not yet decided the merits of its case.

Here, the PGBI filed its petition for *certiorari* with this Court on December 23, 2009. Unfortunately for it, the Court did not find merit in its petition and so dismissed the same on January 12, 2010 on the ground that the COMELEC committed no grave

[1] *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010.

abuse of discretion in issuing its contested resolutions. Consequently, unlike *Ang Ladlad*, PGBI's name remained out of the list.

PGBI filed a supplement to its petition on January 15, 2010, with plea for the issuance of a TRO but the Court merely noted the same since it had already dismissed the main petition.

Four days later on January 19, 2010 the COMELEC issued Minute Resolution 10-0042 stating that it would be publishing the Certified List of Candidates for the May 10, 2010 national and local elections and that the candidates could seek correction of any "misspelling or omission of names of the candidates or an error in the entry of information" in the list within five days of the publication.

On January 25, 2010 (a Monday) PGBI filed its motion for reconsideration of the Court's January 12, 2010 resolution that dismissed its petition. It also asked anew for the issuance of a TRO.

Meantime, on January 30, 2010 the COMELEC published the certified final list of candidates for both local and national positions by posting it on its website, with the following statement: "Should there be misspelling, omission or other errors, the concerned candidate shall call the Law Department's attention within 5 days from this publication for the purpose of correction."[2]

Also on January 30, 2010 the COMELEC submitted to Smartmatic-TIM, Inc. the data base the latter was to use for the configuration of the Precinct Count Optical Scan (PCOS) and Consolidation and Canvassing System (CCS) machines and the printing of the ballot template. The submission of this data base to Smartmatic-TIM was the irreversible point against any further attempt to insert in the list the names of other candidates or parties to be voted on in the national and local elections of May 10.

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[2] See <http://www.comelec.gov.ph/2010%20National_Local/certified_list_of_candidates_2010_toc.html>. Last visited March 7, 2010.

On February 2, 2010 (a Tuesday), acting on PGBI's motion for reconsideration dated January 25, the Court resolved to issue an order directing the COMELEC to revert PGBI's case to the status quo prior to the controversy, meaning that COMELEC was to reinstate PGBI's name in the official list of parties and individuals that could be voted on in the elections. The Court caused the resolution to be served on the COMELEC on the same day, February 2.

On February 3, 2010 the COMELEC noted the Court's status quo order which, if enforced according to it, meant recalling the data base that was then being used in the on-going configuration of the PCOS and CCS machines and the printing of the ballot template. As it happened, Smartmatic-TIM had in fact finished 500 of the 1,674 ballot templates needed for the elections and was about to submit these to the COMELEC on the same day for verification and approval. Such a recall, COMELEC added, would have meant a failure to print 4.8 million ballots on time.

Consequently, on the same day, February 3, 2011, the COMELEC did not lose time to file with the Court an "extremely urgent" motion for reconsideration and to lift status quo order on the ground that, to comply with the order of February 2, would cause havoc to the COMELEC preparation for the forthcoming elections. Further, since the processing of the data base had already begun, undoing what had been accomplished and redoing the whole process in order to include PGBI's name in the national elections would spell disaster in the work of configuring the PCOS and CCS machines, testing and deploying them along with other equipment throughout the islands, checking and sealing the machines, and printing and shipping the ballots. The waves of delays in COMELEC's timelines would have meant possible postponement of the elections at great costs and confusion.

Nearly two months later on April 29, 2010, without resolving the COMELEC's motion for reconsideration, the Court granted PGBI's petition, declared it qualified, and annulled the COMELEC resolutions that excluded it from the 2010 elections. Then, acting on PGBI's manifestation dated April 12, 2010 that the COMELEC

had refused to include its name on the list of parties that could be voted on, the Court required COMELEC on May 7, 2010 to explain why it should not be held in contempt for failing to comply with the Court's February 2 status quo order.

The COMELEC submitted its explanation, essentially reiterating what it said in its "extremely urgent" motion for reconsideration and maintaining that it did not intentionally defy the status quo order. The COMELEC added that it was technically, legally, and physically impossible for it to comply with the order in view of the serious operational and financial consequences that such compliance would have entailed. PGBI's position, on the other hand, was that the COMELEC could have complied with the Court's order with no resulting complications if it had wanted to.

The Bottom Line Issue

At bottom, the issue is whether or not it was still in fact feasible for the COMELEC to restore PGBI's name on the final list of party-list candidates without seriously setting back its preparations for the electronic elections and incurring huge costs.

Discussion

Although the matter presents a factual issue, the majority did not regard it necessary to order the reception of evidence for its resolution. The majority simply rejects the COMELEC explanation, stating that this is belied by the fact that the COMELEC published the final list of candidates on January 30, with notice that any concerned candidate could still call its Law Department to correct "misspelling, omission or other errors" in the published list of candidates within five days of such publication, with the last day falling on February 4.

1. But, clearly, the opportunity provided above was only for "errors" extant on the final list like misspelling (example: listed as "Matias" when the correct spelling is "Mathias"), omission (example: a missing nickname), or other errors (example: interchanging the positions of surname and first name). It may

be assumed that such errors do not affect the main configuration of the final list of candidates, thus, permitting last minute corrections.

Here, the insertion of a new name in the fixed, electronically arranged or configured, list of names, said the COMELEC, was not possible without undoing many things that depended on such configuration. Inserting the name of PGBI in that configuration could be the equivalent of trying to sit an extra passenger on a row of seats in a plane – when others have already taken those seats. The settled configuration of the seats in a plane would simply refuse to yield to an extra passenger. PGBI has presented no expert opinion that putting its name in the electronic configuration of the list at such late date was technically feasible without throwing the whole COMELEC timetable into disarray.

2. When the COMELEC published the final list of candidates on January 30, 2010, it served notice that "Should there be misspelling, omission or other errors, the concerned candidate shall call the Law Department's attention within 5 days from this publication for the purpose of correction." Clearly, PGBI could not rely on this notice since the permitted correction was reserved only to "concerned candidates." Having been officially disqualified from running for elections, PGBI cannot be regarded as a concerned candidate covered by the announcement.

3. The COMELEC was not indifferent to the Court's status quo order that was served on it late afternoon of February 2, 2010. On the next day February 3, the COMELEC promptly filed an "extremely urgent" motion for reconsideration and to lift status quo order, pleading for understanding and explaining why complying with the order was operationally and financially impossible. COMELEC acted responsibly and with appropriate deference to the Court.

4. Despite being told of the reasons why the COMELEC could not comply, the Court chose not to deny its motion for reconsideration readily. The Court did not insist that the

COMELEC comply with its order come what may. Consequently, since the Court was itself quite unwilling to take responsibility for the dire consequences of such compliance, would it be fair to punish the COMELEC for declining to take on that responsibility? And how can the Court, more than three months later, require the COMELEC to show cause why it should not be punished for disobeying the February 2 status quo order, when the Court did not itself act on the COMELEC's day-after explanation and motion for reconsideration of that order?

5. Finally, PGBI makes no claim that the COMELEC singled it out for exclusion and corrected the list after January 30, 2010 to allow the entry of the names of other party-list candidates similarly situated as PGBI. The COMELEC gave no special favor to anyone. Consequently, it cannot be said that the COMELEC acted iniquitously against PGBI.

In any event, it was not the Court's fault that it issued its status quo order in this case at such a late date. The petition for *certiorari* that PGBI filed with this Court on December 23, 2009 failed to persuade. Indeed, the Court dismissed it outright on January 12, 2010. PGBI filed its motion for reconsideration only on January 25, 2010 with the result that the Court had the opportunity to take up such motion only on February 2. Still, mistakenly believing that it was not too late, the Court issued its status quo order. The Court cannot visit such mistake upon the COMELEC. It would not be fair.

For the above reasons, I vote to accept the COMELEC's explanation of why it should not be held in contempt satisfactory.

EN BANC

[G.R. No. 193256. March 22, 2011]

ABC (ALLIANCE FOR BARANGAY CONCERNS) PARTY LIST, represented herein by its Chairman, JAMES MARTY LIM, *petitioner, vs.* **COMMISSION ON ELECTIONS and MELANIO MAURICIO, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS (COMELEC); JURISDICTION; ON PETITION FOR CANCELLATION OF REGISTRATION OF ANY POLITICAL PARTY THAT IS ACTUALLY A RELIGIOUS ORGANIZATION. — The jurisdiction of the COMELEC over petitions for cancellation of registration of any political party, organization or coalition is derived from Section 2 (5), Article IX-C of the Constitution. x x x Based on the provision, the Constitution grants the COMELEC the authority to register political parties, organizations or coalitions, and the authority to cancel the registration of the same on legal grounds. The said authority of the COMELEC is reflected in Section 6 of R.A. No. 7941, which provides: Section 6. *Refusal and/or Cancellation of Registration.* — The Comelec may *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds: (1) It is a religious sect or denomination, organization or association organized for religious purposes; x x x

2. ID.; ID.; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); JURISDICTION; ON CONTESTS RELATING TO THE QUALIFICATIONS OF PARTY-LIST REPRESENTATIVES. — In the case of the party-list nominees/representatives, it is the HRET that has jurisdiction over contests relating to their qualifications. Although it is the party-list organization that is voted for in the elections, it is not the organization that sits as and becomes a member of the House of Representatives,

but it is the party-list nominee/representative who sits as a member of the House of Representatives. The members of the House of Representatives are provided for in Section 5, Article VI of the Constitution: x x x Thus, the members of the House of Representatives are composed of the members who shall be elected from legislative districts *and* those who shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations. x x x Since the representative of the elected party-list organization becomes a member of the House of Representatives, contests relating to the qualifications of the said party-list representative is within the jurisdiction of the HRET, as Section 17, Article VI of the Constitution provides. x x x Therefore, the jurisdiction of the HRET over contests relating to the qualifications of a party-list nominee or representative is derived from Section 17, Article VI of the Constitution, while the jurisdiction of the COMELEC over petitions for cancellation of registration of any national, regional or sectoral party, organization or coalition is derived from Section 2 (5), Article IX-C of the Constitution.

3. ID.; ID.; COMMISSION ON ELECTIONS (COMELEC); NO GRAVE ABUSE OF DISCRETION WHEN IT DIRECTED A HEARING ON THE PETITION FOR CANCELLATION OF REGISTRATION OF A PARTY LIST AND WHEN IT LIBERALLY APPLIED PROCEDURAL RULES ON THE VERIFICATION OF PETITION. — The COMELEC has the constitutional mandate to register political parties, organizations and coalitions, and to cancel their registration on legal grounds; hence, the COMELEC *en banc*, in this case, has the prerogative to direct that a hearing be conducted on the petition for cancellation of registration of the ABC Party-List. The COMELEC *en banc* stated in its Resolution that only then can the petition be resolved on its merits with due regard to private respondent's right to due process. Grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility. The grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law. It is absent in this case. As regards the alleged lack of proper verification of the petition of private respondent, the COMELEC *en banc* held that private respondent substantially complied with the requirements of the 2004 Rules on Notarial

Practice as he submitted his community tax certificate and two identification cards with the verification page. The Court agrees with the ruling of the COMELEC *en banc*, which has the discretion to liberally construe procedural rules in order to achieve a just and speedy resolution of every action brought before the COMELEC.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office for petitioner.
The Solicitor General for public respondent.
Lu Mamangun & Juco Law Office for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a special civil action for *certiorari*[1] alleging that the Commission on Elections (COMELEC) *en banc* acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution dated August 3, 2010, which reinstated the petition to cancel the registration and accreditation of petitioner ABC (Alliance for *Barangay* Concerns) Party-List, and directed the Commission Secretary to schedule a hearing on the petition.

The facts are as follows:

On May 25, 2010, private respondent Melanio Mauricio, Jr. filed a petition[2] with the COMELEC for the cancellation of registration and accreditation of petitioner ABC Party-List[3] on the ground that petitioner is a front for a religious organization; hence, it is disqualified to become a party-list group under Section 6 (1)[4] of Republic Act (R.A.) No. 7941, otherwise known as the *Party-List System Act*.

[1] Under Rule 64 in relation to Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 80-89.

[3] The case was docketed as SPP No. 10-013.

[4] SEC. 6. *Refusal and/or Cancellation of Registration.* — The COMELEC may, *motu proprio* or upon verified complaint of any interested party,

Private respondent contends that ABC is a front for a religious group called the *Children of God International*, which is more popularly known as *Ang Dating Daan*, based on the following circumstances:

1. Although its National Chairman, James Marty Lim, was being publicly bruited as its first nominee, the real number one nominee of the party is Arnulfo "Noel" Molero, who is a known top official of *Ang Dating Daan*;

2. ABC was organized, established and is being run by *Ang Dating Daan* not as a party-list organization for political purposes [envisioned by R.A. No. 7941 (the Party-List System Act)], but as a religious sect for religious purposes;

3. The resources of *Ang Dating Daan* are being used to finance the campaign of ABC on a nationwide scale; and

4. The membership of ABC is composed of the members of *Ang Dating Daan*.[5]

Private respondent also alleged that ABC made an untruthful statement in its petition for accreditation, as it stated that it

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refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association organized for religious purposes;

(2) It advocates violence or unlawful means to seek its goal;

(3) It is a foreign party or organization;

(4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;

(5) It violates or fails to comply with laws, rules or regulations relating to elections;

(6) It declares untruthful statements in its petition;

(7) It has ceased to exist for at least one (1) year; or

(8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two *per centum* (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. (Emphasis supplied.)

[5] COMELEC, Second Division Resolution, *rollo*, pp. 48-49.

does not possess any of the disqualifications provided by the Party-List System Act when it is disqualified for being, in reality, a religious organization. In addition, he alleged that ABC is receiving support from third parties abroad.

Private respondent prayed that the accreditation of ABC be cancelled, and that it be declared disqualified as a party-list group for violating R.A. No. 7941.

In its Answer,[6] petitioner ABC denied private respondent's allegations, which were unproven by any material and convincing evidence. It averred that ABC, as a political party, is allowed by law to be registered and run under the party-list system of representation. The COMELEC has approved petitioner's registration and accreditation as a party-list group, and petitioner had participated and was voted upon in the 2007 elections.

Moreover, petitioner stated that as a political party of national constituency, it was founded and headed by Mr. James Marty Lim, who held the position of National President of the Association of *Barangay* Chairmen for 11 years. Its stature as a party-list organization with national constituency that could contribute to the formulation and enactment of appropriate legislation for the marginalized and underrepresented sectors of society should remove any doubt that it was established for religious purposes. Petitioner averred that it has not been identified with any religious entity or aggrupation.

On June 16, 2010, the COMELEC, Second Division issued a Resolution[7] dismissing the petition based on procedural and substantial grounds.

The dismissal on procedural grounds was grounded on the lack of proper verification of the petition. According to the COMELEC, Second Division, the *Verification with Certification Re: Forum Shopping and Special Power of Attorney* was not duly notarized in accordance with the 2004 Rules on Notarial Practice, as amended. Sections 1 and 6, Rule II of the 2004

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[6] *Rollo*, pp. 90-102.

[7] *Id.* at 48-55.

Rules on Notarial Practice require that the person appearing before a notary public must be known to the notary public or identified by the notary public through competent evidence of identity. In this case, the COMELEC, Second Division found that the "Acknowledgment" at the end of the verification did not contain the name of private respondent who supposedly appeared before the notary public, and he was not identified by any competent evidence of identity as required by the rules on notarial practice.

The COMELEC, Second Division also dismissed the petition based on substantial grounds, as it found that ABC is not a religious sect, and is, therefore, not disqualified from registration.

On June 22, 2010, private respondent filed a *Motion for Reconsideration with Motion to Annul Proclamation and Suspend its Effects*.[8] He argued that his petition was not defective since attached to the verification were photocopies of his identification cards. He likewise argued that he should be given the opportunity to present his evidence to support his Petition in accordance with Section 6 of R.A. No. 7941.

On July 6, 2010, petitioner filed its *Comment/Opposition with Extremely Urgent Motion to Dismiss*.[9]

On July 6, 2010, private respondent submitted a *Supplemental Motion for Reconsideration*[10] and his evidence to support his petition.

In response thereto, petitioner filed on July 21, 2010 a Supplement[11] to its *Comment/Opposition with Extremely Urgent Motion to Dismiss* that was filed on July 6, 2010. Petitioner urged the COMELEC to dismiss the petition for lack of jurisdiction, since the Secretary General of the House of Representatives had already recognized ABC as a proclaimed party-list group by asking its first nominee to attend the Orientation Program

[8] *Id.* at 103-120.

[9] *Id.* at 121-135.

[10] *Id.* at 136-157.

[11] *Id.* at 158-166.

for the new members of the House of Representatives, Fifteenth Congress on July 8, 2010 at the plenary hall.

On July 30, 2010, private respondent filed a Comment/ Opposition[12] to petitioner's motion to dismiss, arguing that ABC was not validly proclaimed; hence, the COMELEC still has jurisdiction over the case.

On August 3, 2010, the COMELEC *en banc* issued a Resolution[13] partially granting private respondent's *Motion for Reconsideration with Motion to Annul Proclamation and Suspend Its Effects* dated June 22, 2010. The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, the instant motion for reconsideration is PARTIALLY GRANTED. The petition is hereby REINSTATED and the Commission Secretary is hereby DIRECTED TO SCHEDULE a hearing on the petition with notice to the parties.[14]

Contrary to the findings of the Second Division, the COMELEC *en banc* found that the petition's verification page substantially complied with the 2004 Rules on Notarial Practice, thus:

> x x x A perusal of the said verification page immediately shows that photostatic copies of Mauricio, Jr.'s Community Tax Certificate No. CCI2009 30975061, Integrated Bar of the Philippines Lifetime Membership Card, and Permit to Carry Firearms No. 09083204 were attached thereto, thereby making them an integral part of said verification page. Clearly, Mauricio Jr.'s submission of his community tax certificate and two (2) identification cards, with the verification page substantially complies with the requirements of the 2004 Notarial Rules.[15]

More importantly, the COMELEC *en banc* stated that the records of the case showed that the Resolution of the Second Division was issued without any hearing, which deprived Mauricio

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[12] *Id.* at 173-176.

[13] *Id.* at 43-47.

[14] *Id.* at 46.

[15] *Id.* at 45.

of the opportunity to submit evidence in support of his petition. The COMELEC *en banc* averred that Section 6[16] of R.A. No. 7941 requires the sending out of notices and that an actual hearing is held to ensure that the parties' right to due process is respected. It cited the case of ***Sandoval v. Commission on Elections***,[17] which held that procedural due process demands notice and hearing.

ABC filed this petition raising the following issues:

1. THE COMMISSION *EN BANC* HAS NO MORE JURISDICTION TO ENTERTAIN THE PETITION FOR CANCELLATION OF REGISTRATION AND ACCREDITATION SINCE ABC WAS ALREADY PROCLAIMED AS WINNER.
2. GRANTING THAT PUBLIC RESPONDENT STILL HAS JURISDICTION, THE COMELEC *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SET THE PETITION OF MAURICIO FOR HEARING WHEN HE WAS ALREADY GIVEN ALL THE TIME AND OPPORTUNITY TO PRESENT AND SUBSTANTIATE HIS CASE.
3. GRANTING THAT PUBLIC RESPONDENT STILL HAS JURISDICTION, THE COMELEC *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT RECOGNIZE THAT ON ITS FACE THE PETITION OF MAURICIO IS UNMERITORIOUS AND PROCEDURALLY DEFECTIVE.
4. GRANTING THAT PUBLIC RESPONDENT STILL HAS JURISDICTION, THE COMELEC *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SINGLED OUT THE CASE OF ABC, SETTING THE SAME FOR HEARING

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[16] Sec. 6. *Refusal and/or Cancellation of Registration.* — The Comelec may *motu proprio* or upon verified complaint of any interested party, refuse or cancel, **after due notice and hearing**, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association organized for religious purposes; x x x (Emphasis supplied.)

[17] 380 Phil. 375 (2000).

WHEN ALL THE OTHER CASES OF THE SAME NATURE WERE ALL SUMMARILY AND *MOTU PROPRIO* DISMISSED BY THE COMELEC.

5. BECAUSE OF THE FOREGOING, THE ASSAILED RESOLUTION OF AUGUST 3, 2010 IS A PATENT NULLITY; HENCE, DIRECT RESORT TO THIS HONORABLE SUPREME COURT IS PROPER.[18]

Petitioner contends that the COMELEC *en banc* no longer had jurisdiction to entertain the petition for cancellation of registration and accreditation of ABC Party-List after it was already proclaimed as one of the winners in the party-list elections of May 10, 2010 per National Board of Canvassers Resolution No. 10-009[19] promulgated on May 31, 2010.

Petitioner avers that Section 17, Article VI of the Constitution provides that "[t]he Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members." Hence, once a candidate for House of Representatives is proclaimed, the COMELEC is divested of jurisdiction to pass upon its qualification and the same is vested with the House of Representatives Electoral Tribunal (HRET).

Petitioner states that in this case, there is no dispute that ABC Party-List has been proclaimed by the COMELEC as one of the winners in the party-list elections of May 10, 2010; therefore, any question as to its qualification should be resolved by the HRET and not by the COMELEC. Petitioner asserts that once a party-list group has been proclaimed winner and its nominees have taken their oath, the COMELEC should be divested of its jurisdiction over both the party-list group and its nominees.

Further, petitioner submits that Section 6 of R.A. No. 7941, which states that the COMELEC may *motu proprio* or upon verified complaint of any interested party remove or cancel, after due notice and hearing, the registration of any national,

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

[19] Annex "E", *id.* at 64-67.

regional or sectoral party, organization or coalition, is applicable only to a non-winning party-list group. According to petitioner, its submission is supported by the fact that one of the grounds for the cancellation of the registration of any national, regional or sectoral party is failure to obtain the required two percent of votes or to participate in the past two elections which are obviously applicable only to losing party-list groups.

The arguments of petitioner do not persuade.

The jurisdiction of the COMELEC over petitions for cancellation of registration of any political party, organization or coalition is derived from Section 2 (5), Article IX-C of the Constitution, which states:

> Sec. 2. The Commission on Elections shall exercise the following powers and functions:
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> x x x x x x x x x
>
> (5) **Register, after sufficient publication, political parties, organizations, or coalitions** which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. **Religious denominations and sects shall not be registered**. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.
>
> Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and when accepted, shall be an additional ground for the **cancellation** of their registration with the Commission, in addition to other penalties that may be prescribed by law.[20]

Based on the provision above, the Constitution grants the COMELEC the authority to register political parties, organizations or coalitions, and the authority to cancel the registration of the same on legal grounds. The said authority of the COMELEC is reflected in Section 6 of R.A. No. 7941, which provides:

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[20] Emphasis and underscoring supplied.

Section 6. *Refusal and/or Cancellation of Registration.* — The Comelec may *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association organized for religious purposes;

x x x x x x x x x

It is, therefore, clear that the COMELEC has jurisdiction over the instant petition for cancellation of the registration of the ABC Party-List.

In the case of the party-list nominees/representatives, it is the HRET that has jurisdiction over contests relating to their qualifications. Although it is the party-list organization that is voted for in the elections, it is not the organization that sits as and becomes a member of the House of Representatives,[21] but it is the party-list nominee/representative who sits as a member of the House of Representatives.

The members of the House of Representatives are provided for in Section 5, Article VI of the Constitution:

Sec. 5. (1). The House of Representatives shall be composed of not more than two hundred and fifty **members**, unless otherwise fixed by law, **who shall be elected from legislative districts** apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, **and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.**[22]

Thus, the members of the House of Representatives are composed of the members who shall be elected from legislative districts *and* those who shall be elected through a party-list

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[21] *Abayon v. House of Representatives Electoral Tribunal*, G.R. No. 189466, February 11, 2010, 612 SCRA 375, 381.

[22] Emphasis and underscoring supplied.

system of registered national, regional, and sectoral parties or organizations.

Abayon v. House of Representatives Electoral Tribunal[23] held:

x x x [F]rom the Constitution's point of view, it is the party-list representatives who are "elected" into office, not their parties or organizations. These representatives are elected, however, through that peculiar party-list system that the Constitution authorized and that Congress by law established where the voters cast their votes for the organizations or parties to which such party-list representatives belong.

Once elected, both the district representatives and the party-list representatives are treated in like manner. They have the same deliberative rights, salaries, and emoluments. They can participate in the making of laws that will directly benefit their legislative districts or sectors. They are also subject to the same term limitation of three years for a maximum of three consecutive terms.

It may not be amiss to point out that the Party-List System Act itself recognizes party-list nominees as "members of the House of Representatives," thus:

> Sec. 2. *Declaration of Policy.* — The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible. (Underscoring supplied)[24]

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[23] *Supra* note 21.

[24] *Id.* at 382.

Since the representative of the elected party-list organization becomes a member of the House of Representatives, contests relating to the qualifications of the said party-list representative is within the jurisdiction of the HRET, as Section 17, Article VI of the Constitution provides:

> Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members.

Abayon held:

> x x x [P]arty-list nominees are "**elected members**" of the House of Representatives no less than the district representatives are, the HRET has jurisdiction to hear and pass upon their qualifications. By analogy with the cases of district representatives, once the party or organization of the party-list nominee has been proclaimed and the nominee has taken his oath and assumed office as member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his qualifications ends and the HRET's own jurisdiction begins.[25]

Therefore, the jurisdiction of the HRET over contests relating to the qualifications of a party-list nominee or representative is derived from Section 17, Article VI of the Constitution, while the jurisdiction of the COMELEC over petitions for cancellation of registration of any national, regional or sectoral party, organization or coalition is derived from Section 2 (5), Article IX-C of the Constitution.

In sum, the COMELEC *en banc* had jurisdiction over the petition for cancellation of the registration and accreditation of petitioner ABC Party-List for alleged violation of Section 6 (1) of R.A. No. 7941.

Moreover, petitioner contends that the COMELEC *en banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it still set the petition for hearing despite the fact that private respondent had the opportunity to be heard

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[25] *Supra* note 21, at 385.

and was not denied due process, and he presented his evidence as attachments to his Supplemental Motion for Reconsideration.

The contention lacks merit.

The COMELEC has the constitutional mandate to register political parties, organizations and coalitions, and to cancel their registration on legal grounds; hence, the COMELEC *en banc*, in this case, has the prerogative to direct that a hearing be conducted on the petition for cancellation of registration of the ABC Party-List. The COMELEC *en banc* stated in its Resolution that only then can the petition be resolved on its merits with due regard to private respondent's right to due process.

Grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility.[26] The grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.[27] It is absent in this case.

As regards the alleged lack of proper verification of the petition of private respondent, the COMELEC *en banc* held that private respondent substantially complied with the requirements of the 2004 Rules on Notarial Practice as he submitted his community tax certificate and two identification cards with the verification page. The Court agrees with the ruling of the COMELEC *en banc*, which has the discretion to liberally construe procedural rules in order to achieve a just and speedy resolution of every action brought before the COMELEC.

Further, petitioner contends that the COMELEC *en banc* committed grave abuse of discretion when it singled out this case and directed that it be set for hearing when other cases of the same nature were summarily and *motu proprio* dismissed by the COMELEC, citing the cases of ***Barangay Natin Party-List (BANAT) v. Citizens' Battle Against Corruption (CIBAC) Foundation, Inc.***, and ***BANAT v. 1st Consumers Alliance***

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[26] *Batul v. Bayron*, 468 Phil. 130, 148 (2004).

[27] *Id*.

for Rural Energy (1-CARE) and Association of Philippine Electric Cooperatives (APEC).[28]

The contention is without merit.

In the cited case of ***BANAT v. CIBAC Foundation, Inc.***, the COMELEC dismissed the petition for cancellation of the certificate of registration and accreditation of CIBAC Foundation Inc. on the ground that this Court had already determined the eligibility of CIBAC as a registered/accredited party-list organization, unlike in this case.[29]

In regard to the case of ***BANAT v. 1-CARE and APEC***,[30] the COMELEC dismissed a similar petition on the ground that the registration and qualification of APEC and its nominees have been settled affirmatively by this Court in ***Ang Bagong Bayani-OFW Labor Party v. Commission on Elections***.[31]

In fine, the COMELEC *en banc* did not act without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution dated August 3, 2010.

WHEREFORE, the petition is hereby *DISMISSED* for lack of merit.

Costs against petitioner.

SO ORDERED.

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

Mendoza, J., on leave.

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[28] Comelec Resolutions in SPP No. 10-015 dated July 1, 2010 and in SPP No. 10-014, dated August 5, 2010, Annexes "N" & "P", *rollo*, pp. 177-179, 185-189, respectively.

[29] Annex "O", *id.* at 180-184.

[30] Annex "P", *id.* at 185.

[31] 452 Phil. 899 (2003).

SECOND DIVISION

[A.M. No. P-09-2651. March 23, 2011]

EMMANUEL M. GIBAS, JR., *complainant, vs.* **MA. JESUSA E. GIBAS, Court Stenographer I, Municipal Trial Court, Guiguinto, Bulacan, and FRANCONELLO S. LINTAO, Sheriff IV, Regional Trial Court, Branch 83, Malolos City, Bulacan,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; JURISDICTION; COURT HAS JURISDICTION OVER AN EMPLOYEE WHO, ALTHOUGH DROPPED FROM THE ROLLS BEFORE COMPLAINT WAS FILED, WAS RE-APPOINTED BEFORE REGULAR ADMINISTRATIVE COMPLAINT WAS RE-DOCKETED. —— In her Motion to Dismiss dated 5 January 2009, respondent [court employee] Gibas claims that the Court has no jurisdiction over her person since she has been dropped from the rolls effective 1 February 2007 and the complaint against her was filed only later on 18 September 2007. However, records reveal that respondent Gibas has been re-appointed on 30 October 2008 as Clerk III at the Regional Trial Court of Baguio City and thereafter assumed office on 5 November 2008. Thus, when this administrative complaint was re-docketed by the Court as regular administrative matter A.M. No. P-09-2651 in a resolution dated 8 July 2009, respondent Gibas was already re-appointed as Clerk III. We therefore hold that the Court has jurisdiction over respondent Gibas.

2. ID.; ID.; ID.; DUTY TO MAINTAIN MORAL RIGHTEOUSNESS, EMPHASIZED. — Court employees should maintain moral righteousness and uprightness in their professional and private conduct to preserve the integrity and dignity of the courts of justice. Court personnel should avoid any act of impropriety which tarnishes the honor and dignity of the Judiciary x x x .

3. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; IMMORAL CONDUCT; PENALTY. —

> Under Section 52(A)(15), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, disgraceful and immoral conduct is classified as a grave offense for which the imposable penalty for the first offense is six months and one day to one year while the penalty for the second offense is dismissal.

APPEARANCES OF COUNSEL

Public Attorney's Office for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint for immorality filed by Emmanuel M. Gibas, Jr. (complainant) against his wife Ma. Jesusa E. Gibas (respondent Gibas) and Franconello S. Lintao (respondent Lintao). Respondent Gibas was then Court Stenographer I of the Municipal Trial Court (MTC) of Guiguinto, Bulacan but was detailed at Branch 80, Regional Trial Court (RTC) of Malolos City, Bulacan while respondent Lintao was Sheriff IV of Branch 83 of RTC, Malolos City.

The Facts

In his *Sinumpaang Salaysay*[1] dated 17 September 2007, complainant accused his wife, respondent Gibas, of having an illicit relationship with respondent Lintao, who is also married to another person. Complainant alleged that he started having suspicions about his wife's indiscretions in January 2007 when, while working as a seaman abroad, his thrice weekly phone calls at 9:00 p.m. to 10:00 p.m. were often answered by their children because his wife was still not home. When complainant came back to the Philippines, he discovered that all their jewelries were missing. Complainant then searched through his wife's belongings and found a digital camera inside his wife's bag.

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

Looking at the images in the camera, he was shocked to see images of a half-naked man, which he suspected was taken inside a motel room. Complainant later learned the identity of the half-naked man as respondent Lintao when he showed the image to his son and daughter, who told him respondent Lintao often went to their house and stayed at the master's bedroom with their mother (respondent Gibas). When questioned, complainant's son narrated that his mother (respondent Gibas) even scolded him when he peeped inside the room and saw respondent Lintao wrapped only in a white blanket. Their five-year old daughter even identified the man as "Franco" and told complainant that she saw both her mother and respondent Lintao naked and kissing inside the room. Complainant submitted several pictures of respondents Gibas and Lintao in very intimate and romantic poses to further support his allegations.

In her *Sinumpaang Kontra-Salaysay*[2] dated 16 October 2007, respondent Gibas denied the accusations of complainant and dismissed most of complainant's allegations as mere fabrications. Respondent Gibas attributed the missing jewelries to her failure to watch over their house and belongings because she was busy working in the court the whole day. She denied any knowledge of the half-naked images of respondent Lintao in her digital camera and explained that respondent Lintao once borrowed the camera during a family occasion. As regards the intimate pictures of her and respondent Lintao, respondent Gibas stated that those pictures were just random shots taken during their frequent outing with friends and were taken without any malice.

Complainant, in his *Sagot Sa Kontra Salaysay*,[3] countered that the pictures of respondents Gibas and Lintao clearly indicate their intimate relationship. Complainant narrated that he was able to locate the motel where his wife and respondent Lintao regularly checked-in. Complainant alleged that when the security guard of the motel was shown pictures of respondents Gibas and Lintao, the security guard confirmed that respondents indeed frequented the motel.

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[2] *Id.* at 51-60.

[3] *Id.* at 116-122.

Respondent Gibas filed a Motion to Dismiss[4] dated 5 January 2009, asserting that since she had been dropped from the rolls effective 1 February 2007 and the complaint against her was filed only on 18 September 2007, the Court no longer had jurisdiction over her person. Records show that in a resolution of the Court dated 30 July 2007 in A.M. No. 07-6-286-RTC,[5] respondent Gibas was dropped from the rolls effective 1 February 2007 for absence without official leave (AWOL). However, upon verification from the Office of the Administrative Services, the OCA discovered that on 30 October 2008, respondent Gibas was re-employed as Clerk III and assumed office on 5 November 2008 at the Regional Trial Court, Office of the Clerk of Court, Baguio City.[6] Further investigation revealed that when respondent Gibas applied for the new position, she did not disclose in her personal data sheet that she had a pending administrative charge of immorality and that she was dropped from the rolls due to AWOL.

Respondent Lintao, on the other hand, has failed to file his comment despite being given several opportunities to comment on the complaint. In a resolution of the Court dated 23 June 2008 in A.M. No. 08-4-229, respondent Lintao was likewise dropped from the rolls effective 1 March 2007 for AWOL.[7]

The Court, in a resolution[8] dated 8 July 2009, re-docketed this administrative complaint[9] as regular administrative matter A.M. No. P-09-2651. In a resolution[10] dated 30 September 2009, the Court resolved to refer the administrative complaint against respondents to the Executive Judge of the Regional Trial Court of Malolos City, Bulacan for investigation, report and recommendation.

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[4] *Id.* at 138-139.

[5] Re: Absence Without Official Leave (AWOL) of Ms. Jesusa Gibas, Court Stenographer I, RTC, Br. 80, Malolos Bulacan; *rollo*, pp. 141-142.

[6] *Rollo*, p. 182.

[7] *Id.* at 185.

[8] *Id.* at 173-174.

[9] OCA IPI No. 07-2676-P.

[10] *Rollo*, p. 201

The Report of the Investigating Judge

In his Report dated 16 March 2010, the Investigating Judge found respondents Gibas and Lintao guilty of immorality, thus:

EVIDENCE

Complainant affirmed all the material allegations in his filed sworn statements and on clarificatory questioning stressed that prior to his arrival from the United States as a seaman, he noted some behavioral change from his wife Ma. Jesusa Gibas on calling her everyday at home, [s]he cannot be contacted with reports reaching him that she was seen in unholy hours elsewhere. For three or four days after coming home unannounced on August 28, 2007, his wife respondent was nowhere. Their children were found surviving from "food borrowed from the store" and unattended to. Texting thereafter his wife, the latter responded. Both met in a fast food chain in Malolos City. Psyching his wife respondent, who by then acknowledged his suspicion, and on her taking a nap upon coming home, complainant managed to secure pictures of his wife and respondent sheriff in uncompromising situations, found in their digital camera and inside the shoulder bag of his wife. Such relationship was likewise verified [by] their children. In addition he was able to gather the police report on the accident involving his wife respondent and respondent Lintao on board the vehicle at an untimely hour evidenced by pictures taken of the duo alleged to be drunk then sleeping in the car. Complainant and children are now living separate from respondent Gibas.

Against these imputations, respondent Ma. Jesusa Gibas only submitted and marked her sworn statements and reiterated her plea to resolve the motion to dismiss the administrative charge filed against her and its supplemental motion.

FINDINGS AND RECOMMENDATION

Testimonial and documentary evidence support the complaint of Emmanuel Gibas, Jr. against his wife respondent Ma. Jesusa Gibas and respondent Sheriff IV Franconello Lintao. Forming integral part of the letter complaint of Emmanuel M. Gibas, Jr. are pictures which eloquently captured the intimacy between the two respondents. That the pictures are but a result of camaraderie of their "barkada" is a lame excuse to relieve respondents from any sanction.

Denial was the pronounced defense of respondent Ma. Jesusa Gibas. Pitted against the affirmative allegations of the complainant,

the same has to be rightfully dismissed. Between positive allegations and negative allegations, the former control and are more credible in standing.

The further raised argument that the disciplining authority has lost jurisdiction over respondent Ma. Jesusa Gibas is already a resolved issue.

As regards respondent Franconello Lintao, it has been said that his refusal to submit his comments constitutes a clear and willful disrespect to the lawful orders of the office of the Court Administrator, a conduct which cannot be brushed aside. His deafening silence, from evidentiary point is an admission of guilt.

Given the foregoing, this Office is persuaded with the merits of the complaint and respondents must be meted the additional accessory penalties involved in the dismissal from the service x x x.[11]

The OCA's Report and Recommendation

The OCA adopted the findings and recommendation of the Investigating Judge. The OCA agreed with the Investigating Judge that complainant was able to support his charge of immorality against respondents Gibas and Lintao.

The OCA recommended that respondents Gibas and Lintao be dismissed from service, thus:

IN VIEW OF THE FOREGOING, and considering the baseness of the immoral acts of respondents, we respectfully submit, for the consideration of the Honorable Court, the recommendations that:

1. the Report, dated 16 March 2010, of Executive Judge Herminia V. Pagsamba, Regional Trial Court, Malolos City, be NOTED;

2. the respondent, Ma. Jesusa A. G[i]bas, former Court Stenographer I, Municipal Trial Court, Guiguinto Bulacan, and now Clerk III, Regional Trial Court, Office of the Clerk of Court, Baguio City, be found guilty of immorality and be DISMISSED FROM SERVICE with forfeiture of all salaries and benefits, cancellation of eligibility, except accrued leave credits to which she may be entitled, and with disqualification from reinstatement or appointment to any

[11] *Id.* at 247-248.

public office, including government-owned or controlled corporation; and

3. the respondent, Franconello S. Lintao, Sheriff IV, Regional Trial Court, Branch 83, Malolos City, Bulacan, be found guilty of immorality and be DISMISSED FROM SERVICE with forfeiture of all salaries and benefits, except accrued leave credits to which he may be entitled, cancellation of eligibility, and with disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporation.[12]

The Ruling of the Court

We will first resolve the issue of jurisdiction raised by respondent Gibas. In her Motion to Dismiss dated 5 January 2009, respondent Gibas claims that the Court has no jurisdiction over her person since she has been dropped from the rolls effective 1 February 2007 and the complaint against her was filed only later on 18 September 2007. However, records reveal that respondent Gibas has been re-appointed on 30 October 2008 as Clerk III at the Regional Trial Court of Baguio City and thereafter assumed office on 5 November 2008. Thus, when this administrative complaint was re-docketed by the Court as regular administrative matter A.M. No. P-09-2651 in a resolution dated 8 July 2009, respondent Gibas was already re-appointed as Clerk III. We therefore hold that the Court has jurisdiction over respondent Gibas.

The Court further notes that when the OCA investigated this administrative case against respondent Gibas, the OCA found that respondent Gibas accomplished her personal data sheet on 19 August 2008 for her re-employment as Clerk III without disclosing that she had a pending administrative case for immorality. As a result of this concealment, respondent Gibas was administratively charged with falsification of personal data sheet, which administrative matter A.M. No. P-10-2755 is still pending with the Court.

With regard to respondent Lintao, he not only failed to comment on the complaint but also failed to attend the hearings before

[12] *Id.* at 365.

the Investigating Judge despite notice sent by mail.[13] However, since respondent Lintao was dropped from the rolls effective 1 March 2007 for AWOL and has not been re-appointed, we hold that the Court has no jurisdiction over respondent Lintao. Respondent Lintao was no longer a court employee when the complaint was filed on 18 September 2007 and when the administrative complaint was re-docketed by the Court as regular administrative matter A.M. No. P-09-2651 in the resolution dated 8 July 2009.

On the charge of immorality, the findings and recommendations of both the Investigating Judge and the OCA are well-taken, except for the recommended penalty of dismissal from service which is not in accordance with the Uniform Rules on Administrative Cases in the Civil Service.[14]

As found by the Investigating Judge and the OCA, complainant was able to substantiate the charge of immorality against the respondents. In his testimony, complainant affirmed the material allegations in his sworn statements. The incriminating pictures submitted by complainant clearly showed the intimate relationship between respondents and belied respondent Gibas' claim that they are just friends. The images of the half-naked respondent Lintao with only a towel wrapped around his waist, found in respondent Gibas' digital camera, further support complainant's allegation of respondents' illicit relationship.

Court employees should maintain moral righteousness and uprightness in their professional and private conduct to preserve the integrity and dignity of the courts of justice.[15] Court personnel should avoid any act of impropriety which tarnishes the honor and dignity of the Judiciary, thus:

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[13] *Id.* at 253.

[14] Under Section 52(A)(15), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, disgraceful and immoral conduct is classified as a grave offense for which the imposable penalty for the first offense is six months and one day to one year while the penalty for the second offense is dismissal.

[15] *Court Employees of the MCTC, Ramon Magsaysay, Zamboanga del Sur v. Sy*, A.M. No. P-93-808, 25 November 2005, 476 SCRA 127; *Hernandez v. Aribuabo*, 400 Phil. 763 (2000).

Every employee of the judiciary should be an example of integrity, uprightness and honesty. Like any public servant, he must exhibit the highest sense of honesty and integrity not only in the performance of his official duties but in his personal and private dealings with other people, to preserve the court's good name and standing. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court employees have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of courts of justice.[16]

Respondent Gibas failed to refute the charge filed against her and respondent Lintao. In fact, respondent Gibas chose not to testify during the hearing of the administrative matter scheduled on 25 February 2010 and held in the office of the Investigating Judge, which respondent Gibas attended. Even the counsel of respondent Gibas did not cross examine complainant on the main points of his testimony but merely questioned complainant whether he received the motion to dismiss filed by respondent Gibas.

Under Section 52(A)(15), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service,[17] disgraceful and immoral conduct is classified as a grave offense for which the imposable penalty for the first offense is six months and one day to one year while the penalty for the second offense is dismissal.

Thus, in several cases,[18] the Court suspended for six months and one day the respondents found guilty of immorality, taking into consideration that it was their first offense.

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[16] *Bucatcat v. Bucatcat*, 380 Phil. 555, 567 (2000).

[17] Adopted by the Civil Service Commission (CSC) through Resolution No. 99-1936, dated 31 August 1999, and which took effect on 27 September 1999.

[18] *Elape v. Elape*, A.M. No. P-08-2431, 16 April 2008, 551 SCRA 403; *Licardo v. Licardo*, A.M. No. P-06-2238, 27 September 2007, 534 SCRA 181; *Nalupta, Jr. v. Tapec*, A.M. No. P-88-263, 30 March 1993, 220 SCRA 505.

Similarly, this is the first offense for respondent Gibas. Hence, the Court deems the recommended penalty of dismissal inappropriate. In accordance with the prescribed penalty in the Uniform Rules on Administrative Cases in the Civil Service, the penalty of six months and one day is sufficient considering that this is respondent Gibas' first offense for immorality.

WHEREFORE, we find respondent Ma. Jesusa E. Gibas *GUILTY* of immorality. We *SUSPEND* Ma. Jesusa E. Gibas from service for six months and one day without pay and other fringe benefits including leave credits, with a stern warning that a repetition of the same or similar act in the future shall be dealt with more severely. We *DISMISS* the administrative case against Franconello S. Lintao for lack of jurisdiction.

SO ORDERED.

Nachura, Brion,[*] *Peralta* and *Abad, JJ.,* concur.

FIRST DIVISION

[A.M. No. MTJ-11-1782. March 23, 2011]
(Formerly OCA IPI No. 05-1807-MTJ)

JOSEFINA NAGUIAT, *complainant, vs.* **JUDGE MARIO B. CAPELLAN, Presiding Judge, MTCC, Br. 1, Malolos City, Bulacan,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; COVERED BY THE 1991 REVISED RULE ON SUMMARY PROCEDURE; DUTY OF THE COURT UPON FILING OF

[*] Designated additional member per Special Order No. 975 dated 21 March 2011.

EJECTMENT CASE; NOT COMPLIED WITH.— Civil Case No. 98-84 for ejectment is covered by the *1991 Revised Rule on Summary Procedure*. Under the Rule, the first duty of the respondent upon the filing of the case for ejectment was to examine the allegations in the complaint and the evidence appended to it, and to dismiss the case outright on any of the grounds apparent for the dismissal of a civil action. Section 4 of the Rules on Summary Procedure says as much: Sec. 4. Duty of the Court.¾After the court determines that the case falls under summary procedure, it may, from an examination of the allegations therein and such evidence as may be attached thereto, dismiss the case outright on any of the grounds apparent for the dismissal of a civil action. In his Order of December 3, 2003, respondent dismissed Civil Case No. 98-84 on the stated ground that one Joseph Jacob, the plaintiff's representative, was not authorized to appear for the corporation because his authority, as reflected in the corporate secretary's certificate appended to the complaint, was for another case. In net effect, the ground for dismissing Civil Case No. 98-84 existed and was apparent upon the filing of the basic complaint on August 12, 1998. Yet, respondent judge allowed the case to unnecessarily drag on for more than five years.

2. ID.; ID.; ID.; ID.; ISSUE AND DEFENSE OF LACK OF PERSONALITY DEEMED WAIVED WHERE THE SAME WAS NOT RAISED IN THE ANSWERS OF THE DEFENDANTS.— The issue of Jacob's lack of legal personality to institute the ejectment suit was, as respondent judge stressed in his supplemental position paper, raised in the position paper of defendant Rufino Cruz. It was, respondent adds, a primordial issue, not a mere technicality, to which all other issues ought to yield. The above argument may perhaps be accorded some measure of plausibility, but Sec. 5 of the Rule on Summary Procedure, in part, states that "affirmative and negative defenses not pleaded in the [answer] shall be deemed waived, except for lack of jurisdiction over the subject matter." Not one of the answers of the defendants in Civil Case No. 98-84 raised the question of Jacob's lack of personality. In the strictly legal viewpoint, therefore, the issue and defense of lack of personality, was, by force of said Sec. 5, deemed waived.

3. ID.; ID.; ID.; ID.; 30-DAY PERIOD WITHIN WHICH TO RENDER JUDGMENT RECKONED FROM THE TIME THE COURT

RECEIVED THE LAST AFFIDAVITS AND POSITION PAPERS, OR THE EXPIRATION OF THE PERIOD FOR FILING THE SAME.— When confronted with administrative charges of delay, the Court shall be guided by the period allowed by law. Reglementary periods fixed by law and the various issuances of the Court are designed not only to protect the rights of all the parties to due process but also to achieve efficiency and order in the conduct of official business. Sec. 10 of the Rule on Summary Procedure requires the court "to render [on covered cases] judgment within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same." In the context of Civil Case No. 98-84, and assuming that the 30-day threshold was to be reckoned from the time defendant Rufino Cruz filed his position paper on March 26, 2003, respondent had up to April 26, 2003 within which to decide the case. As it were, respondent rendered his terse dismissal order on December 3, 2003, or seven (7) months beyond the prescribed period under Sec. 10.

4. JUDICIAL ETHICS; JUDGES; REQUIRED TO REMAIN, AT ALL TIMES, IN FULL CONTROL OF THE PROCEEDINGS IN THEIR SALA AND TO ADOPT A FIRM POLICY AGAINST IMPROVIDENT POSTPONEMENTS; ALLOWING 14 POSTPONEMENTS DURING THE PRELIMINARY CONFERENCE STAGE OF THE CASE IS HIGHLY INAPPROPRIATE AND WELL-NIGH IMPROVIDENT.— Another procedural lapse attributable to respondent relates to his having allowed several and doubtless unnecessary postponements which contributed to the delay in the resolution of what was otherwise a simple case. As aptly observed by the OCA and as records show, respondent conducted the preliminary conference of the ejectment case on September 15, 1999 and ended it on October 23, 2000. Between these two dates, respondent granted a total of fourteen (14) postponements. Evidently, respondent did not exert his authority to expedite the summary proceedings of the case. He was oblivious to the basic objectives of summary procedures, one of which is to obviate dilatory practices and unnecessary delays which have long been the bane of ejectment proceedings. The fact that the resetting may have been sought and agreed upon by the parties is, by itself, of little moment, for judges have a wide latitude of discretion on the matter of granting or denying a

plea for continuance or postponement. Sound practice requires a judge to remain, at all times, in full control of the proceedings in his sala and to adopt a firm policy against improvident postponements. Given the summary nature of ejectment proceedings, allowing 14 postponements during the preliminary conference stage of the case strikes this Court as not only highly inappropriate but well-nigh improvident.

5. ID.; ID.; UNDUE DELAYS IN RENDERING A JUDGMENT; ERODE THE PEOPLE'S FAITH IN THE JUDICIAL SYSTEM; PENALTY.— The Court has time and again admonished judges to be prompt in the performance of their solemn duty as dispenser of justice, since undue delays erode the people's faith in the judicial system. Delay not only reinforces the belief of the people that the wheels of justice grind ever so slowly, but invites suspicion, however unfair, of ulterior motives on the part of the judge. The *raison d'être* of courts lies not only in properly dispensing justice but also in being able to do so seasonably. Under Sec. 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order constitutes a less serious offense which, under the succeeding Sec. 11(B), is punishable as follows: 1. Suspension from office without salary and other benefits for one (1) month to two (2) months and twenty-nine days; or 2. A fine of not less than ₱10,000.00 but not more than ₱19,999.00.

R E S O L U T I O N

VELASCO, JR., *J.*:

The instant administrative matter stemmed from a verified letter-complaint of Josefina Naguiat dated August 2, 2005, with enclosures, charging Judge Mario B. Capellan, Presiding Judge, Metropolitan Trial Court in Cities (MTCC), Branch 1 in Malolos City, Bulacan, with Delay in Rendering Judgment relative to Civil Case No. 98-84, entitled *Sta. Monica Industrial and Development Corporation v. Eugenio Roxas Buenaventura, Mario Cruz, Graciano C. Cruz and Rufino Cruz*. As alleged, it took respondent judge six (6) years to resolve, on technicality, a case governed by the rule on summary procedure.

Complainant Naguiat, during the period material, was the president and general manager of Sta. Monica Industrial and Development Corporation (Sta. Monica), the plaintiff in Civil Case No. 98-84, a suit for ejectment which the corporation filed on August 12, 1998 and raffled to the MTCC, Branch 1 in Malolos City. Summonses having been served, Eugenio R. Buenaventura and Rufino Cruz filed their joint Answer on September 3, 1998; Graciano C. Cruz filed his Answer to the complaint on September 4, 1998; while Mario Cruz did not file an Answer. Sta. Monica filed its pre-trial brief on October 26, 1998, and Graciano filed his pre-trial brief on November 17, 1998. On January 20, 1999, Rufino filed a pre-trial brief accompanied by another answer.

According to the complaint, Sta. Monica, pursuant to the orders of the court, submitted its position paper on January 29, 2001. Graciano and Rufino filed their position papers on January 17, 2001 and March 26, 2003, respectively.

On December 3, 2003, or over seven (7) months after its receipt of the last position paper, the MTCC, presided by the respondent, issued an order dismissing Civil Case No. 98-84, on the ground that plaintiff Sta. Monica's representative lacked the personality to file the said ejectment case.

In his Comment dated February 2, 2006, respondent admitted the filing of the pleadings adverted to, except as to the filing by plaintiff Sta. Monica of its position paper. He attributed the delay in rendering judgment to the numerous pleadings that had to be filed, postponements, and the purported failure of the plaintiff to file its position paper. He went on to state that in barely three months and 25 days from the date of the filing of the case, he had conducted and terminated the pre-trial conference and ordered the submission of position papers. He could have, so he claimed, rendered judgment shortly thereafter were it not for Atty. Cenon Navarro entering his appearance for Rufino Cruz and filing a separate answer and pre-trial brief, necessitating the setting of another pre-trial that was itself reset over a dozen times at the instance of both parties.

In a Resolution dated January 29, 2007, the Court directed the parties, if they so desired, to file their respective papers and/or additional evidence. Per Resolution of July 19, 2007, followed later by another resolution, the Court referred the case to the Office of the Court Administrator (OCA) for investigation, report and recommendation.

In its memorandum-report dated February 15, 2008, the OCA found the commission of at least four (4) procedural lapses that caused unnecessary delay in the final resolution of Civil Case No. 98-84. The OCA, thus, recommended that respondent judge be adjudged guilty, as charged, and penalized accordingly.

The Court agrees with the recommendation of the OCA.

Indeed, respondent committed several lapses in his handling and eventual disposition of Civil Case No. 98-84, a failing which could have easily been avoided and, in the process, saved the parties and the court much time and resources had he exercised due diligence. Civil Case No. 98-84 for ejectment is covered by the *1991 Revised Rule on Summary Procedure*.[1] Under the Rule, the first duty of the respondent upon the filing of the case for ejectment was to examine the allegations in the complaint and the evidence appended to it, and to dismiss the case outright on any of the grounds apparent for the dismissal of a civil action. Section 4 of the Rules on Summary Procedure says as much:

> Sec. 4. Duty of the Court.—After the court determines that the case falls under summary procedure, it may, from an examination of the allegations therein and such evidence as may be attached thereto, dismiss the case outright on any of the grounds apparent for the dismissal of a civil action.

In his Order[2] of December 3, 2003, respondent dismissed Civil Case No. 98-84 on the stated ground that one Joseph Jacob, the plaintiff's representative, was not authorized to appear for the corporation because his authority, as reflected in the

[1] Sec. 1 of the Rule provides that "this rule shall govern x x x all cases of forcible entry and unlawful detainer, irrespective of the amount of damages or unpaid rentals sought to be recovered. x x x

[2] *Rollo*, p. 82.

corporate secretary's certificate appended to the complaint, was for another case. In net effect, the ground for dismissing Civil Case No. 98-84 existed and was apparent upon the filing of the basic complaint on August 12, 1998. Yet, respondent judge allowed the case to unnecessarily drag on for more than five years.

This brings us to another but related point. The issue of Jacob's lack of legal personality to institute the ejectment suit was, as respondent judge stressed in his supplemental position paper, raised in the position paper of defendant Rufino Cruz. It was, respondent adds, a primordial issue, not a mere technicality, to which all other issues ought to yield.

The above argument may perhaps be accorded some measure of plausibility, but Sec. 5 of the Rule on Summary Procedure, in part, states that "affirmative and negative defenses not pleaded in the [answer] shall be deemed waived, except for lack of jurisdiction over the subject matter." Not one of the answers of the defendants in Civil Case No. 98-84 raised the question of Jacob's lack of personality. In the strictly legal viewpoint, therefore, the issue and defense of lack of personality, was, by force of said Sec. 5, deemed waived.

Another procedural lapse attributable to respondent relates to his having allowed several and doubtless unnecessary postponements which contributed to the delay in the resolution of what was otherwise a simple case. As aptly observed by the OCA and as records show, respondent conducted the preliminary conference of the ejectment case on September 15, 1999 and ended it on October 23, 2000. Between these two dates, respondent granted a total of fourteen (14) postponements. Evidently, respondent did not exert his authority to expedite the summary proceedings of the case. He was oblivious to the basic objectives of summary procedures, one of which is to obviate dilatory practices and unnecessary delays which have long been the bane of ejectment proceedings. The fact that the resetting may have been sought and agreed upon by the parties is, by itself, of little moment, for judges have a wide latitude of discretion on the matter of granting or denying a plea for continuance or

postponement.[3] Sound practice requires a judge to remain, at all times, in full control of the proceedings in his sala and to adopt a firm policy against improvident postponements.[4] Given the summary nature of ejectment proceedings, allowing 14 postponements during the preliminary conference stage of the case strikes this Court as not only highly inappropriate but well-nigh improvident.

When confronted with administrative charges of delay, the Court shall be guided by the period allowed by law. Reglementary periods fixed by law and the various issuances of the Court are designed not only to protect the rights of all the parties to due process but also to achieve efficiency and order in the conduct of official business.[5] Sec. 10 of the Rule on Summary Procedure requires the court "to render [on covered cases] judgment within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same." In the context of Civil Case No. 98-84, and assuming that the 30-day threshold was to be reckoned from the time defendant Rufino Cruz filed his position paper on March 26, 2003, respondent had up to April 26, 2003 within which to decide the case. As it were, respondent rendered his terse dismissal order on December 3, 2003, or seven (7) months beyond the prescribed period under Sec. 10.

The Court has time and again admonished judges to be prompt in the performance of their solemn duty as dispenser of justice, since undue delays erode the people's faith in the judicial system. Delay not only reinforces the belief of the people that the wheels of justice grind ever so slowly, but invites suspicion, however unfair, of ulterior motives on the part of the judge.[6] The *raison*

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[3] *Philippine National Bank v. Donasco*, No. L-18638, February 28, 1963, 7 SCRA 409, 413-419.

[4] *Sevilla v. Quintin*, A.M. No. MTJ-05-1603, October 25, 2005, 474 SCRA 10, 17.

[5] *Ocampo v. Bibat-Palamos*, A.M. No. MTJ-06-1655, March 6, 2007, 517 SCRA 480, 486.

[6] *Concillo v. Gil*, A.M. No. RTJ-02-1722, September 24, 2002, 389 SCRA 487, 490-491.

d'être of courts lies not only in properly dispensing justice but also in being able to do so seasonably.[7]

Under Sec. 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order constitutes a less serious offense which, under the succeeding Sec. 11(B), is punishable as follows:

1. Suspension from office without salary and other benefits for one (1) month to two (2) months and twenty-nine (29) days; or

2. A fine of not less than ₱10,000.00 but not more than ₱19,999.00.

WHEREFORE, Judge Mario B. Capellan, MTCC, Branch 1 in Malolos City, Bulacan, is adjudged *GUILTY* of undue delay in rendering a decision or order. He is *FINED* in the amount of ten thousand one hundred pesos (PhP 10,100), with stern warning that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Brion,[*] and *del Castillo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 146839. March 23, 2011]

ROLANDO T. CATUNGAL, JOSE T. CATUNGAL, JR., CAROLYN T. CATUNGAL and ERLINDA CATUNGAL-WESSEL, *petitioners, vs.* **ANGEL S. RODRIGUEZ,** *respondent.*

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[7] *Lim, Jr. v. Magallanes*, A.M. No. RTJ-05-1932, April 2, 2007, 520 SCRA 12, 18.

[*] Additional member per Raffle dated February 28, 2011.

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES; A PARTY IS NOT ALLOWED TO COMPLETELY CHANGE HIS THEORY OF THE CASE ON APPEAL AND TO ABANDON HIS PREVIOUS ASSIGNMENT OF ERRORS IN HIS BRIEF; RATIONALE; A JUDGMENT THAT GOES BEYOND THE ISSUES AND PURPORTS TO ADJUDICATE SOMETHING ON WHICH THE COURT DID NOT HEAR THE PARTIES IS NOT ONLY IRREGULAR BUT ALSO EXTRAJUDICIAL AND INVALID.— This is not an instance where a party merely failed to assign an issue as an error in the brief nor failed to argue a material point on appeal that was raised in the trial court and supported by the record. Neither is this a case where a party raised an error closely related to, nor dependent on the resolution of, an error properly assigned in his brief. This is a situation where a party completely changes his theory of the case on appeal and abandons his previous assignment of errors in his brief, which plainly should not be allowed as anathema to due process. Petitioners should be reminded that the object of pleadings is to draw the lines of battle between the litigants and to indicate fairly the nature of the claims or defenses of both parties. In *Philippine National Construction Corporation v. Court of Appeals*, we held that "[w]hen a party adopts a certain theory in the trial court, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process." We have also previously ruled that "courts of justice have no jurisdiction or power to decide a question not in issue. Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play."

2. ID.; ID.; ID.; CHANGING OF LEGAL THEORIES ON APPEAL IS PROSCRIBED.— Verily, the first time petitioners raised their theory of the nullity of the Conditional Deed of Sale in view of the questioned provisions was only in their Motion for Reconsideration of the Court of Appeals' Decision, affirming the trial court's judgment. The previous filing of various citations of authorities by Atty. Borromeo and the Court of

Appeals' resolutions noting such citations were of no moment. The citations of authorities merely listed cases and their main rulings without even any mention of their relevance to the present case or any prayer for the Court of Appeals to consider them. In sum, the Court of Appeals did not err in disregarding the citations of authorities or in denying petitioners' motion for reconsideration of the assailed August 8, 2000 Decision in view of the proscription against changing legal theories on appeal.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; A CONDITION IMPOSED ON THE PERFECTION OF A CONTRACT AND A CONDITION IMPOSED MERELY ON THE PERFORMANCE OF AN OBLIGATION, DISTINGUISHED; CONDITION IN THE SUBJECT CONDITIONAL DEED OF SALE THAT PAYMENT OF THE BALANCE OF THE PURCHASE PRICE IS CONDITIONED ON THE SUCCESSFUL NEGOTIATION OF A ROAD RIGHT OF WAY BY THE VENDEE IS A MIXED CONDITION.— In the past, this Court has distinguished between a condition imposed on the perfection of a contract and a condition imposed merely on the performance of an obligation. While failure to comply with the first condition results in the failure of a contract, failure to comply with the second merely gives the other party the option to either refuse to proceed with the sale or to waive the condition. This principle is evident in Article 1545 of the Civil Code on sales x x x. Paragraph 1(b) of the Conditional Deed of Sale, stating that respondent shall pay the balance of the purchase price when he has successfully negotiated and secured a road right of way, is not a condition on the perfection of the contract nor on the validity of the entire contract or its compliance as contemplated in Article 1308. It is a condition imposed only on respondent's obligation to pay the remainder of the purchase price. In our view and applying Article 1182, such a condition is not purely potestative as petitioners contend. It is not dependent on the sole will of the debtor but also on the will of third persons who own the adjacent land and from whom the road right of way shall be negotiated. In a manner of speaking, such a condition is likewise dependent on chance as there is no guarantee that respondent and the third party-landowners would come to an agreement regarding the road right of way. This type of mixed condition is expressly allowed under Article 1182 of the Civil Code.

4. ID.; ID.; ID.; RESCISSION OF THE CONTRACT, UNWARRANTED; FILING OF AN ACTION IN COURT FOR THE FIXING OF PERIOD WITHIN WHICH THE VENDEE MUST COMPLY WITH HIS OBLIGATION, PROPER REMEDY.— Furthermore, it is evident from the language of paragraph 1(b) that the condition precedent (for respondent's obligation to pay the balance of the purchase price to arise) in itself partly involves an obligation to do, *i.e.*, the undertaking of respondent to negotiate and secure a road right of way at his own expense. It does not escape our notice as well, that far from disclaiming paragraph 1(b) as void, it was the Catungals' contention before the trial court that said provision should be read in relation to paragraph 1(c) x x x. The Catungals' interpretation of the [s]tipulation was that Rodriguez's obligation to negotiate and secure a road right of way was one with a period and that period, *i.e.*, "enough time" to negotiate, had already lapsed by the time they demanded the payment of ₱5,000,000.00 from respondent. Even assuming *arguendo* that the Catungals were correct that the respondent's obligation to negotiate a road right of way was one with an uncertain period, their rescission of the Conditional Deed of Sale would still be unwarranted. Based on their own theory, the Catungals had a remedy under Article 1197 of the Civil Code x x x. What the Catungals should have done was to first file an action in court to fix the period within which Rodriguez should accomplish the successful negotiation of the road right of way pursuant to the above quoted provision. Thus, the Catungals' demand for Rodriguez to make an additional payment of ₱5,000,000.00 was premature and Rodriguez's failure to accede to such demand did not justify the rescission of the contract.

5. ID.; ID.; ID.; INTERPRETATION OF CONTRACTS; RULES; APPLICATION TO THE CASE AT BAR.— It is petitioners' strategy to insist that the Court examine the first sentence of paragraph 5 alone and resist a correlation of such sentence with other provisions of the contract. Petitioners' view, however, ignores a basic rule in the interpretation of contracts – that the contract should be taken as a whole. Article 1374 of the Civil Code provides that "[t]he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." The same Code further sets down the rule that

"[i]f some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual." Similarly, under the Rules of Court it is prescribed that "[i]n the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all" and "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." Bearing in mind the aforementioned interpretative rules, we find that the first sentence of paragraph 5 must be taken in relation with the rest of paragraph 5 and with the other provisions of the Conditional Deed of Sale.

6. ID.; ID.; ID.; RESCISSION OF CONTRACT; THE VENDEE'S OPTION TO RESCIND THE CONTRACT IS NOT PURELY POTESTATIVE; EFFECT IF CONDITION IS NOT FULFILLED.— Rodriguez's option to rescind the contract is not purely potestative but rather also subject to the same **mixed condition** as his obligation to pay the balance of the purchase price – *i.e.*, the negotiation of a road right of way. In the event the condition is fulfilled (or the negotiation is successful), Rodriguez must pay the balance of the purchase price. In the event the condition is not fulfilled (or the negotiation fails), Rodriguez has the choice either (a) to not proceed with the sale and demand return of his downpayment or (b) considering that the condition was imposed for his benefit, to waive the condition and still pay the purchase price despite the lack of road access. This is the most just interpretation of the parties' contract that gives effect to all its provisions.

7. ID.; ID.; ID.; WHERE THE POTESTATIVE CONDITION IS IMPOSED NOT ON THE BIRTH OF THE OBLIGATION BUT ON ITS FULFILLMENT, ONLY THE CONDITION IS AVOIDED, LEAVING UNAFFECTED THE OBLIGATION ITSELF.— [E]ven if we assume for the sake of argument that the grant to Rodriguez of an option to rescind, in the manner provided for in the contract, is tantamount to a potestative condition, not being a condition affecting the perfection of the contract, only the said condition would be considered void and the rest of the contract will remain valid.

In *Romero*, the Court observed that "where the so-called 'potestative condition' is imposed not on the birth of the obligation but on its fulfillment, only the condition is avoided, leaving unaffected the obligation itself."

8. ID.; ID.; ID.; HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES AND SHOULD BE COMPLIED WITH IN GOOD FAITH; A COURT HAS NO ALTERNATIVE BUT TO ENFORCE THE CONTRACTUAL STIPULATIONS IN THE MANNER THEY HAVE BEEN AGREED UPON AND WRITTEN.— It cannot be gainsaid that "contracts have the force of law between the contracting parties and should be complied with in good faith." We have also previously ruled that "[b]eing the primary law between the parties, the contract governs the adjudication of their rights and obligations. A court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written." We find no merit in petitioners' contention that their parents were merely "duped" into accepting the questioned provisions in the Conditional Deed of Sale. We note that although the contract was between Agapita Catungal and Rodriguez, Jose Catungal nonetheless signed thereon to signify his marital consent to the same. We concur with the trial court's finding that the spouses Catungals' claim of being misled into signing the contract was contrary to human experience and conventional wisdom since it was Jose Catungal who was a practicing lawyer while Rodriquez was a non-lawyer. It can be reasonably presumed that Atty. Catungal and his wife reviewed the provisions of the contract, understood and accepted its provisions before they affixed their signatures thereon.

9. ID.; ID.; ID.; VENDEE IS GIVEN A PERIOD OF THIRTY DAYS FROM THE FINALITY OF THE DECISION TO NEGOTIATE A ROAD RIGHT OF WAY; THE COURT FIXED THE PERIOD IN ORDER TO AVOID FURTHER DELAY AND MULTIPLICITY OF SUITS.— After thorough review of the records of this case, we have come to the conclusion that petitioners failed to demonstrate that the Court of Appeals committed any reversible error in deciding the present controversy. However, having made the observation that it was desirable for the Catungals to file a separate action to fix the period for respondent Rodriguez's obligation to negotiate a road right of way, the Court finds it necessary to fix said period in

these proceedings. It is but equitable for us to make a determination of the issue here to obviate further delay and in line with the judicial policy of avoiding multiplicity of suits. If still warranted, Rodriguez is given a period of thirty (30) days from the finality of this decision to negotiate a road right of way. In the event no road right of way is secured by Rodriquez at the end of said period, the parties shall reassess and discuss other options as stipulated in paragraph 1(b) of the Conditional Deed of Sale and, for this purpose, they are given a period of thirty (30) days to agree on a course of action. Should the discussions of the parties prove futile after the said thirty (30)-day period, immediately upon the expiration of said period for discussion, Rodriguez may (a) exercise his option to rescind the contract, subject to the return of his downpayment, in accordance with the provisions of paragraphs 1(b) and 5 of the Conditional Deed of Sale or (b) waive the road right of way and pay the balance of the deducted purchase price as determined in the RTC Decision dated May 30, 1992.

APPEARANCES OF COUNSEL

Jesus N. Borromeo for petitioners.
Goering G.C. Paderanga for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari*, assailing the following issuances of the Court of Appeals in CA-G.R. CV No. 40627 consolidated with CA-G.R. SP No. 27565: (a) the August 8, 2000 Decision,[1] which affirmed the Decision[2] dated May 30, 1992 of the Regional Trial Court (RTC), Branch 27 of Lapu-lapu City, Cebu in Civil Case No. 2365-L, and (b) the January 30, 2001 Resolution,[3] denying herein

[1] *Rollo*, pp. 12-23; penned by Associate Justice Eloy R. Bello, Jr. with Associate Justices Delilah Vidallon-Magtolis and Elvi John S. Asuncion, concurring.

[2] CA *rollo* (CA-G.R. CV No. 40627), pp. 72-81.

[3] *Rollo*, pp. 8-9.

petitioners' motion for reconsideration of the August 8, 2000 Decision.

The relevant factual and procedural antecedents of this case are as follows:

This controversy arose from a Complaint for Damages and Injunction with Preliminary Injunction/Restraining Order[4] filed on December 10, 1990 by herein respondent Angel S. Rodriguez (Rodriguez), with the RTC, Branch 27, Lapu-lapu City, Cebu, docketed as Civil Case No. 2365-L against the spouses Agapita and Jose Catungal (the spouses Catungal), the parents of petitioners.

In the said Complaint, it was alleged that Agapita T. Catungal (Agapita) owned a parcel of land (Lot 10963) with an area of 65,246 square meters, covered by Original Certificate of Title (OCT) No. 105[5] in her name situated in the Barrio of Talamban, Cebu City. The said property was allegedly the exclusive paraphernal property of Agapita.

On April 23, 1990, Agapita, with the consent of her husband Jose, entered into a Contract to Sell[6] with respondent Rodriguez. Subsequently, the Contract to Sell was purportedly "upgraded" into a Conditional Deed of Sale[7] dated July 26, 1990 between the same parties. Both the Contract to Sell and the Conditional Deed of Sale were annotated on the title.

The provisions of the Conditional Deed of Sale pertinent to the present dispute are quoted below:

1. The VENDOR for and in consideration of the sum of TWENTY[-]FIVE MILLION PESOS (₱25,000,000.00) payable as follows:

a. FIVE HUNDRED THOUSAND PESOS (₱500,000.00) downpayment upon the signing of this agreement, receipt of which sum is hereby acknowledged in full from the VENDEE.

[4] Records, pp. 1-27.

[5] *Id.* at 12-13.

[6] *Id.* at 14-16.

[7] *Id.* at 17-19.

b. The balance of TWENTY[-]FOUR MILLION FIVE HUNDRED THOUSAND PESOS (₱24,500,000.00) shall be payable in five separate checks, made to the order of JOSE Ch. CATUNGAL, the first check shall be for FOUR MILLION FIVE HUNDRED THOUSAND PESOS (₱4,500,000.00) and the remaining balance to be paid in four checks in the amounts of FIVE MILLION PESOS (₱5,000,000.00) each after the VENDEE have (sic) successfully negotiated, secured and provided a Road Right of Way consisting of 12 meters in width cutting across Lot 10884 up to the national road, either by widening the existing Road Right of Way or by securing a new Road Right of Way of 12 meters in width. If however said Road Right of Way could not be negotiated, the VENDEE shall give notice to the VENDOR for them to reassess and solve the problem by taking other options and should the situation ultimately prove futile, he shall take steps to rescind or cancel the herein Conditional Deed of Sale.

c. That the access road or Road Right of Way leading to Lot 10963 shall be the responsibility of the VENDEE to secure and any or all cost relative to the acquisition thereof shall be borne solely by the VENDEE. He shall, however, be accorded with enough time necessary for the success of his endeavor, granting him a free hand in negotiating for the passage.

BY THESE PRESENTS, the VENDOR do hereby agree to sell by way of herein CONDITIONAL DEED OF SALE to VENDEE, his heirs, successors and assigns, the real property described in the Original Certificate of Title No. 105 x x x.

x x x x x x x x x

5. That the VENDEE has the option to rescind the sale. In the event the VENDEE exercises his option to rescind the herein Conditional Deed of Sale, the VENDEE shall notify the VENDOR by way of a written notice relinquishing his rights over the property. The VENDEE shall then be reimbursed by the VENDOR the sum of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) representing the downpayment, interest free, payable but contingent upon the event that the VENDOR shall have been able to sell the property to another party.[8]

In accordance with the Conditional Deed of Sale, Rodriguez purportedly secured the necessary surveys and plans and through his efforts, the property was reclassified from agricultural land

[8] *Id.* at 17-18.

into residential land which he claimed substantially increased the property's value. He likewise alleged that he actively negotiated for the road right of way as stipulated in the contract.[9]

Rodriguez further claimed that on August 31, 1990 the spouses Catungal requested an advance of ₱5,000,000.00 on the purchase price for personal reasons. Rodriquez allegedly refused on the ground that the amount was substantial and was not due under the terms of their agreement. Shortly after his refusal to pay the advance, he purportedly learned that the Catungals were offering the property for sale to third parties.[10]

Thereafter, Rodriguez received letters dated October 22, 1990,[11] October 24, 1990[12] and October 29, 1990,[13] all signed by Jose Catungal who was a lawyer, essentially demanding that the former make up his mind about buying the land or exercising his "option" to buy because the spouses Catungal allegedly received other offers and they needed money to pay for personal obligations and for investing in other properties/business ventures. Should Rodriguez fail to exercise his option to buy the land, the Catungals warned that they would consider the contract cancelled and that they were free to look for other buyers.

In a letter dated November 4, 1990,[14] Rodriguez registered his objections to what he termed the Catungals' unwarranted demands in view of the terms of the Conditional Deed of Sale which allowed him sufficient time to negotiate a road right of way and granted him, the vendee, the exclusive right to rescind the contract. Still, on November 15, 1990, Rodriguez purportedly received a letter dated November 9, 1990[15] from Atty. Catungal, stating that the contract had been cancelled and terminated.

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[9] *Id.* at 3.

[10] *Id*.

[11] *Id.* at 20.

[12] *Id.* at 21.

[13] *Id.* at 22.

[14] *Id.* at 23-26.

[15] *Id.* at 27.

Contending that the Catungals' unilateral rescission of the Conditional Deed of Sale was unjustified, arbitrary and unwarranted, Rodriquez prayed in his Complaint, that:

> 1. Upon the filing of this complaint, a restraining order be issued enjoining defendants [the spouses Catungal], their employees, agents, representatives or other persons acting in their behalf from offering the property subject of this case for sale to third persons; from entertaining offers or proposals by third persons to purchase the said property; and, in general, from performing acts in furtherance or implementation of defendants' rescission of their Conditional Deed of Sale with plaintiff [Rodriguez].
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> 2. After hearing, a writ of preliminary injunction be issued upon such reasonable bond as may be fixed by the court enjoining defendants and other persons acting in their behalf from performing any of the acts mentioned in the next preceding paragraph.
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> 3. After trial, a Decision be rendered:
>
> a) Making the injunction permanent;
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> b) Condemning defendants to pay to plaintiff, jointly and solidarily:
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> Actual damages in the amount of ₱400,000.00 for their unlawful rescission of the Agreement and their performance of acts in violation or disregard of the said Agreement;
>
> Moral damages in the amount of ₱200,000.00;
>
> Exemplary damages in the amount of ₱200,000.00; Expenses of litigation and attorney's fees in the amount of ₱100,000.00; and
>
> Costs of suit.[16]

On December 12, 1990, the trial court issued a temporary restraining order and set the application for a writ of preliminary injunction for hearing on December 21, 1990 with a directive to the spouses Catungal to show cause within five days from

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

notice why preliminary injunction should not be granted. The trial court likewise ordered that summons be served on them.[17]

Thereafter, the spouses Catungal filed their opposition[18] to the issuance of a writ of preliminary injunction and later filed a motion to dismiss[19] on the ground of improper venue. According to the Catungals, the subject property was located in Cebu City and thus, the complaint should have been filed in Cebu City, not Lapu-lapu City. Rodriguez opposed the motion to dismiss on the ground that his action was a personal action as its subject was breach of a contract, the Conditional Deed of Sale, and not title to, or possession of real property.[20]

In an Order dated January 17, 1991,[21] the trial court denied the motion to dismiss and ruled that the complaint involved a personal action, being merely for damages with a prayer for injunction.

Subsequently, on January 30, 1991, the trial court ordered the issuance of a writ of preliminary injunction upon posting by Rodriguez of a bond in the amount of ₱100,000.00 to answer for damages that the defendants may sustain by reason of the injunction.

On February 1, 1991, the spouses Catungal filed their Answer with Counterclaim[22] alleging that they had the right to rescind the contract in view of (1) Rodriguez's failure to negotiate the road right of way despite the lapse of several months since the signing of the contract, and (2) his refusal to pay the additional amount of ₱5,000,000.00 asked by the Catungals, which to them indicated his lack of funds to purchase the property. The Catungals likewise contended that Rodriguez did not have an

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[17] *Id.* at 28.

[18] *Id.* at 33.

[19] *Id.* at 37.

[20] *Id.* at 48-50.

[21] *Id.* at 45.

[22] *Id.* at 55-66.

exclusive right to rescind the contract and that the contract, being reciprocal, meant both parties had the right to rescind.[23] The spouses Catungal further claimed that it was Rodriguez who was in breach of their agreement and guilty of bad faith which justified their rescission of the contract.[24] By way of counterclaim, the spouses Catungal prayed for actual and consequential damages in the form of unearned interests from the balance (of the purchase price in the amount) of ₱24,500,000.00, moral and exemplary damages in the amount of ₱2,000,000.00, attorney's fees in the amount of ₱200,000.00 and costs of suits and litigation expenses in the amount of ₱10,000.00.[25] The spouses Catungal prayed for the dismissal of the complaint and the grant of their counterclaim.

The Catungals amended their Answer twice,[26] retaining their basic allegations but amplifying their charges of contractual breach and bad faith on the part of Rodriguez and adding the argument that in view of Article 1191 of the Civil Code, the power to rescind reciprocal obligations is granted by the law itself to both parties and does not need an express stipulation to grant the same to the injured party. In the Second Amended Answer with Counterclaim, the spouses Catungal added a prayer for the trial court to order the Register of Deeds to cancel the annotations of the two contracts at the back of their OCT.[27]

On October 24, 1991, Rodriguez filed an Amended Complaint,[28] adding allegations to the effect that the Catungals were guilty of several misrepresentations which purportedly induced Rodriguez to buy the property at the price of ₱25,000,000.00. Among others, it was alleged that the spouses

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[23] *Id.* at 57-58; *see* Paragraphs 6 and 7 of the Answer with Counterclaim.

[24] *Id.* at 64; *see* Paragraphs 17, 19 and 36 of the Answer with Counterclaim.

[25] *Id.* at 66-67.

[26] *Id.* at 94-111 and 120-139; the first Amended Answer with Counterclaim was dated April 4, 1991, the Second Amended Answer with Counterclaim was dated May 6, 1991.

[27] *Id.* at 139.

[28] *Id.* at 195-217.

Catungal misrepresented that their Lot 10963 includes a flat portion of land which later turned out to be a separate lot (Lot 10986) owned by Teodora Tudtud who sold the same to one Antonio Pablo. The Catungals also allegedly misrepresented that the road right of way will only traverse two lots owned by Anatolia Tudtud and her daughter Sally who were their relatives and who had already agreed to sell a portion of the said lots for the road right of way at a price of ₱550.00 per square meter. However, because of the Catungals' acts of offering the property to other buyers who offered to buy the road lots for ₱2,500.00 per square meter, the adjacent lot owners were no longer willing to sell the road lots to Rodriguez at ₱550.00 per square meter but were asking for a price of ₱3,500.00 per square meter. In other words, instead of assisting Rodriguez in his efforts to negotiate the road right of way, the spouses Catungal allegedly intentionally and maliciously defeated Rodriguez's negotiations for a road right of way in order to justify rescission of the said contract and enable them to offer the property to other buyers.

Despite requesting the trial court for an extension of time to file an amended Answer,[29] the Catungals did not file an amended Answer and instead filed an Urgent Motion to Dismiss[30] again invoking the ground of improper venue. In the meantime, for failure to file an amended Answer within the period allowed, the trial court set the case for pre-trial on December 20, 1991.

During the pre-trial held on December 20, 1991, the trial court denied in open court the Catungals' Urgent Motion to Dismiss for violation of the rules and for being repetitious and having been previously denied.[31] However, Atty. Catungal refused to enter into pre-trial which prompted the trial court to declare the defendants in default and to set the presentation of the plaintiff's evidence on February 14, 1992.[32]

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[29] *Id.* at 219.

[30] *Id.* at 253.

[31] *Id.* at 254.

[32] *Id.* at 255.

On December 23, 1991, the Catungals filed a motion for reconsideration[33] of the December 20, 1991 Order denying their Urgent Motion to Dismiss but the trial court denied reconsideration in an Order dated February 3, 1992.[34] Undeterred, the Catungals subsequently filed a Motion to Lift and to Set Aside Order of Default[35] but it was likewise denied for being in violation of the rules and for being not meritorious.[36] On February 28, 1992, the Catungals filed a Petition for *Certiorari* and Prohibition[37] with the Court of Appeals, questioning the denial of their motion to dismiss and the order of default. This was docketed as **CA-G.R. SP No. 27565**.

Meanwhile, Rodriguez proceeded to present his evidence before the trial court.

In a Decision dated May 30, 1992, the trial court ruled in favor of Rodriguez, finding that: (a) under the contract it was complainant (Rodriguez) that had the option to rescind the sale; (b) Rodriguez's obligation to pay the balance of the purchase price arises only upon successful negotiation of the road right of way; (c) he proved his diligent efforts to negotiate the road right of way; (d) the spouses Catungal were guilty of misrepresentation which defeated Rodriguez's efforts to acquire the road right of way; and (e) the Catungals' rescission of the contract had no basis and was in bad faith. Thus, the trial court made the injunction permanent, ordered the Catungals to reduce the purchase price by the amount of acquisition of Lot 10963 which they misrepresented was part of the property sold but was in fact owned by a third party and ordered them to pay ₱100,000.00 as damages, ₱30,000.00 as attorney's fees and costs.

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[33] *Id.* at 256-259.

[34] *Id.* at 264.

[35] *Id.* at 267.

[36] *Id.* at 273.

[37] CA *rollo* (CA-G.R. SP No. 27565), pp. 1-46.

The Catungals appealed the decision to the Court of Appeals, asserting the commission of the following errors by the trial court in their appellants' brief[38] dated February 9, 1994:

I

THE COURT *A QUO* ERRED IN NOT DISMISSING OF (SIC) THE CASE ON THE GROUNDS OF IMPROPER VENUE AND LACK OF JURISDICTION.

II

THE COURT *A QUO* ERRED IN CONSIDERING THE CASE AS A PERSONAL AND NOT A REAL ACTION.

III

GRANTING WITHOUT ADMITTING THAT VENUE WAS PROPERLY LAID AND THE CASE IS A PERSONAL ACTION, THE COURT *A QUO* ERRED IN DECLARING THE DEFENDANTS IN DEFAULT DURING THE PRE-TRIAL WHEN AT THAT TIME THE DEFENDANTS HAD ALREADY FILED THEIR ANSWER TO THE COMPLAINT.

IV

THE COURT *A QUO* ERRED IN CONSIDERING THE DEFENDANTS AS HAVING LOST THEIR LEGAL STANDING IN COURT WHEN AT MOST THEY COULD ONLY BE CONSIDERED AS IN DEFAULT AND STILL ENTITLED TO NOTICES OF ALL FURTHER PROCEEDINGS ESPECIALLY AFTER THEY HAD FILED THE MOTION TO LIFT THE ORDER OF DEFAULT.

V

THE COURT *A QUO* ERRED IN ISSUING THE WRIT [OF] PRELIMINARY INJUNCTION RESTRAINING THE EXERCISE OF ACTS OF OWNERSHIP AND OTHER RIGHTS OVER REAL PROPERTY OUTSIDE OF THE COURT'S TERRITORIAL JURISDICTION AND INCLUDING PERSONS WHO WERE NOT BROUGHT UNDER ITS JURISDICTION, THUS THE NULLITY OF THE WRIT.

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[38] CA *rollo* (CA-G.R. CV No. 40627), pp. 26-71 and (CA-G.R. SP No. 27565), pp. 23-114.

VI

THE COURT *A QUO* ERRED IN NOT RESTRAINING ITSELF *MOTU PROP[R]IO* FROM CONTINUING WITH THE PROCEEDINGS IN THE CASE AND IN RENDERING DECISION THEREIN IF ONLY FOR REASON OF COURTESY AND FAIRNESS BEING MANDATED AS DISPENSER OF FAIR AND EQUAL JUSTICE TO ALL AND SUNDRY WITHOUT FEAR OR FAVOR IT HAVING BEEN SERVED EARLIER WITH A COPY OF THE PETITION FOR *CERTIORARI* QUESTIONING ITS VENUE AND JURISDICTION IN CA-G.R. NO. SP 27565 IN FACT NOTICES FOR THE FILING OF COMMENT THERETO HAD ALREADY BEEN SENT OUT BY THE HONORABLE COURT OF APPEALS, SECOND DIVISION, AND THE COURT *A QUO* WAS FURNISHED WITH COPY OF SAID NOTICE.

VII

THE COURT *A QUO* ERRED IN DECIDING THE CASE IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANTS ON THE BASIS OF EVIDENCE WHICH ARE IMAGINARY, FABRICATED, AND DEVOID OF TRUTH, TO BE STATED IN DETAIL IN THE DISCUSSION OF THIS PARTICULAR ERROR, AND, THEREFORE, THE DECISION IS REVERSIBLE.[39]

On August 31, 1995, after being granted several extensions, Rodriguez filed his appellee's brief,[40] essentially arguing the correctness of the trial court's Decision regarding the foregoing issues raised by the Catungals. Subsequently, the Catungals filed a Reply Brief[41] dated October 16, 1995.

From the filing of the appellants' brief in 1994 up to the filing of the Reply Brief, the spouses Catungal were represented by appellant Jose Catungal himself. However, a new counsel for the Catungals, Atty. Jesus N. Borromeo (Atty. Borromeo), entered his appearance before the Court of Appeals on September 2, 1997.[42] On the same date, Atty. Borromeo filed a Motion

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

[40] *Id.* at 259-296.

[41] *Id.* at 318-336.

[42] *Id.* at 339.

for Leave of Court to File Citation of Authorities[43] and a Citation of Authorities.[44] This would be followed by Atty. Borromeo's filing of an Additional Citation of Authority and Second Additional Citation of Authority both on November 17, 1997.[45]

During the pendency of the case with the Court of Appeals, Agapita Catungal passed away and thus, her husband, Jose, filed on February 17, 1999 a motion for Agapita's substitution by her surviving children.[46]

On August 8, 2000, the Court of Appeals rendered a Decision in the consolidated cases CA-G.R. CV No. 40627 and CA-G.R. SP No. 27565,[47] affirming the trial court's Decision.

In a Motion for Reconsideration dated August 21, 2000,[48] counsel for the Catungals, Atty. Borromeo, argued for the first time that paragraphs 1(b) and 5[49] of the Conditional Deed of Sale, whether taken separately or jointly, violated the principle of mutuality of contracts under Article 1308 of the Civil Code and thus, said contract was void *ab initio*. He adverted to the cases mentioned in his various citations of authorities to support his argument of nullity of the contract and his position that this issue may be raised for the first time on appeal.

Meanwhile, a Second Motion for Substitution[50] was filed by Atty. Borromeo in view of the death of Jose Catungal.

In a Resolution dated January 30, 2001, the Court of Appeals allowed the substitution of the deceased Agapita and Jose Catungal

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[43] *Id.* at 341.

[44] *Id.* at 342.

[45] *Id.* at 343-346.

[46] *Id.* at 349-350.

[47] This is the petition for *certiorari* and prohibition previously filed by the Catungals to question the trial court's denial of the motion to dismiss and the order of default.

[48] CA *rollo* (CA-G.R. CV No. 40627), pp. 365-374.

[49] In petitioners' pleadings, they refer to this as paragraph "f" when it should be paragraph 5 of the Conditional Deed of Sale.

[50] CA *rollo* (CA-G.R. CV No. 40627), pp. 391-393.

by their surviving heirs and denied the motion for reconsideration for lack of merit.

Hence, the heirs of Agapita and Jose Catungal filed on March 27, 2001 the present petition for review,[51] which essentially argued that the Court of Appeals erred in not finding that paragraphs 1(b) and/or 5 of the Conditional Deed of Sale, violated the principle of mutuality of contracts under Article 1308 of the Civil Code. Thus, said contract was supposedly void *ab initio* and the Catungals' rescission thereof was superfluous.

In his Comment,[52] Rodriguez highlighted that (a) petitioners were raising new matters that cannot be passed upon on appeal; (b) the validity of the Conditional Deed of Sale was already admitted and petitioners cannot be allowed to change theories on appeal; (c) the questioned paragraphs of the Conditional Deed of Sale were valid; and (d) petitioners were the ones who committed fraud and breach of contract and were not entitled to relief for not having come to court with clean hands.

The Court gave due course to the Petition[53] and the parties filed their respective Memoranda.

The issues to be resolved in the case at bar can be summed into two questions:

I. Are petitioners allowed to raise their theory of nullity of the Conditional Deed of Sale for the first time on appeal?

II. Do paragraphs 1(b) and 5 of the Conditional Deed of Sale violate the principle of mutuality of contracts under Article 1308 of the Civil Code?

On petitioners' change of theory

Petitioners claimed that the Court of Appeals should have reversed the trial courts' Decision on the ground of the alleged nullity of paragraphs 1(b) and 5 of the Conditional Deed of

[51] *Rollo*, pp. 26-40.

[52] *Id.* at 51-65.

[53] *Id.* at 80-81.

Sale notwithstanding that the same was not raised as an error in their appellants' brief. Citing *Catholic Bishop of Balanga v. Court of Appeals*,[54] petitioners argued in the Petition that this case falls under the following exceptions:

> (3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice;
>
> (4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
>
> (5) Matters not assigned as errors on appeal but closely related to an error assigned; and
>
> (6) Matters not assigned as errors but upon which the determination of a question properly assigned is dependent.[55]

We are not persuaded.

This is not an instance where a party merely failed to assign an issue as an error in the brief nor failed to argue a material point on appeal that was raised in the trial court and supported by the record. Neither is this a case where a party raised an error closely related to, nor dependent on the resolution of, an error properly assigned in his brief. This is a situation where a party completely changes his theory of the case on appeal and abandons his previous assignment of errors in his brief, which plainly should not be allowed as anathema to due process.

Petitioners should be reminded that the object of pleadings is to draw the lines of battle between the litigants and to indicate fairly the nature of the claims or defenses of both parties.[56] In *Philippine National Construction Corporation v. Court of*

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[54] 332 Phil. 206 (1996).

[55] *Id.* at 217-218.

[56] *Ortega v. Social Security Commission*, G.R. No. 176150, June 25, 2008, 555 SCRA 353, 370.

Appeals,[57] we held that "[w]hen a party adopts a certain theory in the trial court, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process."[58]

We have also previously ruled that "courts of justice have no jurisdiction or power to decide a question not in issue. Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play."[59]

During the proceedings before the trial court, the spouses Catungal never claimed that the provisions in the Conditional Deed of Sale, stipulating that the payment of the balance of the purchase price was contingent upon the successful negotiation of a road right of way (paragraph 1[b]) and granting Rodriguez the option to rescind (paragraph 5), were void for allegedly making the fulfillment of the contract dependent solely on the will of Rodriguez.

On the contrary, with respect to paragraph 1(b), the Catungals did not aver in the Answer (and its amended versions) that the payment of the purchase price was subject to the will of Rodriguez but rather they claimed that paragraph 1(b) in relation to 1(c) only presupposed a reasonable time be given to Rodriguez to negotiate the road right of way. However, it was petitioners' theory that more than sufficient time had already been given Rodriguez to negotiate the road right of way. Consequently, Rodriguez's refusal/failure to pay the balance of the purchase price, upon demand, was allegedly indicative of lack of funds and a breach of the contract on the part of Rodriguez.

Anent paragraph 5 of the Conditional Deed of Sale, regarding Rodriguez's option to rescind, it was petitioners' theory in the

[57] 505 Phil. 87 (2005).

[58] *Id.* at 102.

[59] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, G.R. No. 159593, October 16, 2006, 504 SCRA 484, 495.

court *a quo* that notwithstanding such provision, they retained the right to rescind the contract for Rodriguez's breach of the same under Article 1191 of the Civil Code.

Verily, the first time petitioners raised their theory of the nullity of the Conditional Deed of Sale in view of the questioned provisions was only in their Motion for Reconsideration of the Court of Appeals' Decision, affirming the trial court's judgment. The previous filing of various citations of authorities by Atty. Borromeo and the Court of Appeals' resolutions noting such citations were of no moment. The citations of authorities merely listed cases and their main rulings without even any mention of their relevance to the present case or any prayer for the Court of Appeals to consider them. In sum, the Court of Appeals did not err in disregarding the citations of authorities or in denying petitioners' motion for reconsideration of the assailed August 8, 2000 Decision in view of the proscription against changing legal theories on appeal.

Ruling on the questioned provisions of the Conditional Deed of Sale

Even assuming for the sake of argument that this Court may overlook the procedural misstep of petitioners, we still cannot uphold their belatedly proffered arguments.

At the outset, it should be noted that what the parties entered into is a Conditional Deed of Sale, whereby the spouses Catungal agreed to sell and Rodriguez agreed to buy Lot 10963 conditioned on the payment of a certain price but the payment of the purchase price was additionally made contingent on the successful negotiation of a road right of way. It is elementary that "[i]n conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition."[60]

Petitioners rely on Article 1308 of the Civil Code to support their conclusion regarding the claimed nullity of the aforementioned provisions. Article 1308 states that "[t]he contract must bind

[60] Civil Code, Article 1181.

both contracting parties; its validity or compliance cannot be left to the will of one of them."

Article 1182 of the Civil Code, in turn, provides:

> Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.

In the past, this Court has distinguished between a condition imposed on the perfection of a contract and a condition imposed merely on the performance of an obligation. While failure to comply with the first condition results in the failure of a contract, failure to comply with the second merely gives the other party the option to either refuse to proceed with the sale or to waive the condition.[61] This principle is evident in Article 1545 of the Civil Code on sales, which provides in part:

> Art. 1545. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition x x x.

Paragraph 1(b) of the Conditional Deed of Sale, stating that respondent shall pay the balance of the purchase price when he has successfully negotiated and secured a road right of way, is not a condition on the perfection of the contract nor on the validity of the entire contract or its compliance as contemplated in Article 1308. It is a condition imposed only on respondent's obligation to pay the remainder of the purchase price. In our view and applying Article 1182, such a condition is not purely potestative as petitioners contend. It is not dependent on the sole will of the debtor but also on the will of third persons who own the adjacent land and from whom the road right of way shall be negotiated. In a manner of speaking, such a condition is likewise dependent on chance as there is no guarantee that respondent and the third party-landowners would come to an

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[61] *Babasa v. Court of Appeals*, 352 Phil. 1142, 1154 (1998).

agreement regarding the road right of way. This type of mixed condition is expressly allowed under Article 1182 of the Civil Code.

Analogous to the present case is *Romero v. Court of Appeals*,[62] wherein the Court interpreted the legal effect of a condition in a deed of sale that the balance of the purchase price would be paid by the vendee when the vendor has successfully ejected the informal settlers occupying the property. In *Romero*, we found that such a condition did not affect the perfection of the contract but only imposed a condition on the fulfillment of the obligation to pay the balance of the purchase price, to wit:

> From the moment the contract is perfected, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law. Under the agreement, private respondent is obligated to evict the squatters on the property. **The ejectment of the squatters is a condition the operative act of which sets into motion the period of compliance by petitioner of his own obligation, *i.e.*, to pay the balance of the purchase price. Private respondent's failure "to remove the squatters from the property" within the stipulated period gives petitioner the right to either refuse to proceed with the agreement or waive that condition in consonance with Article 1545 of the Civil Code**. This option clearly belongs to petitioner and not to private respondent.
>
> **We share the opinion of the appellate court that the undertaking required of private respondent does not constitute a "potestative condition dependent solely on his will" that might, otherwise, be void in accordance with Article 1182 of the Civil Code but a "mixed" condition "dependent not on the will of the vendor alone but also of third persons like the squatters and government agencies and personnel concerned."** We must hasten to add, however, that where the so-called "potestative condition" is imposed not on the birth of the obligation but on its fulfillment, only the condition is avoided, leaving unaffected the obligation itself.[63] (Emphases supplied.)

From the provisions of the Conditional Deed of Sale subject matter of this case, it was the vendee (Rodriguez) that had the

[62] 320 Phil. 269 (1995).

[63] *Id.* at 281-282.

obligation to successfully negotiate and secure the road right of way. However, in the decision of the trial court, which was affirmed by the Court of Appeals, it was found that respondent Rodriguez diligently exerted efforts to secure the road right of way but the spouses Catungal, in bad faith, contributed to the collapse of the negotiations for said road right of way. To quote from the trial court's decision:

> It is therefore apparent that the vendee's obligations (sic) to pay the balance of the purchase price arises only when the road-right-of-way to the property shall have been successfully negotiated, secured and provided. In other words, the obligation to pay the balance is conditioned upon the acquisition of the road-right-of-way, in accordance with paragraph 2 of Article 1181 of the New Civil Code. Accordingly, "an obligation dependent upon a suspensive condition cannot be demanded until after the condition takes place because it is only after the fulfillment of the condition that the obligation arises." (Javier v[s] (sic) CA 183 SCRA) Exhibits H, D, P, R, T, FF and JJ show that **plaintiff [Rodriguez] indeed was diligent in his efforts to negotiate for a road-right-of-way** to the property. The written offers, proposals and follow-up of his proposals show that plaintiff [Rodriguez] went all out in his efforts to immediately acquire an access road to the property, even going to the extent of offering ₱3,000.00 per square meter for the road lots (Exh. Q) from the original ₱550.00 per sq. meter. This Court also notes that **defendant (sic) [the Catungals] made misrepresentation in the negotiation they have entered into with plaintiff** [Rodriguez]. (Exhs. F and G) The misrepresentation of defendant (sic) [the Catungals] as to the third lot (Lot 10986) to be part and parcel of the subject property [(]Lot 10963) **contributed in defeating the plaintiff's [Rodriguez's] effort in acquiring the road-right-of-way to the property. Defendants [the Catungals] cannot now invoke the non-fulfillment of the condition in the contract as a ground for rescission when defendants [the Catungals] themselves are guilty of preventing the fulfillment of such condition.**
>
> From the foregoing, this Court is of the considered view that rescission of the conditional deed of sale by the defendants is without any legal or factual basis.[64] x x x. (Emphases supplied.)

In all, we see no cogent reason to disturb the foregoing factual findings of the trial court.

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[64] CA *rollo* (CA-G.R. CV No. 40627), pp. 78-79.

Furthermore, it is evident from the language of paragraph 1(b) that the condition precedent (for respondent's obligation to pay the balance of the purchase price to arise) in itself partly involves an obligation to do, *i.e.*, the undertaking of respondent to negotiate and secure a road right of way at his own expense.[65] It does not escape our notice as well, that far from disclaiming paragraph 1(b) as void, it was the Catungals' contention before the trial court that said provision should be read in relation to paragraph 1(c) which stated:

> c. That the access road or Road Right of Way leading to Lot 10963 shall be the responsibility of the VENDEE to secure and any or all cost relative to the acquisition thereof shall be borne solely by the VENDEE. **He shall, however, be accorded with enough time necessary for the success of his endeavor**, granting him a free hand in negotiating for the passage.[66] (Emphasis supplied.)

The Catungals' interpretation of the foregoing stipulation was that Rodriguez's obligation to negotiate and secure a road right of way was one with a period and that period, *i.e.*, "enough time" to negotiate, had already lapsed by the time they demanded the payment of ₱5,000,000.00 from respondent. Even assuming *arguendo* that the Catungals were correct that the respondent's obligation to negotiate a road right of way was one with an uncertain period, their rescission of the Conditional Deed of Sale would still be unwarranted. Based on their own theory, the Catungals had a remedy under Article 1197 of the Civil Code, which mandates:

> Art. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.
>
> The courts shall also fix the duration of the period when it depends upon the will of the debtor.
>
> In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

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[65] Records, p. 17; paragraph 1(b) and (c) of the Conditional Deed of Sale.

[66] *Id*.

What the Catungals should have done was to first file an action in court to fix the period within which Rodriguez should accomplish the successful negotiation of the road right of way pursuant to the above quoted provision. Thus, the Catungals' demand for Rodriguez to make an additional payment of ₱5,000,000.00 was premature and Rodriguez's failure to accede to such demand did not justify the rescission of the contract.

With respect to petitioners' argument that paragraph 5 of the Conditional Deed of Sale likewise rendered the said contract void, we find no merit to this theory. Paragraph 5 provides:

> 5. That the VENDEE has the option to rescind the sale. In the event the VENDEE exercises his option to rescind the herein Conditional Deed of Sale, the VENDEE shall notify the VENDOR by way of a written notice relinquishing his rights over the property. The VENDEE shall then be reimbursed by the VENDOR the sum of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) representing the downpayment, interest free, payable but contingent upon the event that the VENDOR shall have been able to sell the property to another party.[67]

Petitioners posited that the above stipulation was the "deadliest" provision in the Conditional Deed of Sale for violating the principle of mutuality of contracts since it purportedly rendered the contract subject to the will of respondent.

We do not agree.

It is petitioners' strategy to insist that the Court examine the first sentence of paragraph 5 alone and resist a correlation of such sentence with other provisions of the contract. Petitioners' view, however, ignores a basic rule in the interpretation of contracts – that the contract should be taken as a whole.

Article 1374 of the Civil Code provides that "[t]he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." The same Code further sets down the rule that "[i]f some stipulation of any contract should admit of several

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[67] *Id.* at 18.

meanings, it shall be understood as bearing that import which is most adequate to render it effectual."[68]

Similarly, under the Rules of Court it is prescribed that "[i]n the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all"[69] and "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."[70]

Bearing in mind the aforementioned interpretative rules, we find that the first sentence of paragraph 5 must be taken in relation with the rest of paragraph 5 and with the other provisions of the Conditional Deed of Sale.

Reading paragraph 5 in its entirety will show that Rodriguez's option to rescind the contract is not absolute as it is subject to the requirement that there should be written notice to the vendor and the vendor shall only return Rodriguez's downpayment of ₱500,000.00, without interest, when the vendor shall have been able to sell the property to another party. That what is stipulated to be returned is only the downpayment of ₱500,000.00 in the event that Rodriguez exercises his option to rescind is significant. To recall, paragraph 1(b) of the contract clearly states that the installments on the balance of the purchase price shall only be paid upon successful negotiation and procurement of a road right of way. It is clear from such provision that the existence of a road right of way is a material consideration for Rodriguez to purchase the property. Thus, prior to him being able to procure the road right of way, by express stipulation in the contract, he is not bound to make additional payments to the Catungals. It was further stipulated in paragraph 1(b) that: "[i]f however said road right of way cannot be negotiated, the VENDEE shall give notice to the VENDOR for them to reassess

[68] Civil Code, Article 1373.

[69] Rules of Court, Rule 130, Section 11.

[70] *Id.*, Section 13.

and solve the problem by taking other options and **should the situation ultimately prove futile, he [Rodriguez] shall take steps to rescind or [cancel] the herein Conditional Deed of Sale**." The intention of the parties for providing subsequently in paragraph 5 that Rodriguez has the option to rescind the sale is undeniably only limited to the contingency that Rodriguez shall not be able to secure the road right of way. Indeed, if the parties intended to give Rodriguez the absolute option to rescind the sale at any time, the contract would have provided for the return of all payments made by Rodriguez and not only the downpayment. To our mind, the reason only the downpayment was stipulated to be returned is that the vendee's option to rescind can only be exercised in the event that no road right of way is secured and, thus, the vendee has not made any additional payments, other than his downpayment.

In sum, Rodriguez's option to rescind the contract is not purely potestative but rather also subject to the same **mixed condition** as his obligation to pay the balance of the purchase price – *i.e.*, the negotiation of a road right of way. In the event the condition is fulfilled (or the negotiation is successful), Rodriguez must pay the balance of the purchase price. In the event the condition is not fulfilled (or the negotiation fails), Rodriguez has the choice either (a) to not proceed with the sale and demand return of his downpayment or (b) considering that the condition was imposed for his benefit, to waive the condition and still pay the purchase price despite the lack of road access. This is the most just interpretation of the parties' contract that gives effect to all its provisions.

In any event, even if we assume for the sake of argument that the grant to Rodriguez of an option to rescind, in the manner provided for in the contract, is tantamount to a potestative condition, not being a condition affecting the perfection of the contract, only the said condition would be considered void and the rest of the contract will remain valid. In *Romero*, the Court observed that "where the so-called 'potestative condition' is imposed not on the birth of the obligation but on its fulfillment,

only the condition is avoided, leaving unaffected the obligation itself."[71]

It cannot be gainsaid that "contracts have the force of law between the contracting parties and should be complied with in good faith."[72] We have also previously ruled that "[b]eing the primary law between the parties, the contract governs the adjudication of their rights and obligations. A court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written."[73] We find no merit in petitioners' contention that their parents were merely "duped" into accepting the questioned provisions in the Conditional Deed of Sale. We note that although the contract was between Agapita Catungal and Rodriguez, Jose Catungal nonetheless signed thereon to signify his marital consent to the same. We concur with the trial court's finding that the spouses Catungals' claim of being misled into signing the contract was contrary to human experience and conventional wisdom since it was Jose Catungal who was a practicing lawyer while Rodriquez was a non-lawyer.[74] It can be reasonably presumed that Atty. Catungal and his wife reviewed the provisions of the contract, understood and accepted its provisions before they affixed their signatures thereon.

After thorough review of the records of this case, we have come to the conclusion that petitioners failed to demonstrate that the Court of Appeals committed any reversible error in deciding the present controversy. However, having made the observation that it was desirable for the Catungals to file a separate action to fix the period for respondent Rodriguez's obligation to negotiate a road right of way, the Court finds it necessary to fix said period in these proceedings. It is but equitable

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[71] *Romero v. Court of Appeals*, *supra* note 62 at 282.

[72] Civil Code, Article 1159.

[73] *Raquel-Santos v. Court of Appeals*, G.R. Nos. 174986, 175071 and 181415, July 7, 2009, 592 SCRA 169, 194; *Felsan Realty & Development Corporation v. Commonwealth of Australia*, G.R. No. 169656, October 11, 2007, 535 SCRA 618, 629; *Pryce Corporation v. Philippine Amusement and Gaming Corporation*, 497 Phil. 490, 503 (2005).

[74] CA *rollo* (CA-G.R. CV No. 40627), p. 77.

for us to make a determination of the issue here to obviate further delay and in line with the judicial policy of avoiding multiplicity of suits.

If still warranted, Rodriguez is given a period of thirty (30) days from the finality of this decision to negotiate a road right of way. In the event no road right of way is secured by Rodriquez at the end of said period, the parties shall reassess and discuss other options as stipulated in paragraph 1(b) of the Conditional Deed of Sale and, for this purpose, they are given a period of thirty (30) days to agree on a course of action. Should the discussions of the parties prove futile after the said thirty (30)-day period, immediately upon the expiration of said period for discussion, Rodriguez may (a) exercise his option to rescind the contract, subject to the return of his downpayment, in accordance with the provisions of paragraphs 1(b) and 5 of the Conditional Deed of Sale or (b) waive the road right of way and pay the balance of the deducted purchase price as determined in the RTC Decision dated May 30, 1992.

WHEREFORE, the Decision dated August 8, 2000 and the Resolution dated January 30, 2001 of the Court of Appeals in CA-G.R. CV No. 40627 consolidated with CA-G.R. SP No. 27565 are *AFFIRMED with* the following *modification*:

If still warranted, respondent Angel S. Rodriguez is given a period of thirty (30) days from the finality of this Decision to negotiate a road right of way. In the event no road right of way is secured by respondent at the end of said period, the parties shall reassess and discuss other options as stipulated in paragraph 1(b) of the Conditional Deed of Sale and, for this purpose, they are given a period of thirty (30) days to agree on a course of action. Should the discussions of the parties prove futile after the said thirty (30)-day period, immediately upon the expiration of said period for discussion, Rodriguez may (a) exercise his option to rescind the contract, subject to the return of his downpayment, in accordance with the provisions of paragraphs 1(b) and 5 of the Conditional Deed of Sale or (b) waive the road right of way and pay the balance of the deducted purchase price as determined in the RTC Decision dated May 30, 1992.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 151369. March 23, 2011]

ANITA MONASTERIO-PE and the SPOUSES ROMULO TAN and EDITHA PE-TAN, *petitioners, vs.* **JOSE JUAN TONG, herein represented by his Attorney-in-Fact, JOSE Y. ONG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED BY THE PARTIES AND PASSED UPON BY THE SUPREME COURT.— At the outset, it bears emphasis that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and passed upon by this Court. It is a settled rule that in the exercise of this Court's power of review, it does not inquire into the sufficiency of the evidence presented, consistent with the rule that this Court is not a trier of facts. In the instant case, a perusal of the errors assigned by petitioners would readily show that they are raising factual issues the resolution of which requires the examination of evidence. Certainly, issues which are being raised in the present petition, such as the questions of whether the issue of physical possession is already included as one of the issues in a case earlier filed by petitioner Anita and her husband, as well as whether respondent complied with the law and rules on *barangay* conciliation, are factual in nature.

2. ID.; ID.; ID.; MUST BE FILED BEFORE THE COURT OF APPEALS WHERE THE ASSAILED DECISION OF THE REGIONAL TRIAL COURT WAS ISSUED IN THE EXERCISE OF ITS APPELLATE JURISDICTION.— Moreover, the appeal under Rule 45 of the said Rules contemplates that the RTC rendered the judgment, final order or resolution acting in its original jurisdiction. In the present case, the assailed Decision and Order of the RTC were issued in the exercise of its appellate jurisdiction. Thus, petitioners pursued the wrong mode of appeal when they filed the present petition for review on *certiorari* with this Court. Instead, they should have filed a petition for review with the CA pursuant to the provisions of Section 1, Rule 42 of the Rules of Court.

3. ID.; ACTIONS; CERTIFICATION AGAINST FORUM-SHOPPING; EXECUTION THEREOF BY THE ATTORNEY-IN-FACT WHO INSTITUTED THE EJECTMENT SUIT AS THE REPRESENTATIVE OF THE PLAINTIFF, IS NOT A VIOLATION OF THE REQUIREMENT THAT THE PARTIES MUST PERSONALLY SIGN THE SAME.— It is true that the first paragraph of Section 5, Rule 7 of the Rules of Court, requires that the certification should be signed by the "petitioner or principal party" himself. The rationale behind this is because only the petitioner himself has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or agencies. However, the rationale does not apply where, as in this case, it is the attorney-in-fact who instituted the action. Such circumstance constitutes reasonable cause to allow the attorney-in-fact to personally sign the Certificate of Non-Forum Shopping. Indeed, the settled rule is that the execution of the certification against forum shopping by the attorney-in-fact is not a violation of the requirement that the parties must personally sign the same. The attorney-in-fact, who has authority to file, and who actually filed the complaint as the representative of the plaintiff, is a party to the ejectment suit. In fact, Section 1, Rule 70 of the Rules of Court includes the representative of the owner in an ejectment suit as one of the parties authorized to institute the proceedings. In the present case, there is no dispute that Ong is respondent's attorney-in-fact. Hence, the Court finds that there has been substantial compliance with the rules proscribing forum shopping.

4. CIVIL LAW; PROPERTY AND OWNERSHIP; RIGHT OF POSSESSION IS A NECESSARY INCIDENT OF OWNERSHIP.— In any case, it can be inferred from the judgments of this Court in the [Civil Case Nos. 10853 and 20181] that respondent, as owner of the subject lots, is entitled to the possession thereof. Settled is the rule that the right of possession is a necessary incident of ownership. Petitioners, on the other hand, are consequently barred from claiming that they have the right to possess the disputed parcels of land, because their alleged right is predicated solely on their claim of ownership, which is already effectively debunked by the decisions of this Court affirming the validity of the deeds of sale transferring ownership of the subject properties to respondent.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ONE-YEAR PERIOD WITHIN WHICH THE COMPLAINT CAN BE FILED SHOULD BE COUNTED FROM THE DATE OF DEMAND.— Respondent alleged in his complaint that petitioners occupied the subject property by his mere tolerance. While tolerance is lawful, such possession becomes illegal upon demand to vacate by the owner and the possessor by tolerance refuses to comply with such demand. Respondent sent petitioners a demand letter dated December 1, 1999 to vacate the subject property, but petitioners did not comply with the demand. A person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him. Under Section 1, Rule 70 of the Rules of Court, the one-year period within which a complaint for unlawful detainer can be filed should be counted from the date of demand, because only upon the lapse of that period does the possession become unlawful. Respondent filed the ejectment case against petitioners on March 29, 2000, which was less than a year from December 1, 1999, the date of formal demand. Hence, it is clear that the action was filed within the one-year period prescribed for filing an ejectment or unlawful detainer case.

6. ID.; ID.; ID.; PROVISIONS OF THE LAW ON *BARANGAY* CONCILIATION COMPLIED WITH PRIOR TO THE FILING OF THE UNLAWFUL DETAINER CASE.— [T]he

Court does not agree with petitioners' assertion that the filing of the unlawful detainer case was premature, because respondent failed to comply with the provisions of the law on *barangay* conciliation. As held by the RTC, *Barangay* Kauswagan City Proper, through its *Pangkat* Secretary and Chairman, issued not one but two certificates to file action after herein petitioners and respondent failed to arrive at an amicable settlement. The Court finds no error in the pronouncement of both the MTCC and the RTC that any error in the previous conciliation proceedings leading to the issuance of the first certificate to file action, which was alleged to be defective, has already been cured by the MTCC's act of referring back the case to the *Pangkat Tagapagkasundo of Barangay Kauswagan* for proper conciliation and mediation proceedings. These subsequent proceedings led to the issuance anew of a certificate to file action.

7. CIVIL LAW; SPECIAL CONTRACTS; SALES; EXECUTION OF THE DEED OF SALE IS TANTAMOUNT TO DELIVERY OF THE THING WHICH IS THE OBJECT OF THE CONTRACT, ABSENT ANY EVIDENCE SHOWING NO INTENTION OF DELIVERING THE SAME WHEN THE PARTIES EXECUTED THE DEED.— Neither is the Court persuaded by petitioners' argument that respondent has no cause of action to recover physical possession of the subject properties on the basis of a contract of sale because the thing sold was never delivered to the latter. It has been established that petitioners validly executed a deed of sale covering the subject parcels of land in favor of respondent after the latter paid the outstanding account of the former with the Philippine Veterans Bank. Article 1498 of the Civil Code provides that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. In the instant case, petitioners failed to present any evidence to show that they had no intention of delivering the subject lots to respondent when they executed the said deed of sale. Hence, petitioners' execution of the deed of sale is tantamount to a delivery of the subject lots to respondent. The fact that petitioners remained in possession of the disputed properties does not prove that there was no delivery, because

as found by the lower courts, such possession is only by respondent's mere tolerance.

APPEARANCES OF COUNSEL

*Alfredo A. Orquillas, Jr. f*or petitioners.
Posecion Sindico & Firmeza Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and nullification of the Decision[1] and Order,[2] respectively dated October 24, 2001 and January 18, 2002, of the Regional Trial Court (RTC) of Iloilo City, Branch 24.

The instant petition stemmed from an action for ejectment filed by herein respondent Jose Juan Tong (Tong) through his representative Jose Y. Ong (Ong) against herein petitioners Anita Monasterio-Pe (Anita) and the spouses Romulo Tan and Editha Pe-Tan (Spouses Tan). The suit was filed with the Municipal Trial Court in Cities (MTCC), Branch 3, Iloilo City and docketed as Civil Case No. 2000(92).

In the Complaint, it was alleged that Tong is the registered owner of two parcels of land known as Lot Nos. 40 and 41 and covered by Transfer Certificate of Title (TCT) Nos. T-9699 and T-9161, together with the improvements thereon, located at *Barangay* Kauswagan, City Proper, Iloilo City; herein petitioners are occupying the house standing on the said parcels of land without any contract of lease nor are they paying any kind of rental and that their occupation thereof is simply by mere tolerance of Tong; that in a letter dated December 1, 1999, Tong demanded that respondents vacate the house they are occupying, but despite their receipt of the said letter they

1 Penned by Judge Danilo P. Galvez; *rollo*, pp. 85-92.

2 *Rollo*, pp. 93-95.

failed and refused to vacate the same; Tong referred his complaint to the *Lupon of Barangay Kauswagan*, to no avail.[3]

In their Answer with Defenses and Counterclaim, herein petitioners alleged that Tong is not the real owner of the disputed property, but is only a dummy of a certain alien named Ong Se Fu, who is not qualified to own the said lot and, as such, Tong's ownership is null and void; petitioners are the true and lawful owners of the property in question and by reason thereof they need not lease nor pay rentals to anybody; a case docketed as CA-G.R. CV No. 52676 (RTC Civil Case No. 20181) involving herein petitioner Pe and respondent is pending before the Court of Appeals (CA) where the ownership of the subject property is being litigated; respondent should wait for the resolution of the said action instead of filing the ejectment case; petitioners also claimed that there was, in fact, no proper *barangay* conciliation as Tong was bent on filing the ejectment case before conciliation proceedings could be validly made.[4]

On March 19, 2001, the MTCC rendered judgment in favor of herein respondent, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is rendered, finding the defendants Anita Monasterio-Pe, and Spouses Romulo Tan and Editha Pe-Tan to be unlawfully withholding the property in litigation, *i.e.*, Lot. Nos. 40 and 41 covered by TCT Nos. T-9699 and 9161, respectively, together with the buildings thereon, located at Brgy. Kauswagan, Iloilo City Proper, and they are hereby ordered together with their families and privies, to vacate the premises and deliver possession to the plaintiff and/or his representative.
>
> The defendants are likewise ordered to pay plaintiff reasonable compensation for the use and occupancy of the premises in the amount of ₱15,000.00 per month starting January, 2000 until they actually vacate and deliver possession to the plaintiff and attorney's fees in the amount of ₱20,000.00.

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[3] *Id.* at 59-62.

[4] *Id.* at 64-70.

Costs against the defendants.

SO DECIDED.[5]

Aggrieved by the above-quoted judgment, petitioners appealed the decision of the MTCC with the RTC of Iloilo City.

In its presently assailed Decision, the RTC of Iloilo City, Branch 24 affirmed in its entirety the appealed decision of the MTCC.

Hence, the instant petition for review on *certiorari*.

At the outset, it bears emphasis that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and passed upon by this Court.[6] It is a settled rule that in the exercise of this Court's power of review, it does not inquire into the sufficiency of the evidence presented, consistent with the rule that this Court is not a trier of facts.[7] In the instant case, a perusal of the errors assigned by petitioners would readily show that they are raising factual issues the resolution of which requires the examination of evidence. Certainly, issues which are being raised in the present petition, such as the questions of whether the issue of physical possession is already included as one of the issues in a case earlier filed by petitioner Anita and her husband, as well as whether respondent complied with the law and rules on *barangay* conciliation, are factual in nature.

Moreover, the appeal under Rule 45 of the said Rules contemplates that the RTC rendered the judgment, final order or resolution acting in its original jurisdiction.[8] In the present

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[5] *Id*. at 83-84.

[6] *Federico Jarantilla, Jr. v. Antonieta Jarantilla, Buenaventura Remotigue, substituted by Cynthia Remotigue, Doroteo Jarantilla and Tomas Jarantilla*, G.R. No. 154486, December 1, 2010.

[7] *Emcor Incorporated v. Sienes*, G.R. No. 152101, September 8, 2009, 598 SCRA 617, 632.

[8] *Sevilleno v. Carilo*, G.R. No. 146454, September 14, 2007, 533 SCRA 385, 388, citing *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, 297 SCRA 602 (1998); *see* Regalado, *Remedial Law Compendium*, Vol. I, Sixth Revised Edition, p. 540.

case, the assailed Decision and Order of the RTC were issued in the exercise of its appellate jurisdiction.

Thus, petitioners pursued the wrong mode of appeal when they filed the present petition for review on *certiorari* with this Court. Instead, they should have filed a petition for review with the CA pursuant to the provisions of Section 1,[9] Rule 42 of the Rules of Court.

On the foregoing bases alone, the instant petition should be denied.

In any case, the instant petition would still be denied for lack of merit, as discussed below.

In their first assigned error, petitioners contend that the RTC erred in holding that the law authorizes an attorney-in-fact to execute the required certificate against forum shopping in behalf of his or her principal. Petitioners argue that Tong himself, as the principal, and not Ong, should have executed the certificate against forum shopping.

The Court is not persuaded.

It is true that the first paragraph of Section 5,[10] Rule 7 of the Rules of Court, requires that the certification should be

[9] Sec. 1. *How appeal taken; time for filing*. – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served with fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[10] Sec. 5. *Certification against forum shopping*. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and

signed by the "petitioner or principal party" himself. The rationale behind this is because only the petitioner himself has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or agencies.[11] However, the rationale does not apply where, as in this case, it is the attorney-in-fact who instituted the action.[12] Such circumstance constitutes reasonable cause to allow the attorney-in-fact to personally sign the Certificate of Non-Forum Shopping. Indeed, the settled rule is that the execution of the certification against forum shopping by the attorney-in-fact is not a violation of the requirement that the parties must personally sign the same.[13] The attorney-in-fact, who has authority to file, and who actually filed the complaint as the representative of the plaintiff, is a party to the ejectment suit.[14] In fact, Section 1,[15] Rule 70 of the Rules of Court includes the representative of the owner in an ejectment suit as

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simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

[11] *Wee v. De Castro*, G.R. No. 176405, August 20, 2008, 562 SCRA 695, 712, citing *Mendoza v. Coronel,* 482 SCRA 353, 359 (2006).

[12] *Id.*

[13] *Id.*

[14] *Id.*

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

one of the parties authorized to institute the proceedings. In the present case, there is no dispute that Ong is respondent's attorney-in-fact. Hence, the Court finds that there has been substantial compliance with the rules proscribing forum shopping.

Petitioners also aver that the certificate against forum shopping attached to the complaint in Civil Case No. 2000(92) falsely stated that there is no other case pending before any other tribunal involving the same issues as those raised therein, because at the time the said complaint was filed, Civil Case No. 20181 was, in fact, still pending with the CA (CA-G.R. CV No. 52676), where the very same issues of ejectment and physical possession were already included.

Corollarily, petitioners claim that the MTCC has no jurisdiction over Civil Case No. 2000(92) on the ground that the issue of physical possession raised therein was already included by agreement of the parties in Civil Case No. 20181. As such, petitioners assert that respondent is barred from filing the ejectment case, because in doing so he splits his cause of action and indirectly engages in forum shopping.

The Court does not agree.

The Court takes judicial notice of the fact that the disputed properties, along with three other parcels of land, had been the subject of two earlier cases filed by herein petitioner Anita and her husband Francisco against herein respondent and some other persons. The first case is for specific performance and/or rescission of contract and reconveyance of property with damages. It was filed with the then Court of First Instance (CFI) of Iloilo City and docketed as Civil Case No. 10853. The case was dismissed by the CFI. On appeal, the Intermediate Appellate Court (IAC) upheld the decision of the trial court. When the case was brought to this Court,[16] the decision of the IAC was affirmed. Subsequently, the Court's judgment in this case became final and executory per Entry of Judgment issued on May 27, 1991.

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[16] See *Pe v. Intermediate Appellate Court*, G.R. No. 74781, March 13, 1991, 195 SCRA 137.

Subsequently, in 1992, the Spouses Pe filed a case for nullification of contract, cancellation of titles, reconveyance and damages with the RTC of Iloilo City. This is the case presently cited by petitioners. Eventually, the case, docketed as Civil Case No. 20181, was dismissed by the lower court on the ground of *res judicata*. The RTC held that Civil Case No. 10853 serves as a bar to the filing of Civil Case No. 20181, because both cases involve the same parties, the same subject matter and the same cause of action. On appeal, the CA affirmed the dismissal of Civil Case No. 20181. Herein petitioner Anita assailed the judgment of the CA before this Court, but her petition for review on *certiorari* was denied *via* a Resolution[17] dated January 22, 2003. On June 25, 2003, the said Resolution became final and executory. The Court notes that the case was disposed with finality without any showing that the issue of ejectment was ever raised. Hence, respondent is not barred from filing the instant action for ejectment.

In any case, it can be inferred from the judgments of this Court in the two aforementioned cases that respondent, as owner of the subject lots, is entitled to the possession thereof. Settled is the rule that the right of possession is a necessary incident of ownership.[18] Petitioners, on the other hand, are consequently barred from claiming that they have the right to possess the disputed parcels of land, because their alleged right is predicated solely on their claim of ownership, which is already effectively debunked by the decisions of this Court affirming the validity of the deeds of sale transferring ownership of the subject properties to respondent.

Petitioners also contend that respondent should have filed an *accion publiciana* and not an unlawful detainer case, because the one-year period to file a case for unlawful detainer has already lapsed.

The Court does not agree.

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[17] Per G.R. No. 155908.

[18] *Metro Manila Transit Corporation v. D.M. Consortium, Inc.*, G.R. No. 147594, March 7, 2007, 517 SCRA 632, 640.

Sections 1 and 2, Rule 70 of the Rules of Court provide:

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

Section 2. *Lessor to proceed against lessee only after demand*. – Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

Respondent alleged in his complaint that petitioners occupied the subject property by his mere tolerance. While tolerance is lawful, such possession becomes illegal upon demand to vacate by the owner and the possessor by tolerance refuses to comply with such demand.[19] Respondent sent petitioners a demand letter dated December 1, 1999 to vacate the subject property, but petitioners did not comply with the demand. A person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him.[20] Under Section 1, Rule 70 of the Rules of Court, the

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[19] *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 159.

[20] *Soriente v. Estate of the Late Arsenio E. Concepcion*, G.R. No. 160239, November 25, 2009, 605 SCRA 315, 329.

one-year period within which a complaint for unlawful detainer can be filed should be counted from the date of demand, because only upon the lapse of that period does the possession become unlawful.[21] Respondent filed the ejectment case against petitioners on March 29, 2000, which was less than a year from December 1, 1999, the date of formal demand. Hence, it is clear that the action was filed within the one-year period prescribed for filing an ejectment or unlawful detainer case.

Neither is the Court persuaded by petitioners' argument that respondent has no cause of action to recover physical possession of the subject properties on the basis of a contract of sale because the thing sold was never delivered to the latter.

It has been established that petitioners validly executed a deed of sale covering the subject parcels of land in favor of respondent after the latter paid the outstanding account of the former with the Philippine Veterans Bank.

Article 1498 of the Civil Code provides that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. In the instant case, petitioners failed to present any evidence to show that they had no intention of delivering the subject lots to respondent when they executed the said deed of sale. Hence, petitioners' execution of the deed of sale is tantamount to a delivery of the subject lots to respondent. The fact that petitioners remained in possession of the disputed properties does not prove that there was no delivery, because as found by the lower courts, such possession is only by respondent's mere tolerance.

Lastly, the Court does not agree with petitioners' assertion that the filing of the unlawful detainer case was premature, because respondent failed to comply with the provisions of the law on *barangay* conciliation. As held by the RTC, *Barangay* Kauswagan City Proper, through its *Pangkat* Secretary and Chairman, issued not one but two certificates to file action after

[21] *Id*.

herein petitioners and respondent failed to arrive at an amicable settlement. The Court finds no error in the pronouncement of both the MTCC and the RTC that any error in the previous conciliation proceedings leading to the issuance of the first certificate to file action, which was alleged to be defective, has already been cured by the MTCC's act of referring back the case to the *Pangkat Tagapagkasundo of Barangay Kauswagan* for proper conciliation and mediation proceedings. These subsequent proceedings led to the issuance anew of a certificate to file action.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision and Order of the Regional Trial Court of Iloilo City, Branch 24, are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Brion,[*] and *Abad, JJ.*, concur.

FIRST DIVISION

[G.R. No. 156142. March 23, 2011]

SPOUSES ALVIN GUERRERO and MERCURY M. GUERRERO, *petitioners, vs.* **HON. LORNA NAVARRO DOMINGO, IN HER CAPACITY AS PRESIDING JUDGE, BRANCH 201, REGIONAL TRIAL COURT, LAS PIÑAS CITY & PILAR DEVELOPMENT CORPORATION,** *respondents.*

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[*] Designated as an additinal member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 975, dated March 21, 2011.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; THE PETITION FOR PROHIBITION SHOULD BE DISMISSED WHERE THE ACT SOUGHT TO BE ENJOINED HAD ALREADY BEEN ACCOMPLISHED.— Indeed, prohibition is a *preventive* remedy seeking a judgment ordering the defendant to desist from continuing with the commission of an act perceived to be illegal. However, we disagree with the pronouncement of the RTC-Branch 201 that the act sought to be prevented in the filing of the Petition for Prohibition is the cancellation of the contract to sell. Petitions for Prohibition may be filed only against tribunals, corporations, boards, officers or persons exercising judicial, quasi-judicial or ministerial functions. Though couched in imprecise terms, the Petition for Prohibition in the case at bar apparently seeks to prevent the MeTC from hearing and disposing Civil Case No. 6293 x x x. Nevertheless, the same result occurs: Civil Case No. 6293 had already been disposed by the MeTC, as there was no preliminary injunction issued against said proceeding. The appeal of the spouses Guerrero in Civil Case No. 6293 had likewise been denied by the RTC-Branch 197 in a Decision dated June 20, 2003. The records of the case were returned to the MeTC in view of petitioners' failure to file a Motion for Reconsideration or an appeal of the same. Since the act sought to be enjoined in the Petition for Prohibition had already been accomplished, the same should be dismissed.

2. ID.; ID.; ID.; NOT PROPER WHERE THERE ARE ADEQUATE REMEDY SUCH AS A MOTION TO DISMISS OR AN ANSWER, AGAINST THE ALLEGEDLY IMPROPER EXERCISE OF JURISDICTION BY THE MeTC.— Ever since the Petition for Prohibition was filed with the RTC-Branch 201, PDC opposed its propriety on the ground that the spouses Guerrero had an available remedy against the allegedly improper exercise of jurisdiction by the MeTC – a Motion to Dismiss. Certainly, the spouses Guerrero could have filed a Motion to Dismiss to prevent the exercise of jurisdiction by the MeTC if the same had been warranted. Section 13, Rule 70 of the 1997 Rules of Civil Procedure clearly provides that Motions to Dismiss on the ground of lack of jurisdiction over the subject

matter are exceptions to the pleadings that are prohibited in forcible entry and unlawful detainer cases x x x. Further, under Section 6, Rule 16 of the same Rules, any ground for dismissal may, in lieu of a Motion to Dismiss, be raised in the Answer as an affirmative defense. This was, in fact, what petitioners did in the present case. Before resorting to the remedy of prohibition, there should be "no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law." We are convinced that in the case at bar, a Motion to Dismiss or an Answer is a plain, speedy, and adequate remedy in opposing the jurisdiction of the MeTC. Being in possession of the subject property, the step of filing a Motion to Dismiss or an Answer instead of resorting to an extraordinary writ under Rule 65 would have even favored the spouses Guerrero, as there is no threat of dispossession until the MeTC renders its judgment on the action.

3. ID.; ID.; ID.; SHOULD NOT LIE WHERE PARTIES COULD HAVE RESORTED TO OTHER REMEDIES THAT WERE NOW LOST DUE TO THEIR OWN NEGLECT.—The spouses Guerrero could have, and in fact actually did, present their allegations in the Petition for Prohibition as defenses in Civil Case No. 6293. x x x [H]owever, the spouses Guerrero did not participate in the proceedings of Civil Case No. 6293 with the exception of filing an Answer with Reservation. The appeal thereof, Civil Case No. LP-02-0292 in the RTC-Branch 197, was likewise dismissed on account of the spouses Guerrero's failure to file their Memorandum of Appeal and failure to comply with another Court Order. Just as *certiorari* cannot be made a substitute for an appeal where the latter remedy is available but was lost through the fault or negligence of petitioner, prohibition should not lie when petitioner could have resorted to other remedies that are now lost due to its own neglect. The irresponsible act of ignoring the proceedings and orders in Civil Case No. 6293 and in the appeal thereof deserve no affirmation from this Court.

4. ID.; ID.; EJECTMENT; ONLY ISSUE IS PHYSICAL POSSESSION.— The spouses Guerrero's insistence that there was a violation of Presidential Decree No. 975 or an invalid rescission of the contract by PDC could have been asserted in a separate civil action. The latter would not constitute forum shopping since the only issue in ejectment suits is physical possession, and

any finding thereon on ownership is only for the purpose of determining right to possession.

APPEARANCES OF COUNSEL

Francisco T. Mamauag for petitioners.
Bienvenido Tagorio for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* assailing the Order[1] of the Regional Trial Court (RTC), Branch 201 of Las Piñas City dated November 18, 2002 in Civil Case No. SCA-02-0007. Said Order denied the Petition for Prohibition against the proceedings in Civil Case No. 6293, an unlawful detainer case, which was filed in the Metropolitan Trial Court (MeTC) of Las Piñas City.

The factual and procedural antecedents of this case are as follows:

On June 2, 1997, private respondent Pilar Development Corporation (PDC) and petitioners spouses Alvin and Mercury Guerrero (spouses Guerrero) entered into a Contract to Sell[2] whereby PDC agreed to sell to the spouses Guerrero the property covered by Transfer Certificate of Title (TCT) No. T-51529 and the house standing thereon. The total consideration for the sale is ₱2,374,000.00 with a downpayment of ₱594,000.00 and a balance of ₱1,780,000.00 payable in 120 months commencing on May 30, 1997.

On February 5, 2002, PDC filed a Complaint[3] for Unlawful Detainer against the spouses Guerrero. The Complaint alleged that the spouses Guerrero made no further payment beyond

[1] Records, pp. 171-172; penned by Presiding Judge Lorna Navarro Domingo.

[2] *Id.* at 12-17.

[3] *Id.* at 9-11.

June 1, 2000 despite repeated demands, prompting PDC to cancel the Contract to Sell on November 19, 2001 by sending a Notice of Cancellation to the spouses Guerrero dated November 23, 2001. The Complaint was docketed as Civil Case No. 6293 filed with the MeTC of Las Piñas City. The spouses Guerrero responded with a pleading captioned Answer With Reservation[4] alleging that it is impermissible to blend "causes of action such as 'cancellation, extinguishment or rescission of contract' (which are beyond pecuniary estimation) and 'ejectment (unlawful detainer).'"

On April 10, 2002, the spouses Guerrero filed a Petition for Prohibition[5] with the RTC of Las Piñas City praying that the Complaint in Civil Case No. 6293 be quashed,[6] and raising the following lone issue:

AN ACTION WITH TWO (2) JOINED CONTROVERSIES, ONE BEYOND PECUNIARY ESTIMATION SUCH AS "EXTINGUISHMENT OF CONTRACT" (COGNIZABLE BY THE RTC), AND THE OTHER, FOR EJECTMENT (UNLAWFUL DETAINER), IS BEYOND THE ADJUDICATORY POWERS OF AN INFERIOR COURT.[7]

The Petition was docketed as Civil Case No. SCA-02-0007 and was raffled to the RTC-Branch 201, then presided by Judge Lorna Navarro Domingo.

In the meantime, proceedings in Civil Case No. 6293 continued. Except for the Answer they had earlier filed, the spouses Guerrero **did not participate** in the proceedings of Civil Case No. 6293 until the MeTC rendered its Decision[8] on September 30, 2002. Ruling in favor of PDC, the MeTC brushed aside the spouses Guerrero's insistence that it had no jurisdiction by holding that the

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[4] *Rollo*, pp. 24-26.

[5] *Id.* at 27-34.

[6] *Id.* at 33.

[7] *Id.* at 30.

[8] *Id.* at 41-46.

allegations in the complaint and the reliefs prayed for therein indicate that the suit is indeed an unlawful detainer case cognizable by it.[9]

On November 4, 2002, the spouses Guerrero appealed the MeTC Decision in Civil Case No. 6293 to the RTC of Las Piñas City. The appeal was docketed as Civil Case No. LP-02-0292 and was raffled to Branch 197 then presided by Judge Manuel N. Duque.

On November 18, 2002, the RTC-Branch 201 issued the herein assailed Order in Civil Case No. SCA-02-0007, denying the Petition for Prohibition for lack of merit.

Hence, this Petition wherein the spouses Guerrero reiterated their argument before the RTC-Branch 201 that the joinder of an action beyond pecuniary estimation such as "extinguishment of contract" with an action for unlawful detainer is beyond the adjudicatory powers of the MeTC. The spouses Guerrero claim that the cancellation of the contract to sell is a matter prejudicial to the action for unlawful detainer.[10]

Meanwhile, on June 20, 2003, the RTC-Branch 197 dismissed the appeal of the spouses Guerrero in Civil Case No. LP-02-0292 on account of their failure to file their Memorandum of Appeal and for failure to comply with another Court Order dated December 16, 2002.[11] On August 28, 2003, the RTC-Branch 197, noting that there was no appeal or Motion for Reconsideration filed assailing the June 20, 2003 Decision, ordered the return of the records of the case to the MeTC.[12]

Prohibition does not lie to restrain an act that is already a *fait accompli*

In denying the Petition for Prohibition of the spouses Guerrero, the RTC-Branch 201 held that the remedy was inappropriate, applying the rule that Prohibition does not lie to restrain an act that is already a *fait accompli*:

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[9] *Id.* at 44.

[10] Records, p. 6.

[11] *Id.* at 252, 258.

[12] *Id.* at 258.

A perusal of the complaint filed before the Metropolitan Trial Court, Las Piñas under Civil Case No. 6293 alleged that the Contract to Sell was cancelled on November 19, 2001, from then on Petitioner's right to occupy the property ceased, and that Defendants/Petitioners refused to surrender and vacate the house and lot. The prayer is for the Defendants to vacate the premises to the Plaintiff and pay rentals.

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"The function of the Writ of Prohibition is to prevent the doing of some act which is about to be done. It is not intended to provide a remedy for acts already accomplished["] (*Cabanero vs. Torres*, 61 Phil. 522 [1935]; *Agustin, et al. vs. De la Fuente*, 84 Phil 525 [1949]; *Navarro vs. Lardizabal*, G.R. No. L-25361, September 28, 1968, 25 SCRA 370; *Heirs of Eugenia V. Roxas, Inc. vs. Intermediate Appellate Court*, G.R. No. 67195, May 29, 1989, 173 SCRA 581).

In this case the Contract to Sell has already been cancelled before the filing of the complaint for Unlawful Detainer, hence the Prohibition will no longer lie.

The rest of the allegations are within the jurisdiction of the Metropolitan Trial Court as the case filed is for Unlawful Detainer.[13]

Indeed, prohibition is a *preventive* remedy seeking a judgment ordering the defendant to desist from continuing with the commission of an act perceived to be illegal.[14] However, we disagree with the pronouncement of the RTC-Branch 201 that the act sought to be prevented in the filing of the Petition for Prohibition is the cancellation of the contract to sell. Petitions for Prohibition may be filed only against tribunals, corporations, boards, officers or persons exercising judicial, quasi-judicial or ministerial functions.[15] Though couched in imprecise terms, the Petition for Prohibition in the case at bar apparently seeks to prevent the MeTC from hearing and disposing Civil Case No. 6293:

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[13] *Id.* at 171.

[14] *Montes v. Court of Appeals*, G.R. No. 143797, May 4, 2006, 489 SCRA 432, 443.

[15] 1997 Rules of Civil Procedure, Rule 65, Section 2.

P R A Y E R

WHEREFORE, considering the nature of this petition, that is, Civil Case No. 6293 being under the operation of the Summary Rules of Procedure, petitioners very fervently pray, that:

1. Upon the filing of this petition, it be given preferential disposition or hearing at the earliest time possible be conducted for purposes of issuance of preliminary writ of prohibition;

2. Thereafter, the COMPLAINT (Annex "B" hereof), be QUASHED as it contains two (2) combined but severable cases, one cognizable before this Honorable Court, and the other, before the public respondent.

For other reliefs just and equitable.[16]

Nevertheless, the same result occurs: Civil Case No. 6293 had already been disposed by the MeTC, as there was no preliminary injunction issued against said proceeding. The appeal of the spouses Guerrero in Civil Case No. 6293 had likewise been denied by the RTC-Branch 197 in a Decision dated June 20, 2003. The records of the case were returned to the MeTC in view of petitioners' failure to file a Motion for Reconsideration or an appeal of the same.[17] Since the act sought to be enjoined in the Petition for Prohibition had already been accomplished, the same should be dismissed.

To avail of the extraordinary writ of prohibition, petitioners should have no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law

Ever since the Petition for Prohibition was filed with the RTC-Branch 201, PDC opposed its propriety on the ground that the spouses Guerrero had an available remedy against the allegedly improper exercise of jurisdiction by the MeTC – a Motion to Dismiss.[18]

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[16] Records, p. 7.

[17] *Id.* at 258.

[18] *Id.* at 146-148.

Certainly, the spouses Guerrero could have filed a Motion to Dismiss to prevent the exercise of jurisdiction by the MeTC if the same had been warranted. Section 13, Rule 70 of the 1997 Rules of Civil Procedure clearly provides that Motions to Dismiss on the ground of lack of jurisdiction over the subject matter are exceptions to the pleadings that are prohibited in forcible entry and unlawful detainer cases:

> Sec. 13. *Prohibited pleadings and motions*. — The following petitions, motions, or pleadings shall not be allowed:
>
> 1. Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, or failure to comply with Section 12.

Further, under Section 6, Rule 16[19] of the same Rules, any ground for dismissal may, in lieu of a Motion to Dismiss, be raised in the Answer as an affirmative defense. This was, in fact, what petitioners did in the present case.

Before resorting to the remedy of prohibition, there should be "no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law."[20] We are convinced that in the case at bar, a Motion to Dismiss or an Answer is a plain, speedy, and adequate remedy in opposing the jurisdiction of the MeTC. Being in possession of the subject property, the step of filing a Motion to Dismiss or an Answer instead of resorting to an extraordinary writ under Rule 65 would have even favored the spouses Guerrero, as there is no threat of dispossession until the MeTC renders its judgment on the action.

The spouses Guerrero could have, and in fact actually did, present their allegations in the Petition for Prohibition as defenses

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[19] Sec. 6. *Pleading grounds as affirmative defenses*. — If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer.

[20] 1997 Rules of Civil Procedure, Rule 65, Section 2.

in Civil Case No. 6293. As stated above, however, the spouses Guerrero did not participate in the proceedings of Civil Case No. 6293 with the exception of filing an Answer with Reservation. The appeal thereof, Civil Case No. LP-02-0292 in the RTC-Branch 197, was likewise dismissed on account of the spouses Guerrero's failure to file their Memorandum of Appeal and failure to comply with another Court Order. Just as *certiorari* cannot be made a substitute for an appeal where the latter remedy is available but was lost through the fault or negligence of petitioner,[21] prohibition should not lie when petitioner could have resorted to other remedies that are now lost due to its own neglect. The irresponsible act of ignoring the proceedings and orders in Civil Case No. 6293 and in the appeal thereof deserve no affirmation from this Court.

The spouses Guerrero's insistence that there was a violation of Presidential Decree No. 975 or an invalid rescission of the contract by PDC could have been asserted in a separate civil action. The latter would not constitute forum shopping since the only issue in ejectment suits is physical possession, and any finding thereon on ownership is only for the purpose of determining right to possession.[22]

WHEREFORE, the instant Petition for Review on *Certiorari* is *DENIED*. The Decision of the Regional Trial Court, Branch 201 of Las Piñas City in Civil Case No. SCA-02-0007 is *AFFIRMED*.

Costs against petitioners Alvin and Mercury Guerrero.

SO ORDERED.

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

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[21] *The Presidential Commission on Good Government v. Sandiganbayan,* 353 Phil. 80, 88 (1998).

[22] 1997 Rules of Civil Procedure, Rule 70, Section 16.

THIRD DIVISION

[G.R. No. 160736. March 23, 2011]

AIR ADS, INCORPORATED, *petitioner, vs.* **TAGUM AGRICULTURAL DEVELOPMENT CORPORATION (TADECO),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; CERTIFICATION AGAINST FORUM SHOPPING; NON-COMPLIANCE WITH THE REQUIREMENTS, EFFECT THEREOF; REFILING OF THE PETITION FOR *CERTIORARI* FOLLOWING THE DISMISSAL WITHOUT PREJUDICE THEREOF FOR NON-COMPLIANCE WITH THE REQUIREMENTS FOR CERTIFICATION AGAINST FORUM SHOPPING DOES NOT CONSTITUTE *RES JUDICATA*.—TADECO's contention, that Air Ads' filing of the second petition while the first petition was still pending was a clear case of forum shopping; and that, accordingly, the second petition of Air Ads was already barred by *res judicata* due to the dismissal of the first petition having resulted in an adjudication upon the merits, conformably with *Denoso v. Court of Appeals*, has no substance. x x x Section 5, Rule 7 of the 1997 *Rules of Civil Procedure*, defines the effect of the failure to comply with the requirements for the certification against forum shopping x x x. The first sentence of the second paragraph expressly provides that the dismissal of a petition due to failure to comply with the requirements therein is *without prejudice* unless otherwise provided by the court. Accordingly, the plaintiff or petitioner is not precluded from filing a similar action in order to rectify the defect in the certification where the court states in its order that the action is dismissed due to such defect, unless the court directs that the dismissal is *with prejudice*, in which case the plaintiff is barred from filing a similar action by *res judicata*. In the context of the aforequoted rule, the dismissal of C.A.-G.R. SP No. 73418, being without any qualification, was a dismissal without prejudice, plainly indicating that Air Ads could not be barred from filing the second petition. x x x. Indeed, Air Ads' options to correct its dire

situation included the refilling, for, although the *Rules of Court* declares that the failure to comply with the requirements of Section 5 of Rule 7 shall not be cured by amendment, nowhere does the rule prohibit the filing of a similar complaint or pleading following the dismissal without qualification of the earlier one.

2. ID.; ID.; A SUBSTITUTE THIRD PARTY COMPLAINT DOES NOT HAVE THE EFFECT OF SUPERSEDING THE ORIGINAL THIRD PARTY COMPLAINT WHERE IT WAS SHOWN THAT THE AVERMENTS IN BOTH PLEADINGS ARE SUBSTANTIALLY THE SAME AND THAT THE SUBSTITUTE THIRD PARTY COMPLAINT DID NOT STRIKE OUT ANY ALLEGATION OF THE PRIOR ONE.— Air Ads' urging that the filing of the substitute *third party complaint* effectively superseded the *third party complaint* impleading it as third party defendant ostensibly harks back to Section 8 of Rule 10 of the *Rules of Court*, which states that the amended pleading supersedes the pleading that it amends. However, the substitution of the *third party complaint* could not produce the effect that an amendment of an existing pleading produces. Under Section 1, Rule 10 of the *Rules of Court*, an amendment is done by *adding* or *striking out* an allegation or the name of any party, or by *correcting* a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect. A perusal of the original and the substitute *third party complaints* shows that their averments are substantially the same; and that the substitute *third party complaint* did not strike out any allegation of the prior one.

3. ID.; ID.; IT IS NOT THE CAPTION OF THE PLEADING THAT DETERMINES THE NATURE OF THE COMPLAINT BUT RATHER ITS ALLEGATIONS.— [A]ir Ads attributes error to the CA and the RTC for disregarding the caption and the allegations of the substitute *third party complaint* that would have led them to rule that the original *third party complaint* was effectively superseded and supplanted by the substitute *third party complaint.* It submits that "substitution" signifies "to put in the place of another"; and "something that is put in place of something else or is available for use instead of something else." Air Ads' submission is flawed. It is not the caption of the pleading that determines the nature of the complaint but rather its allegations. Although Air Ads'

observation that the substitute *third party complaint* contained allegations only against Pioneer is correct, sight should not be lost of the fact that Dominguez Law Office represented TADECO in its *third party complaint* only against Pioneer, which was precisely why the substitute *third party complaint* referred only to Pioneer.

APPEARANCES OF COUNSEL

Jose C. Blanco & Conrado A. Boro for petitioner.

Angara Abello Concepcion Regala and Cruz Law Offices for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Assailed *via* petition for review on *certiorari* are the two resolutions promulgated on February 24, 2003[1] and November 13, 2003,[2] whereby the Court of Appeals (CA) respectively dismissed the petitioner's petition for *certiorari* and prohibition, and denied the petitioner's *motion for reconsideration* of the dismissal.

We find no reversible error on the part of the CA, and affirm the dismissal of the petitioner's petition for *certiorari*.

Antecedents

This case stemmed from Civil Case No. 27802-2000 of the Regional Trial Court, Branch 15, in Davao City (RTC) entitled *Elva O. Pormento v. Tagum Agricultural Development Corporation and Edwin Yap*, an action to recover damages for the death of the plaintiff's husband and attorney's fees.

On April 6, 2000, respondent Tagum Agricultural Development Corporation (TADECO), as defendant, filed through counsel

[1] *Rollo*, pp. 35-36; penned by Associate Justice Ruben T. Reyes (later Presiding Justice, and Member of the Court), and concurred in by Associate Justice Remedios Salazar-Fernando and Associate Justice Edgardo F. Sundiam (deceased).

[2] *Id.*, pp. 38-39; penned by Associate Justice Reyes, and concurred in by Associate Justice Salazar-Fernando and Associate Justice Sundiam.

ACCRA Law Office an *answer with compulsory counterclaims and motion for leave to file third party complaint,*[3] impleading petitioner Air Ads, Inc. and Pioneer Insurance and Surety Corporation (Pioneer) as third-party defendants. The RTC admitted TADECO's *third party complaint* on April 14, 2000.[4] On June 16, 2000, however, ACCRA Law Office, upon realizing that Pioneer was a client of its Makati Office, filed a *notice of dismissal without prejudice to third party complaint only against Pioneer Insurance and Surety Corporation*.[5]

Ten days later, TADECO filed through another counsel Dominguez Paderna & Tan Law Offices (Dominguez Law Office) a *motion to withdraw notice of dismissal without prejudice of third party complaint only against Pioneer Insurance & Surety Corporation or motion for reconsideration*,[6] alleging that the *notice of dismissal without prejudice etc.* filed by ACCRA Law Office had been made without its consent. On June 29, 2000, the RTC granted the *notice of dismissal without prejudice etc.*[7]

Nearly a month later, the RTC also granted the *motion to withdraw notice of dismissal without prejudice of third party complaint only against Pioneer Insurance & Surety Corporation or motion for reconsideration*, and set aside the dismissal of the third party complaint against Pioneer.

Following the grant of its *motion to withdraw the notice of dismissal etc.*, TADECO, still through Dominguez Law Office, filed a *motion to admit third party complaint in substitution of the third party complaint filed by the third party plaintiff's former counsel*,[8] explaining that the substitute *third party*

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[3] *Rollo*, pp. 42-57.

[4] *Id.*, p. 242.

[5] *Id.*, pp. 89-90.

[6] *Id.*, pp. 92-96.

[7] *Id.*, p. 246.

[8] *Id.*, pp. 97-104.

complaint was being filed to avoid putting ACCRA Law Office in an awkward situation, and to avoid the appearance that new counsel Dominguez Law Office was merely adopting the previous third party complaint.

It is noted that the substitute *third party complaint* contained allegations pertaining only to Pioneer as third party defendant, to wit:

x x x x x x x x x

5. Under the heading "ADMISSIONS" of the answer of TADECO it alleged:

"TADECO admits the allegations in the following paragraphs of the complaint:

x x x x x x x x x

> "1.3 Paragraph 3 only in so far as it is alleged that TADECO is the owner of the CESSNA 550 Citation jetplane; and that the aircraft is duly registered with the Air Transportation Office."

6. The CESSNA 550 Citation jetplane, hereinafter referred to as the Citation jetplane, was insured by PIONEER INSURANCE under Aircraft Insurance Policy No. AV-HO-96-60014 effective December 02, 1996 to December 02, 1997, a copy of which is attached as Annex "C" by virtue of which PIONEER INSURANCE agreed to be bound by the following stipulation:

"SECTION II – Third Party Liability

> The Company will indemnify the Assured for all sums which the Assured shall become legally liable to pay and shall pay as compensation, including costs awarded, in respect of accidental bodily injury (fatal or non-fatal) or accidental damage to property provided such injury or damage is caused directly by the Aircraft or by objects falling therefrom."

7. Should TADECO be found liable to the plaintiff under the complaint, the third-party plaintiff is entitled to recover from PIONEER INSURANCE indemnification for its liability to the plaintiff.

WHEREFORE, the third party plaintiff respectfully prays that in the remote probability that TADECO would be held liable to the plaintiffs under the complaint, that judgment be rendered ordering

Pioneer Insurance to indemnify TADECO all sums which the latter maybe found liable to the plaintiffs.

x x x x x x x x x[9]

On August 28, 2000, the RTC granted the *motion to admit third party complaint in substitution of the third party complaint filed by the third party plaintiff's former counsel*,[10] *viz*:

The dismissal of defendant and Third Party Plaintiffs-Tagum Agricultural Development Corporation complaint was without prejudice. Considering further that the dismissal was filed by its former counsel who is also the lawyer of Pioneer Insurance and Surety Corporation, the Motion to Admit Third Party complaint in substitution of the Third Party complaint that was dismissed is hereby granted.

x x x x x x x x x

SO ORDERED.

Air Ads then filed a *motion to dismiss* against the *third party complaint*,[11] averring that it had been dropped as third party defendant under TADECO's substitute *third party complaint*; and arguing that the filing of the substitute *third party complaint* had the effect of entirely superseding the original *third party complaint*, which should consequently be stricken out from the records.

TADECO, represented by ACCRA Law Office, countered that it had never been the intention of Dominguez Law Office to file a new *third party complaint* against Air Ads because Dominguez Law Office represented TADECO only in regards to the *third party complaint* against Pioneer.[12]

On July 25, 2002, the RTC denied Air Ads' *motion to dismiss*,[13] holding that the *notice of dismissal etc.* filed by

[9] *Id.*, pp. 258-259.

[10] *Id.*, p. 342.

[11] *Id.*, pp. 105-109.

[12] *Id.*, pp. 110-119.

[13] *Id.*, pp. 124-125.

ACCRA Law Office did not have the effect of dropping Air Ads as a third party defendant due to the *notice of dismissal etc*. being expressly restrictive about the dismissal being only with respect to Pioneer, to wit:

x x x x x x x x x

The first, third party complaint as against Air-ads was not dismissed so there is no reason to grant Air-ads' Motion to Dismiss.

It should be emphasized that the Notice of Dismissal filed by the former counsel of third party plaintiff was restrictive that the dismissal was its third complaint against Pioneer only, Air-ads is still a third party defendant there is nothing to show that it was dropped as a third party defendant by virtue of the said dismissal.

The motion that the first third party complaint filed by the former counsel of Tadeco be removed from the record and declared as no longer existing and that Air-ads should no longer be treated as a party is without any legal basis.

In view whereof the Motion to Dismissed [sic] is denied for lack of merit. Air-ads is given ten (10) days from receipt of this order to file its answer.

The pre-trial shall be on September 18, 2002.

Notify all the parties of this order.

SO ORDERED.

Air Ads filed a *motion for reconsideration*,[14] but the RTC denied the *motion for reconsideration* on September 20, 2002,[15] stating:

Third Party defendant Air Ads' Motion for Reconsideration is denied for lack of merit. This issue was repeatedly discussed by the parties in their pleadings and the court resolution on this matter is clear. The pre-trial conference shall be on October 4, 2002 at 2:30 p.m.

SO ORDERED.

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[14] *Id.*, pp. 127-129.

[15] *Id.*, p. 137.

After receiving the order of denial on October 4, 2002,[16] Air Ads brought a petition for *certiorari* and prohibition docketed in the CA (C.A.-G.R. SP No. 73418).[17] However, on November 13, 2002, the CA dismissed the petition for failure to attach the board resolution designating the petitioner's duly authorized representative to sign the verification and certification against forum shopping in its behalf.[18]

Instead of filing a *motion for reconsideration*, Air Ads filed a new petition for *certiorari* and prohibition on December 2, 2002 in the CA (C.A.-G.R. SP No. 74152),[19] already including the proper board certificate.

While C.A.-G.R. SP No. 74152 was pending, the CA's resolution dismissing C.A.-G.R. SP No. 73418 became final and executory on December 10, 2002.[20]

On February 24, 2003, the CA issued the first assailed resolution in C.A.-G.R. SP No. 74152,[21] *viz*:

x x x x x x x x x

Petitioner's reasoning is specious. The notice of dismissal clearly stated that the dismissal pertains only to the third party complaint against Pioneer Insurance, not as against petitioner Air Ads. The third-party complaint against petitioner was never dismissed. Thus, when TADECO's new counsel sought to revive the third-party complaint against Pioneer, the allegations in the substitute third-party complaint pertain only to Pioneer since petitioner Air Ads was never dropped as third-party defendant in the proceedings. Petitioner's motion to dismiss was correctly denied by the trial court.

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[16] *Id.*, p. 138.

[17] *Id.*, pp. 374-388.

[18] *Id.*, p. 390; penned by Associate Justice Sergio L. Pestaño (retired and deceased), and concurred in by Associate Justice Cancio C. Garcia (later Presiding Justice, and Member of the Court, but already retired) and Associate Justice Eloy R. Bello, Jr. (retired).

[19] *Id.*, pp. 138-153.

[20] *Id.*, p. 391.

[21] *Id.*, pp. 7-8.

ACCORDINGLY, the petition is DENIED due course and DISMISSED.

SO ORDERED.

The CA denied Air Ads's *motion for reconsideration* through the second assailed resolution of November 13, 2003.[22]

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

TADECO, through ACCRA Law Office, filed its *comment* on March 30, 2004,[23] but on April 26, 2004, TADECO, through Dominguez Law Office, filed a *motion to dispense with comment of Tagum Agricultural Development Corporation as third-party plaintiff against Pioneer Insurance Corporation*.[24] Accordingly, the Court directed TADECO to manifest which between ACCRA Law Office and Dominguez Law Office was its principal counsel.[25] In compliance, TADECO manifested that ACCRA Law Office was its counsel in Civil Case No. 27802-2000 and in the *third party complaint* against Air Ads, while Dominguez Law Office was its counsel in the *third party complaint* against Pioneer.[26] After the Court directed the parties to submit their respective *memoranda*,[27] TADECO, through Dominguez Law Office and as third-party plaintiff against Pioneer, filed a *manifestation and motion*,[28] praying that it be excused from filing a *memorandum* considering that Pioneer was not involved in the present recourse. On June 20, 2005, the Court granted the *manifestation and motion*.[29]

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

[23] *Id.*, pp. 171-188.

[24] *Id.*, pp. 416-422.

[25] *Id.*, p. 423.

[26] *Id.*, pp. 424-433.

[27] *Id.*, pp. 457-458.

[28] *Id.*, pp. 497-498.

[29] *Id.*, pp. 500-501.

Issues

The issues to be resolved are as follows:

I.

DOES THE FILING OF AN IDENTICAL PETITION FOLLOWING THE DISMISSAL OF THE FIRST PETITION ON THE GROUND OF DEFECTIVE AND INSUFFICIENT VERIFICATION AND CERTIFICATION CONSTITUTE FORUM SHOPPING?

II.

DOES A SUBSTITUTE THIRD PARTY COMPLAINT HAVE THE EFFECT OF SUPERSEDING THE ORIGINAL THIRD PARTY COMPLAINT?

Air Ads insists that the filing of the substitute *third party complaint* had the effect of dropping it as third party defendant in Civil Case No. 27802-2000; and that the substitute *third party complaint* superseded the original *third party complaint*.

On the other hand, TADECO counters that the filing of the second petition for *certiorari* and prohibition in the CA violated the rule against forum shopping and was already barred by *res judicata* due to the dismissal of the first being an adjudication on the merits; and that Air Ads continued to be a third party defendant because the *third party complaint* against Air Ads had not been withdrawn or dismissed.

Ruling

The petition for review lacks merit.

I.

Refiling of the petition for *certiorari* did not constitute forum shopping or *res judicata*

TADECO's contention, that Air Ads' filing of the second petition while the first petition was still pending was a clear case of forum shopping; and that, accordingly, the second petition of Air Ads was already barred by *res judicata* due to the dismissal of the first petition having resulted in an adjudication upon the

merits, conformably with *Denoso v. Court of Appeals*,[30] has no substance.

The dispositive portion of the CA's resolution of November 13, 2002 in C.A.-G.R. SP No. 73418, which dismissed the first petition, reads:

> WHEREFORE, the instant petition is hereby DISMISSED for defective and insufficient verification and certification against forum shopping.
>
> SO ORDERED.

Section 5, Rule 7 of the 1997 *Rules of Civil Procedure*, defines the effect of the failure to comply with the requirements for the certification against forum shopping, *viz*:

> Section 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> **Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing**. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary

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[30] G.R. No. L-32141, July 29, 1988, 163 SCRA 683.

dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

The first sentence of the second paragraph expressly provides that the dismissal of a petition due to failure to comply with the requirements therein is *without prejudice* unless otherwise provided by the court. Accordingly, the plaintiff or petitioner is not precluded from filing a similar action in order to rectify the defect in the certification where the court states in its order that the action is dismissed due to such defect, unless the court directs that the dismissal is *with prejudice*, in which case the plaintiff is barred from filing a similar action by *res judicata*. In the context of the aforequoted rule, the dismissal of C.A.-G.R. SP No. 73418, being without any qualification, was a dismissal without prejudice, plainly indicating that Air Ads could not be barred from filing the second petition.

TADECO cited *Denoso v. Court of Appeals, supra,* to buttress its contention that the present recourse was already barred by *res judicata*. There, the petitioners had failed to attach the necessary copies of the relevant pleadings to their petition for *certiorari*, thereby causing the dismissal of the petition. They had then sought reconsideration by submitting the omitted documents, but the CA denied their *motion for reconsideration.* On appeal, the Court upheld the dismissal of the petition on the ground that it amounted to an adjudication upon the merits pursuant to Section 3, Rule 17 of the *Rules of Court*,[31] which provides that failure to comply with the rules shall result in the dismissal that has the effect of an adjudication upon the merits. The lack of any qualification that the dismissal of the petition was without prejudice rendered the dismissal an adjudication on the merits.

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[31] Section 3. *Failure to prosecute.* — If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon the motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

Herein, however, Section 5 of Rule 7, *supra*, promulgated after the *Denoso* pronouncement, provides that "the dismissal of the case (is) without prejudice, unless otherwise provided." In this connection, the apt precedent is *Heirs of Juan Valdez v. Court of Appeals*,[32] where the respondent corporation filed two petitions for *certiorari* in the CA, the first of which was dismissed without prejudice due to insufficient certification. After receiving the resolution dismissing the first petition, the respondent corporation refiled its petition, which was docketed and raffled to another division of the CA. The issue of whether the filing of the second petition constituted forum shopping reached this Court, which resolved the issue thuswise:

> We have no doubt that it was within the CA's power and prerogative to issue what either resolution decreed without committing an abuse of discretion amounting to lack of excess of jurisdiction. In the first May 5, 2003 Resolution, the CA correctly dismissed the petition for the deficiency it found in the non-forum shopping certification. Section 5, Rule 7 of the Revised Rules of Court provides that "Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case *without prejudice*, unless otherwise provided, upon motion and after hearing." On the other hand, the requirement specific to petitions filed with the appellate court simply provides as a penalty that the failure of the petitioner to comply with the listed requirements, among them the need for a certification against forum shopping, "shall be sufficient ground for the dismissal of the petition." Thus, the Ninth Division correctly dismissed the petition without prejudice.
>
> x x x x x x x x x
>
> The question of whether Lopez Resources forum shopped when it re-filed its petition is largely rendered moot and academic by the terms of the assailed May 5, 2003 order which dismissed the case without prejudice. Lopez Resources, who cannot be blamed for the CA's mistake, only followed what the assailed order allowed. **Thus, we cannot say that it forum shopped by filing another petition while the first petition was pending. Insofar as it was concerned, its first petition had been dismissed without prejudice; hence,**

[32] G.R. No. 163208, August 13, 2008, 562 SCRA 89.

there was no bar, either by way of forum shopping, *litis pendentia* or *res adjudicata*, to the petition it re-filed.[33]

Indeed, Air Ads' options to correct its dire situation included the refiling, for, although the *Rules of Court* declares that the failure to comply with the requirements of Section 5 of Rule 7 shall not be cured by amendment, nowhere does the rule prohibit the filing of a similar complaint or pleading following the dismissal without qualification of the earlier one.

II.
Substitute third party complaint did not supersede original third party complaint

The posture of Air Ads that the original *third party complaint* was automatically expunged from the records upon the admission of the substitute *third party complaint*[34] is bereft of any basis in fact and in law.

The records indicate that: *firstly*, both TADECO and Pioneer were clients of ACCRA Law Office; *secondly*, TADECO engaged Dominguez Law Office as its counsel in lieu of ACCRA Law Office with respect only to its *third party complaint* against Pioneer; *thirdly*, the RTC dismissed the *third party complaint* only against Pioneer upon the *notice of withdrawal* filed by TADECO through ACCRA Law Office; and *fourthly*, the RTC granted the motion to admit the substitute *third party complaint* only against Pioneer. These rendered it plain and clear that the substitute *third party complaint* merely replaced the *third party complaint* earlier filed against Pioneer.

Air Ads' urging that the filing of the substitute *third party complaint* effectively superseded the *third party complaint* impleading it as third party defendant ostensibly harks back to Section 8 of Rule 10 of the *Rules of Court*, which states that the amended pleading supersedes the pleading that it amends.[35]

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[33] *Id.* (bold emphasis supplied); see also *Development Bank of the Philippines v. La Campana Development Corporation*, G.R. No. 137694, January 17, 2005, 448 SCRA 384.

[34] *Rollo*, p. 465.

[35] Section 8. *Effect of amended pleadings*. — An amended pleading

However, the substitution of the *third party complaint* could not produce the effect that an amendment of an existing pleading produces. Under Section 1,[36] Rule 10 of the *Rules of Court*, an amendment is done by *adding* or *striking out* an allegation or the name of any party, or by *correcting* a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect. A perusal of the original and the substitute *third party complaints* shows that their averments are substantially the same; and that the substitute *third party complaint* did not strike out any allegation of the prior one.

Lastly, Air Ads attributes error to the CA and the RTC for disregarding the caption and the allegations of the substitute *third party complaint* that would have led them to rule that the original *third party complaint* was effectively superseded and supplanted by the substitute *third party complaint*. It submits that "substitution" signifies "to put in the place of another"; and "something that is put in place of something else or is available for use instead of something else."

Air Ads' submission is flawed. It is not the caption of the pleading that determines the nature of the complaint but rather its allegations.[37] Although Air Ads' observation that the substitute *third party complaint* contained allegations only against Pioneer is correct, sight should not be lost of the fact that Dominguez Law Office represented TADECO in its *third party complaint* only against Pioneer, which was precisely why the substitute *third party complaint* referred only to Pioneer.

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supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader; and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived. (n)

[36] Section 1. *Amendments in general*. — Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner.

[37] *Anadon v. Herrera*, G.R. No. 159153, July 9, 2007, 527 SCRA 90, 97.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the resolutions the Court of Appeals promulgated on February 24, 2003 and November 13, 2003.

Costs against the petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 164693. March 23, 2011]

JOSEFA S. ABALOS* and THE DEVELOPMENT BANK OF THE PHILIPPINES, *petitioners, vs.* **SPS. LOMANTONG DARAPA and SINAB DIMAKUTA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE REVIEW AND DETERMINATION OF THE WEIGHT, CREDENCE AND PROBATIVE VALUE OF THE EVIDENCE PRESENTED AT THE TRIAL COURT ARE OUTSIDE THE AMBIT THEREOF.— It is fundamental procedural law that a petition for review on *certiorari* filed with this Court under Rule 45 of the Rules of Civil Procedure shall, as a general rule, raise only questions of law. A question of law arises when there is doubt as to what the is on a certain state of facts – this is in contradistinction from a question of

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* The Court's Resolution dated 13 February 2006 dropped Josefa S. Abalos participation as party-petitioner due to her abandonment pending appeal with the Court of Appeals.

fact which arises from doubt as to the truth or falsity of the alleged facts. A question of law does not involve an examination of the probative value of the evidence presented by the litigants or any of them and the resolution of the issue must rest solely on what the law provides on the given set of circumstances. The DBP's insistence that TCT No. T-1,997 is the same land covered by Tax Declaration No. A-148 is to ask the Court to evaluate the pieces of evidence passed upon by the RTC and the Court of Appeals. To grant this petition will entail the Court's review and determination of the weight, credence, and probative value of the evidence presented at the trial court – matters which, without doubt, are factual and, therefore, outside the ambit of Rule 45.

2. ID.; ID.; FACTUAL FINDINGS OF THE COURT OF APPEALS, AFFIRMING THAT OF THE TRIAL COURT, ARE FINAL AND CONCLUSIVE AND MAY NOT BE REVIEWED ON APPEAL; EXCEPTIONS; NOT PRESENT.— Petitioners ought to remember that the Court of Appeals' factual findings, affirming that of the trial court, are final and conclusive on this Court and may not be reviewed on appeal, except for the most compelling of reasons, such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurb or impossible; (3)there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. None of the exceptions is present in this petition.

3. ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; THE PETITIONER BANK'S FORECLOSURE SALE OF THE LAND UNDER T-1997 WAS DECLARED NULL AND VOID.— [W]e have meticulously reviewed the case's records and found no reason to disturb the findings of the RTC as

affirmed by the Court of Appeals. The records reveal that the land covered by TCT No. T-1,997 was not among the properties, the spouses mortgaged with the DBP in 1962. x x x. That TCT No. T-1,997 was not included in the 1962 mortgage was also admitted by the DBP's former property examiner and appraiser, Mamongcarao Blo, who testified that he was the person who examined and appraised the lands which the spouses mortgaged with the DBP, and that he never examined any land in *Barrio* Buru-an, Linamon, as described in TCT No. T-1,997. Even the bank's own witness, Marie Magsangcay (Magsangcay), the DBP's Executive Officer, claimed during the direct examination that the questioned TCT originated from OCT No. P-1485, an entirely different land as the trial court would later discover. Magsangcay's testimony contradicted the bank's consistent claim that TCT No. T-1,997 originated from Tax Declaration No. A-148. These blatant inconsistencies make the DBP's contention incredulous. Other than the questionable annotation at the bank of Dimakuta's TCT No. T-1,997, claiming that this TCT originated from Tax Declaration No. A-148, DBP submitted nothing more to substantiate its claim that these two documents refer to the land mortgaged in 1962; DBP did not even bother to submit the Tax Declaration, under which its claim is based. xxx. Needles to say, the bank utterly failed to establish, by preponderance of evidence, that TCT No. T-1,997 originated from Tax Declaration No. A-148. Thus, we find no reversible error in the RTC and the Court of Appeals findings that the DBP's foreclosure sale of the land under TCT No. T-1,997 was null and void.

4. ID.; ESTOPPEL; REQUISITES; NOT PRESENT.— The Court also finds unmeritorious the DBP's contention that the spouses' cause of action is barred by *estoppel*, laches and prescription. DBP claims that the failure of the spouses to redeem their property *estopped* them from questioning the validity of the foreclosure sale; and, that laches and prescription have already set in because the spouses filed their action only after the lapse of 16 years from the issuance of DBP's title. In *Pacific Mills, Inc. v. Court of Appeals*, we laid down the requisites of *estoppel* as follows: (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be

acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive, of the factual facts. In the present petition, it cannot be concluded that the spouses are guilty of *estoppel* for the requisites are not attendant.

5. ID.; LACHES; DEFINED; ELEMENTS THEREOF MUST BE PROVED AND CANNOT BE ESTABLISHED BY MERE ALLEGATIONS IN THE PLEADINGS.— Laches, on the other hand, is a doctrine meant to bring equity – not to further oppress those who already are. Laches has been defined as neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relations of the property or parties. The elements of laches must, however, be proved positively because it is evidentiary in nature and cannot be established by mere allegations in the pleadings. These are but factual in nature which the Court cannot grant without violating the basic procedural tenet that, as discussed, the Court is not trier of facts. Yet again, the records as established by the trial court show that it was rather the DBP's tactic which delayed the institution of the action. DBP made the spouses believe that there was no need to institute any action for the land would be returned to the spouses soon, only to be told, after ten (10) years of *naivete*, that reconveyance would no longer be possible for the same land was already sold to Abalos, an alleged purchaser in good faith and for value.

6. ID.; ACTIONS; ANNULMENT OF TITLE AND RECOVERY OF POSSESSION AND DAMAGES; 10-YEAR PRESCRIPTIVE PERIOD DOES NOT APPLY TO AN ACTION TO NULLIFY A CONTRACT WHICH IS VOID *AB INITIO*.— The Court also disagrees with the DBP's contention that for failure to institute the action within ten years from the accrual of the right thereof, prescription has set in, barring the spouses from vindicating their transgressed rights. The DBP contends that the prescriptive period for the reconveyance of fraudulently registered real property is ten (10) years reckoned from the date of the issuance of the certificate of title. While the above disquisition of the DBP is true, the 10-year prescriptive period applies only when the reconveyance is based on fraud which makes a contract voidable (and that the aggrieved party is not in possession of

the land whose title is to be actually reconveyed). It does **not** apply to an action to nullify a contract which is **void *ab initio***, as in the present petition. Article 1410 of the Civil Code categorically states that an action for the declaration of the inexistence of a contract does not prescribe. The spouses' action is an action for "Annulment of Title, Recovery of Possession and Damages," grounded on the theory that the DBP foreclosed their land covered by TCT No. T-1,997 without any legal right to do so, rendering the sale and the subsequent issuance of TCT in DBP's name void *ab initio* and subject to attack at any time comformably to the rule in Article 1410 of the Civil Code.

APPEARANCES OF COUNSEL

Benilda A. Tajena, Mariano S. Guerrero, Jr. & Wilson C. Namocot for petitioner.

Federico R. Maranda for respondents.

D E C I S I O N

PEREZ, *J.*:

The petitioner, Development Bank of the Philippines (DBP), files the present petition for review on *certiorari via* Rule 45 of the Rules of Court,[1] asking us to reverse and set aside the Court of Appeals' decision in CA G.R. CV. No. 70693 dated 26 September 2003[2] which affirmed the decision of the Regional Trial Court (RTC), Branch 3, Iligan City.[3]

BACKGROUND FACTS

On 25 June 1962, petitioner DBP, Ozamis Branch, granted a ₱31,000.00 loan to respondent spouses Lomantong Darapa and Sinab Dimakuta (spouses) who executed therefore a real

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[1] Petition. *Rollo,* pp. 9-36.

[2] Penned by Associate Justice Andres B. Reyes with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong, concurring. *Id.* at 39-54.

[3] *Id.* at 54.

and chattel mortgage contract, which covered, among others, the following:

> A warehouse to house the rice and corn mill, xxx constructed on a **357 square meter lot situated at poblacion, Linamon, Lanao del Norte** which lot is covered by Tax Declaration No. A-148 of Linamon, Lanao del Norte.
>
> **The equity rights,** participation and interest of the mortgagors over the above-mentioned **parcel of land** on which the *bodega* is constructed **situated in the Municipality of Linamon, Province of Lanao del Norte, containing an area of 357 square meters, more or less, declared for tax purposes in the name of Sinab Dimakuta** and assessed at ₱2,430.00 per Tax Declaration No. A-148 for the year 1961 and bounded as follows: on the North by Rafael Olaybar; on the South, by National Road[;] on the East by Ulpiano Jimenez; on the West, by Rafael Olaybar; of which property the mortgagors are in complete and absolute possession. x x x.
>
> The aforesaid equity rights, participation and interest of the mortgagors in said parcel of land are **not registered** under the Spanish Mortgage Law nor under Act 496 and the parties hereto hereby agree that this instrument shall be registered under Act 3344, as amended.
>
> It is further the agreement of the parties that immediately after the mortgagors acquire absolute ownership of the land above-mentioned on which the aforementioned building is erected by means of a free or sales patent or any other title vesting them with ownership in fee simple, the Mortgagors shall execute a Real Estate Mortgage thereon in favor of the Mortgagee, the Development Bank of the Philippines, to replace and substitute only, this portion of the herein mortgage contract.[4]

The assignment of the spouses' equity rights over the land covered by Tax Declaration No. A-148 in DBP's favor was embedded in the Deed of Assignment of Rights and Interests[5] which the spouses executed simultaneous with the real and chattel mortgage contract.

In 1970, the spouses applied for the renewal and increase of their loan using Sinab Dimakuta's (Dimakuta) Transfer Certificate

[4] Mortgage of Contract. *Id.* at 134 (at the back page).

[5] Records, p. 206. Exhibit "II".

of Title (TCT) No. T-1,997 as additional collateral. The DBP disapproved the loan application without returning, however, Dimakuta's TCT.

When the spouses failed to pay their loan, DBP extrajudicially foreclosed the mortgages on 16 September 1971, which, unknown to the spouses, included the TCT No. T-1,997. The spouses failed to redeem the land under TCT No. T-1,997 which led to its cancellation, and, the eventual issuance of TCT No. T-7746 in DBP's name.

In 1984, the spouses discovered all these and they immediately consulted a lawyer who forthwith sent a demand letter to the bank for the reconveyance of the land. The bank assured them of the return of the land. In 1994, however, a bank officer told them that such is no longer possible as the land has already been bought by Abalos, daughter of the then provincial governor.

On 12 May 1994,[6] the DBP sold the land to its co-petitioner Josefa Abalos (Abalos). The TCT No. T-7746 (originally TCT No. T-1,997) was cancelled and on 6 July 1994, T-16,280 was issued in Abalos' name.[7]

On 20 August 1994,[8] the spouses filed with the RTC of Iligan City, a Complaint for Annulment of Title, Recovery of Possession and Damages, against DBP and Abalos.[9]

The spouses averred that TCT No. T-1,997 was not one of the mortgaged properties, and, thus, its foreclosure by DBP and its eventual sale to Abalos was null and void.

On the other hand, DBP countered that TCT No. T-1,997 had its roots in Tax Declaration No. A-148, which the spouses mortgaged with the DBP in 1962 as evidenced by the Real Estate Mortgage and the Deed of Assignment. Abalos, on her part, contended that she was an innocent purchaser for value who relied in good faith on the cleanliness of the DBP's Title.

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[6] Petition. *Rollo,* p. 15.

[7] Transfer of Certificate of Title No. T-16,280. *Id.* at 133.

[8] Records, p. 7.

[9] *Id.* at 1-8.

The RTC, in a Decision dated 29 November 2000, annulled the DBP's foreclosure sale of the land under TCT No. T-1,997 and its sale to Abalos; further, it declared Dimakuta as the land's lawful owner. Thus:

> WHEREFORE, premises all considered, judgment is hereby rendered:
>
> 1. **Declaring the foreclosure of TCT No. T-1,997,** the Sheriff's Certificate of Sale dated September 20, 1971 as far as TCT No. T-1,997 is concerned and the Affidavit of Consolidation of Ownership dated October 19, 1978, also insofar as it included TCT No. T-1,997 **null and void** *ab initio;*
>
> 2. **Annulling TCT No. T-7746 in the name of DBP and TCT No. T-16,280 in the name of defendant Josepha S. Abalos;**
>
> 3. Declaring plaintiff Sinab Dimakuta the lawful owner of the land covered by TCT No. T-1,997. For this purpose, the Registrar of Deeds of Lanao del Norte is ordered to reinstate TCT No. T-1,997 in the name of Sinab Dimakuta and perforce cancel TCT No. T-16,280 in the name of Josefa Abalos and the latter to surrender possession of the lot covered by TCT No. 1,997 to plaintiff Sinab Di[m]akuta;
>
> 4. Ordering DBP to pay plaintiffs ₱50,000.00 moral damages; ₱20,000.00 exemplary damages and ₱20,000.00 attorney's fees;
>
> 5. Directing DBP to pay defendant Josefa Abalos the current fair market value of TCT No. T-1,997 plus actual damages of ₱50,000.00; moral damages of ₱50,000.00, exemplary damages of ₱20,000.00 and attorney's fees of ₱20,000.00.[10]

The DBP and Abalos assailed the RTC decision before the Court of Appeals; **Abalos, however, later abandoned her appeal.**

The Court of Appeals denied the petition in a Decision dated 26 September 2003. It ratiocinated that DBP had no right to foreclose the land under TCT No. T-1,997, it not having been mortgaged:[11]

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[10] Decision of the RTC. *Id.* at 263-264.

[11] *Rollo,* p. 51.

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. The assailed 29 November 2000 Decision of the court is hereby AFFIRMED.[12]

Hence, this petition for review on *certiorari.*

In the main, DBP wants to convince this Court that the land covered by Tax Declaration No. A-148 mortgaged in 1962, then untitled, is the same land now covered by TCT No. T-1,997[13] and that DBP came to its possession when the spouses voluntarily delivered the title in 1970 to the bank's manager, Tauti R. Derico, who executed an affidavit which stated that:

x x x the land covered by Tax Declaration No. A-148 and TCT No. T-1,997 are one and the same parcel of land which was mortgaged to the Development Bank of the Philippines.[14]

OUR RULING

We find the petition unmeritorious, and thus, affirm the Court of Appeals.

It is fundamental procedural law that a petition for review on *certiorari* filed with this Court under Rule 45 of the Rules of Civil Procedure shall, as a general rule, raise only questions of law.[15]

A question of law arises when there is doubt as to what the law is on a certain state of facts[16] – this is in contradistinction

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[12] *Id.* at 54.

[13] *Id.* at 19-23.

[14] *Id.* at 13.

[15] THE 1997 REVISED RULES OF COURT, Rule 45.

Section 1. *Filing of petition with the 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.**

[16] *Marcelo v. Bungubong,* G.R. No. 175201, 23 April 2008, 552 SCRA 589, 605.

from a question of fact which arises from doubt as to the truth or falsity of the alleged facts.[17] A question of law does not involve an examination of the probative value of the evidence presented by the litigants or any of them[18] and the resolution of the issue must rest solely on what the law provides on the given set of circumstances.[19]

The DBP's insistence that TCT No. T-1,997 is the same land covered by Tax Declaration No. A-148 is to ask the Court to evaluate the pieces of evidence passed upon by the RTC and the Court of Appeals. To grant this petition will entail the Court's review and determination of the weight, credence, and probative value of the evidence presented at the trial court – matters which, without doubt, are factual and, therefore, outside the ambit of Rule 45.

Petitioners ought to remember that the Court of Appeals' factual findings, affirming that of the trial court, are final and conclusive on this Court and may not be reviewed on appeal, except for the most compelling of reasons, such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are

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[17] *Vector Shipping Corporation v. Macasa,* G.R. No. 160219, 21 July 2008, 97 SCRA 105.

[18] *Binay vs. Odeña,* G.R. No. 163683, 8 June 2007, 524 SCRA 248, 255-256.

[19] *Id.*

contrary to the admissions of both parties.[20] None of the exceptions is present in this petition.

In any event, we have meticulously reviewed the case's records and found no reason to disturb the findings of the RTC as affirmed by the Court of Appeals. The records reveal that the land covered by TCT No. T-1,997 was not among the properties, the spouses mortgaged with the DBP in 1962.[21]

No less than the 1962 mortgage contract and its accompanying deed of assignment show that the land covered by Tax Declaration No. A-148 is located in Linamon, Lanao del Norte with an area of 357 square meters and bounded "on the north by Rafael Olaybar; on the south, by National Road; on the east by Ulpiano Jimenez; and, on the west, by Rafael Olaybar."[22]

On the other hand, the land covered by TCT No. T-1,997 is situated in *Barrio* Buru-an, Municipality of Iligan, Lanao del Norte and contains an area of 342 square meters.[23] TCT No. T-1,997 traces its roots in Original Certificate of Title (OCT) No. RP-407 (244), pursuant to a Homestead patent granted by the President of the Philippines in 1933 under Act No. 2874, and which was registered as early as 26 June 1933 as recorded in Registration Book No. I, page 137 of the Office of the Register of Deeds, Lanao del Norte.[24]

That TCT No. T-1,997 was not included in the 1962 mortgage was also admitted by the DBP's former property examiner and appraiser, Mamongcarao Blo, who testified that he was the person who examined and appraised the lands which the spouses mortgaged with the DBP, and that he never examined any land in *Barrio* Buru-an, Linamon, as described in TCT No. T-1,997.[25] Even the bank's own witness, Marie Magsangcay

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[20] *International Container Terminal Services, Inc. v. FGU Insurance Corporation*, G.R. No. 161539, 28 June 2008, 556 SCRA 194, 119.

[21] *Rollo*, p. 53.

[22] *Id.* at 11.

[23] *Id.* at 125.

[24] *Id.* at 125.

[25] Records, p. 13.

(Magsangcay), the DBP's Executive Officer, claimed during the direct examination that the questioned TCT originated from OCT No. P-1485, an entirely different land as the trial court would later discover.[26] Magsangcay's testimony contradicted the bank's consistent claim that TCT No. T-1,997 originated from Tax Declaration No. A-148.

These blatant inconsistencies make the DBP's contention incredulous. Other than the questionable annotation at the back of Dimakuta's TCT No. T-1,997, claiming that this TCT originated from Tax Declaration No. A-148, DBP submitted nothing more to substantiate its claim that these two documents refer to the land mortgaged in 1962; DBP did not even bother to submit the Tax Declaration, under which its claim is based. The annotation of such unilateral claim at the back of Dimakuta's TCT cannot improve petitioners' position. This undated annotation should have been disallowed outright for being violative of Sections 60[27] in relation to Section 54, and Section 61[28] of the Presidential Decree No. 1529,[29] otherwise known as the Property Registration Decree – basic provisions, which every Register of Deeds is presumed to know. The DBP's annotation that the property

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[26] *Id.* at 33.

[27] Sec. 60. *Mortgage or lease of registered land.* – Mortgages and leases shall be registered in the manner provided in Section 54 of this Decree. The owner of the registered land may mortgage or lease it by executing the deed in a form sufficient in law. Such deed of mortgage or lease and all instruments which assign, extend discharge or otherwise deal with the mortgage or lease shall be registered, and shall take effect upon the title only from time of registration.

[28] Sec. 61. *Registration.* – Upon presentation for registration of the deed of mortgage or lease together with the owner's duplicate, the Register of Deeds shall enter upon the Original Certificate of title and also upon the owner's duplicate certificate a memorandum thereof, the date and time of filing and the file number assigned to the deed, and shall sign the said memorandum. He shall also9 note on the deed the date and time of filing and a reference to the volume and page of the registration book in which it is registered.

[29] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES. Signed into law on June 11, 1978.

originally covered by Tax Declaration No. A-148 is now covered by TCT No. T-1,997[30] is neither the deed nor the instrument referred to by Sections 60 and 61 of the above quoted law and such annotation will in no way change the fact that the two documents refer to different lands: *one*, which was indeed a subject of the mortgage contract; and *two*, which Dimakuta had delivered to DBP in 1970 supposedly for another loan, but, which was, however, disapproved. It should be underscored that it was this annotation, *albeit* irregular, that paved to the sale of the land now in question.

Needless to say, the bank utterly failed to establish, by preponderance of evidence, that TCT No. T-1,997 originated from Tax Declaration No. A-148.

Thus, we find no reversible error in the RTC and the Court of Appeals findings that the DBP's foreclosure sale of the land under TCT No. T-1,997 was null and void.

The Court also finds unmeritorious the DBP's contention that the spouses' cause of action is barred by *estoppel*, laches and prescription. DBP claims that the failure of the spouses to redeem their property *estopped* them from questioning the validity of the foreclosure sale; and, that laches and prescription have already set in because the spouses filed their action only after the lapse of 16 years[31] from the issuance of DBP's title.

In *Pacific Mills, Inc. v. Court of Appeals*,[32] we laid down the requisites of *estoppel* as follows: (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive, of the factual facts.[33]

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[30] *Rollo*, p. 125 (at the back page).

[31] *Id.* at 130.

[32] 513 Phil. 534 (2005).

[33] *Id.* at 544.

In the present petition, it cannot be concluded that the spouses are guilty of *estoppel* for the requisites are not attendant.

Laches, on the other hand, is a doctrine meant to bring equity – not to further oppress those who already are. Laches has been defined as neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity.[34] It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relations of the property or parties.[35]

The elements of laches must, however, be proved positively because it is evidentiary in nature and cannot be established by mere allegations in the pleadings.[36] These are but factual in nature which the Court cannot grant without violating the basic procedural tenet that, as discussed, the Court is not trier of facts. Yet again, the records as established by the trial court show that it was rather the DBP's tactic which delayed the institution of the action. DBP made the spouses believe that there was no need to institute any action for the land would be returned to the spouses soon, only to be told, after ten (10) years of *naiveté*, that reconveyance would no longer be possible for the same land was already sold to Abalos, an alleged purchaser in good faith and for value.

The Court also disagrees with the DBP's contention that for failure to institute the action within ten years from the accrual of the right thereof, prescription has set in, barring the spouses from vindicating their transgressed rights.

The DBP contends that the prescriptive period for the reconveyance of fraudulently registered real property is ten (10) years reckoned from the date of the issuance of the certificate of title.[37]

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[34] *De Vera-Cruz v. Miguel*, G.R. No. 144103, 31 August 2005, 468 SCRA 506, 518.

[35] *Id.*

[36] *Department of Education v. Oñate*, G.R. No. 161758, 8 June 2007, 524 SCRA 200, 216.

[37] *Rollo*, p. 30.

While the above disquisition of the DBP is true, the 10-year prescriptive period applies only when the reconveyance is based on fraud which makes a contract voidable (and that the aggrieved party is not in possession of the land whose title is to be actually reconveyed). It does **not** apply to an action to nullify a contract which is **void *ab initio,*** as in the present petition. Article 1410 of the Civil Code categorically states that an action for the declaration of the inexistence of a contract does not prescribe.[38]

The spouses' action is an action for "Annulment of Title, Recovery of Possession and Damages,"[39] grounded on the theory that the DBP foreclosed their land covered by TCT No. T-1,997 without any legal right to do so, rendering the sale and the subsequent issuance of TCT in DBP's name void *ab initio* and subject to attack at any time conformably to the rule in Article 1410 of the Civil Code.

In finis, the Court notes that Abalos, DBP's co-defendant, was ordered by the RTC to return to the spouses the land she bought from DBP; the RTC also ordered the cancellation of Abalos' title. Abalos, however, abandoned her appeal then pending before the Court of Appeals, resulting in its dismissal. In this Court's Resolution dated 13 February 2006, she was subsequently dropped as party-petitioner. By abandoning her appeal, the RTC decision with respect to her, thus, became final.

IN LIGHT OF THE FOREGOING, the petition is *DENIED.* The Decision of the Court of Appeals in CA-G.R. CV No. 70693 dated 26 September 2003 is *AFFIRMED.*

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-De Castro, and *del Castillo, JJ.*, concur.

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[38] Art. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

[39] *Rollo,* p. 58.

FIRST DIVISION

[G.R. No. 167518. March 23, 2011]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **PIO ROQUE S. COQUIA, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; ISSUES; ISSUE ON THE CORRECTNESS OF THE AWARD OF SEPARATION PAY IS ALREADY MOOT AS THE SAME HAS ALREADY BEEN SET ASIDE IN A DECISION WHICH HAD LONG BECOME FINAL AND EXECUTORY.— On March 4, 2009, the Special Former Eleventh Division of the CA rendered a Decision in CA-G.R. SP No. 83883, holding the dismissal of respondent Coquia as legal since violations of bank's policies, rules and regulations, amount to an abuse of the trust reposed in him by his employer. As a result, the NLRC's award of separation pay and accumulated leave credits were reversed and set aside. However, the CA, on equitable grounds, still granted respondent Coquia financial assistance for his 26 years of service to the bank. This Decision became final and executory on September 9, 2010. Moreover, Entry of Judgment was made on December 16, 2010. Therefore, in view of this significant development, petitioner BPI's prayer in the instant petition to set aside the award of separation pay in favor of respondent Coquia has already become moot as the same has already been set aside in the March 4, 2009 Decision of the CA which had long become final and executory.

2. ID.; JUDGMENTS; *RES JUDICATA*; ESSENTIAL REQUISITES; PRESENT.— [P]etitioner BPI's prayer in the instant petition to set aside the award of separation pay is likewise barred by the principle of *res judicata*. In its concept as a bar by prior judgment under Section 47(b) of Rule 39 of the Rules of Court, *res judicata* dictates that a judgment on the merits rendered by a court of competent jurisdiction operates as an absolute bar to a subsequent action involving the same cause of action since that judgment is conclusive not only as to the matters offered and received to sustain it but also as to any other matter which might have been offered for that purpose and which could

have been adjudged therein. To apply this doctrine, the following essential requisites should be satisfied: 1) finality of the former judgment; 2) the court which rendered the judgment had jurisdiction over the subject matter and the parties; 3) it must be a judgment on the merits; and 4) there must be, between the first and second actions, identity of parties, subject matter and causes of action. As mentioned, the judgment rendered in CA-G.R. SP No. 83883 has already become final and executory. It was rendered based on the merits by a court which has jurisdiction thereon. The parties involved in that case and in the present petition are the same as well as the subject matter and cause of action, which revolves around the validity of respondent Coquia's termination from employment and the propriety of the award of separation pay in his favor.

3. ID.; ID.; PRINCIPLE OF IMMUTABILITY OF FINAL JUDGMENT; A FINAL AND EXECUTORY JUDGMENT CAN NO LONGER BE ATTACKED BY ANY OF THE PARTIES OR BE MODIFIED, DIRECTLY OR INDIRECTLY, EVEN BY THE SUPREME COURT; EXCEPTIONS; NOT PRESENT.— [T]his Court may not pass upon the same issues which had been finally adjudicated since a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the Supreme Court. This principle of immutability of final judgment renders it unalterable as nothing further can be done except to execute it. A judgment must be final at some definite time as it is only proper to allow the case to take its rest on grounds of public policy and sound practice. Although there are recognized exceptions to this fundamental principle, such as *nunc pro tunc* entries, void judgments and cases which would not cause any prejudice to any party, none of these exceptions obtain in the case at bench.

4. ID.; ID.; ID.; REVIEW OR REVERSAL OF A DULY PROMULGATED DECISION THAT HAS BECOME FINAL AND EXECUTORY IS NOT ALLOWED.— [T]he Court may not dwell on petitioner BPI's assigned errors since to resolve the same would allow the revival or review of an already immutable judgment. In the same perspective, the Court cannot affirm the findings and ruling of the herein assailed Decision because to allow its affirmance would permit a reversal of a duly promulgated decision that has become final and executory. As the Decision of the Special Sixteenth Division of the CA

in CA-G.R. SP No. 84230 completely varies with the final and executory Decision of the CA in CA-G.R. SP No. 83883 upholding the legality of respondent Coquia's dismissal, the former has to be set aside to conform to what has already been finally adjudicated between the parties.

APPEARANCES OF COUNSEL

Alonso & Associates Law Offices for petitioner.
Roberto N. Raagas for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated December 14, 2004 and Resolution[3] dated March 16, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84230, which affirmed the Resolution[4] dated December 17, 2003 of the National Labor Relations Commission (NLRC), holding the dismissal of respondent Pio Roque S. Coquia, Jr. (respondent Coquia) as illegal and ordering petitioner Bank of the Philippine Islands (petitioner BPI) to pay him separation pay in lieu of reinstatement.

Factual Antecedents

Respondent Coquia's stint with petitioner BPI lasted for 26 years commencing in 1972 when he was assigned as bookkeeper and was thereafter promoted to various positions in different BPI branches, such as examiner in 1975, senior examiner in

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[1] *Rollo*, pp. 11-49.

[2] Annex "T" of the Petition, *id.* at 539-553; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Danilo B. Pine and Monina Arevalo-Zenarosa.

[3] Annex "A" of the Petition, *id.* at 51-52.

[4] Annex "O" of the Petition, *id.* at 400-403; penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Victoriano R. Calaycay.

1977, assistant auditor in 1981, assistant manager in 1984, senior assistant manager in 1987, manager in 1989 and as senior manager in Dagupan Branch from 1992 to 1998.

Respondent Coquia alleged that on June 3, 1998, he was instructed to take a vacation leave starting June 4, 1998 on account of an internal audit to be conducted in BPI Dagupan Branch. Two days after he returned to work on June 15, 1998, he was asked to continue his leave of absence until the auditors shall have concluded their examination. In a notice dated July 16, 1998,[5] he was placed under preventive suspension for 30 days due to further investigation of the various irregularities found to have been committed by him, as follows:

1. Possible conflict-of-interest on account of lending activities;
2. Reversal of accrued expense and their corresponding payments without supporting invoices and/or official receipts;
3. Questionable payments for re-painting services and pest control treatment;
4. Irregular encashment of another bank's check against cash-in-vault beyond banking hours;
5. Reported temporary or "daylight" borrowings from the tellers; and
6. Allowing your driver/bodyguard access to the branch's restricted areas, facilities and records.

On August 18, 1998, respondent Coquia received a show cause memo dated August 17, 1998[6] directing him to explain in writing why no disciplinary action should be taken against him for committing serious offenses/violations of bank policies[7]

[5] *Id.* at 104 and 141.

[6] *Id.* at 105-107.

[7] 1. Conflict of Interest; Lending Business. You are either engaged in the lending business or, at the very least, actively participating in the lending business of third parties in violation of the Bank's policy on conflict-of-interest. A certain Josephine Boright directly communicated to you by fax regarding her past due loan. You also admitted that you monitor the lending business of three (3) clients, namely; Lao, P. Merza and P. Quinto. In fact, you do

more than simply monitor their business. Your active participation includes using your own account for the funding of loans and directly releasing loans to borrowers.

2. Irregular Accruals; Spurious Payments. Set up and reversal of accrued expenses totaling ₱49,200.00. This amount was part of the total accruals which you ordered set up on December 29, 1997 without supporting documents except a yellow pad containing the accounting entries in your own handwriting. The corresponding payment via Manager's Checks were also made upon your instruction and approval. There were still no supporting invoices and/or official receipts submitted when you authorized the payments except for the ₱10,000.00 paid to AVS Termite and Pest Control Services. Attached hereto as Attachment I is the schedule of the manager's checks issued to various payees. Needless to say, these payments are considered spurious without the required supporting documents and/or actual service rendered.

In the case of MC No. 9303 dated March 31, 1998 for ₱18,000.00 payable to Mario Santiago purportedly for the repainting (labor and materials) of the branch's stairways, Mr. Santiago has denied receiving the amount, endorsing the check and signing the voucher. The evidence show that you ordered the accrual of this amount on December 29, 1997 despite the fact that no service was rendered as of that date, you authorized the payment (thus reversing the accrual) by signing the voucher, and authorized the encashment of the check by your signature on the dorsal side of the check. According to Mr. Santiago, he charged only the amount of ₱8,000.00 for his service (labor only) performed from April 9-12, 1998 and was paid via MC No. 9353 for ₱7,920.00, net of tax, on April 13, 1998. He did not perform any repainting job at the branch in 1997. Neither was there any corresponding service rendered for the ₱18,000.00 payment.

For pest control treatment, the branch issued MC No. 9302 for ₱10,000.00 on March 31, 1998 (encashed on 04/08/98) for treatment purportedly made in 1997 (OR was dated Nov. 14, 1997) by AVS Termite and Pest Control Services. Earlier, on March 16 and March 26, 1998, two payments aggregating ₱48,000.00 were also made. The signatures of Angelito Seen, proprietor of AVS Termite and Pest Control Services, on MC No. 9302 and the corresponding voucher differ materially from his signature on the service contract for the ₱48,000.00 job. Records in the branch also indicate that no pest control treatment was performed in the branch by AVS in the year 1997.

4. Fraudulent, Overnight Borrowings from Cash-in-Vault. You authorized the irregular encashment of a UCPB-Dagupan check for ₱200,000.00 belonging to your relative, Editha Coquia on 09-24-97. The money was drawn from the Cash-in-Vault after banking hours. To conceal the irregular transaction, it was made to appear in the records that the money was loaded in the Automated Teller Machine (ATM). Since no actual loading took place, the ATM had a shortage of ₱200,000.00 that day. This was reversed the following day when the UCPB check was sent for clearing.

on the basis of the internal auditor's findings. He was also advised in the memo that a hearing will be held to give him an opportunity to ventilate his side.

On November 23, 1998, a Notice of Termination dated November 18, 1998[8] was served on respondent Coquia. Thus, on November 27, 1998, he filed a complaint[9] for illegal suspension, illegal dismissal and other monetary claims against petitioner BPI and some of its corporate officers.

Proceedings before the Labor Arbiter

In its Position Paper,[10] petitioner BPI posited that respondent Coquia's conduct in causing the issuance of Manager's Check No. 9303[11] payable to a certain Mario Santiago for payment of accrued expenses for the painting of the bank's stairway hall in

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A similar infraction was committed in accommodation of the same Editha Coquia on October 16, 1997 but with a different concealment method. Another UCPB check for ₱150,000.00 was encashed from the CIV after banking hours and purposely misrouted by sending it to BPI-Urdaneta for clearing. The debit advice was reversed the following day when BPI-Urdaneta sent it back and refused to pass an accounting entry.

5. "Daylight" Borrowings from Tellers. In a number of instances, you have reportedly resorted to temporary or "daylight" borrowings from various tellers against IOUs written on pieces of paper signed by you or your driver/ bodyguard, Jess Coquia. Though these were paid at the end of the day or before balancing time, we have a stern prohibition against this practice for very obvious reasons.

6. Jess Coquia: Non-employee's Access to Bank Records. You were unduly allowing your personal driver and bodyguard, Jess Coquia, access to the branch's restricted areas, facilities and records in gross violation of control, security and confidentiality laws, rules and regulations. The said driver/bodyguard was also reported to be performing clerical functions inside the bank premises. In February, 1997, you were already instructed by VP JV Razon to stop this practice. (*Id.* at 106.)

[8] *Id.* at 108-109 and 145-146.

[9] Annex "C" of respondent Coquia's Petition for *Certiorari* before the CA, CA *rollo*, pp. 29-30.

[10] Annex "B" of the Petition, *rollo*, pp. 53-72.

[11] *Id.* at 75.

1997, as well as Manager's Check No. 9302[12] payable to AVS Termite and Pest Control Services for payment of pest/termite control treatment performed in 1997, and the subsequent encashments thereof, when there was no painting job or pest control treatment performed within such period of time, manifests his intent and criminal design to defraud the bank. Petitioner BPI presented the affidavit of Mario Santiago,[13] the purported payee of Manager's Check No. 9303, attesting to the fact that the signatures found on the dorsal portion of the check and its supporting voucher are not his, and the affidavit of the branch's head security guard[14] attesting to the falsity of the purpose for which the checks were issued. In addition, it presented the joint affidavit of the branch's operations manager, Ferdinand M. Rabago (Rabago), and operations assistant manager, Mario A. Gabrillo (Gabrillo),[15] declaring that the checks were prepared and issued upon the instruction and initiative of respondent Coquia. On account of these anomalies, a criminal complaint for estafa thru falsification of commercial documents before the City Prosecutor's Office of Dagupan City was filed against respondent Coquia. Petitioner BPI also claimed that respondent Coquia's actuation in permitting the encashment of an uncleared check beyond banking hours, known as overnight borrowing, and in resorting to temporary or daylight borrowings from tellers were evidently irregular transactions violative of bank policies. Further, allowing his driver/bodyguard unlimited access to the bank's restricted areas, facilities and records, as well as to perform clerical functions inside the bank's premises, constitutes flagrant and gross violation of bank rules and orders from superior management. Petitioner BPI likewise presented sworn statements of its employees[16] attesting

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[12] *Id.* at 77.

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

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

[15] *Id.* at 87.

[16] Affidavits of Mario P. Gabrillo, Leticia B. Cacho, Marjorie R. Macaraeg, Araceli T. Antineo, Pearlene Ma. M. Gumapos and Teresita B. Ocoma, *id.* at 94-96, 97, 98, 99-100, 101 and 102-103, respectively.

to the so-called overnight and daylight borrowings of respondent Coquia and to the activities being performed inside the bank by his driver/bodyguard, Jess Coquia. Indeed, according to petitioner BPI, as respondent Coquia's position requires the highest degree of trust, such reprehensible conduct warrants his termination from employment.

Respondent Coquia, on the other hand, claimed innocence of the charges of serious misconduct and breach of trust as grounds for his dismissal. On the charge of spurious expenses, he denied liability by explaining that Rabago and Gabrillo were the ones who caused the preparation of the checks and vouchers containing forged signatures of payees and that he merely approved and signed the same for being regular on its face. According to him, after being informed of the real purpose for the issuance of the checks (as payment for valid contingent expenses) he consented to the disbursements. As regards the alleged overnight borrowings, he claimed justification for authorizing irregular encashment upon the request of important clients and after confirmation from his assistant manager. Likewise, his resort to temporary or daylight borrowing, which involves the borrowing of money from tellers but returning the amount loaned before the close of banking hours, did not cause any prejudice to the bank but in fact was done for the benefit of valued clients. Lastly, he denied having allowed his driver/bodyguard access to confidential bank records and operations.[17]

On July 29, 1999, the Labor Arbiter rendered a Decision[18] finding respondent Coquia's dismissal illegal. The Labor Arbiter held that there is no factual basis for the loss of trust and confidence reposed upon respondent Coquia since, while he may have involved himself in some irregular transactions, the same nevertheless had redounded to the benefit of the bank and without fraudulent intent on his part. First, respondent Coquia's issuance

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[17] Respondent Coquia's Complaint/Position Paper before the Labor Arbiter, Annex "B-1" of the Petition, *id.* at 110-135.

[18] Annex "C" of the Petition, *id.* at 157-163.

of spurious checks was not driven by any criminal design to defraud the bank. In fact, the expenditures have promoted the bank's business interest. Second, the overnight and daylight borrowings were mere favors extended to clients deserving of such accommodation which did not result in any damage to the bank's operation. Lastly, the driver/bodyguard's actions in performing irregular functions inside the bank did not in any way compromise confidential bank records.

The Labor Arbiter also ruled that respondent Coquia's involuntary leave of absence is considered as an illegal suspension for being in excess of the maximum period of suspension of 30 days allowed under the Labor Code. It also declared respondent Coquia entitled to moral and exemplary damages for the anxiety he had gone through while being investigated in an oppressive manner. Only petitioner BPI, excluding its corporate officers, was held liable for the awards granted to respondent Coquia. Thus, the Labor Arbiter disposed of the case as follows:

> PREMISES CONSIDERED, the dismissal of the complainant is hereby declared to be illegal and respondent BPI is hereby ORDERED to reinstate him to his former position without loss of seniority or other benefits and to pay him the following:
>
> a) ₱520,800.04 [1 month 12 days (1998) and 7 months (1999) x ₱62,000.00] as backwages for the period from the time of his dismissal on November 23, 1998 up to the promulgation of this decision[:]
>
> b) ₱1,000,000.00 by way of moral damages;
>
> c) ₱500,000.00 by way of exemplary damages;
>
> d) Attorney's fees equivalent [to] 10% of the aggregate award.
>
> In addition, the respondent company is ORDERED to refrain from deducting from complainant's accumulated sick and vacation leaves the period from June 3, 1998 to November 23, 1998.
>
> SO ORDERED.[19]

Proceedings before the National Labor Relations Commission

[19] *Id.* at 163.

Aggrieved, petitioner BPI appealed to the NLRC on the ground that the Labor Arbiter committed serious error in holding that respondent Coquia was illegally suspended and dismissed. The NLRC, in its Decision dated April 19, 2000,[20] reversed the assailed decision and declared that there exist sufficient bases for the dismissal. The NLRC ruled that respondent Coquia has conducted unsound banking practice in transgression of Central Bank rules and regulations in authorizing and approving fictitious expenses, in accommodating the encashment of a check instead of sending it first for clearing and in maliciously engaging in irregular transactions.

Respondent Coquia filed a motion for reconsideration, which was granted by the NLRC in its Resolution dated September 24, 2001.[21] This time, the NLRC sustained the merits of respondent Coquia's explication of absence of bad faith and malice in his actions and considered his satisfactory performance and loyal dedication to the bank. The NLRC thus reinstated and affirmed the awards rendered by the Labor Arbiter.

Petitioner BPI then filed its own motion for reconsideration. The NLRC, in its Resolution dated December 17, 2003,[22] denied the motion and affirmed the illegality of respondent Coquia's termination from employment but this time, modified the awards granted to him. It noted that respondent Coquia was not entirely faultless of the charges which stripped him of entitlement to backwages. Likewise, he has no right to damages since his termination was in compliance with due process and not attended by any ill-motive on the part of petitioner BPI. Furthermore, since reinstatement is no longer possible due to strained relation between the parties, separation pay is proper under the circumstances. Thus, the decretal portion of the NLRC Resolution reads:

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[20] Annex "E" of the Petition, *id.* at 226-253.

[21] Annex "H" of the Petition, *id.* at 290-299.

[22] Annex "O" of the Petition, *id.* at 400-403.

WHEREFORE, the assailed Decision is hereby MODIFIED. Accordingly, the awards of backwages and moral and exemplary damages are hereby deleted.

In lieu of reinstatement, complainant is hereby awarded separation pay in the amount of One Million Six Hundred Twelve Thousand Pesos (₱1,612,000.00).

Finally, the Order directing respondents to refrain from deducting from complainant's accumulated sick and vacation leaves the period from June 3, 1998 to September 23, 1998 is hereby REITERATED. Considering however complainant's non-reinstatement, reference to company practice, policy or the Collective Bargaining Agreement may be made to determine if said accumulated leaves may be converted to their cash equivalent.

SO ORDERED.[23]

Proceedings before the Court of Appeals

From the said NLRC Resolution, petitioner BPI and respondent Coquia filed their separate petitions before the CA. Petitioner BPI's Petition for *Certiorari* with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order[24] was docketed as CA-G.R. SP No. 83883. On the other hand, respondent Coquia's Petition for *Certiorari*[25] was docketed as CA-G.R. SP No. 84230.

The CA, however, resolved the petitions differently. In CA-G.R. SP No. 84230, the CA, through its Special Sixteenth Division, rendered a Decision[26] dated December 14, 2004 which

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[23] *Id.* at 402-403.

[24] Annex "P" of the Petition, *id.* at 404-441.

[25] Annex "Q" of the Petition, *id.* at 442-453.

[26] Annex "T" of the Petition, *id.* at 539-553. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is DENIED. The assailed resolution dated December 17, 2003 of the public respondent NLRC in NLRC Case SUB-RAB-01-07-11-0304-98 DC, NLRC NCR CA No. 020987-99 is hereby AFFIRMED.

SO ORDERED. (*Id.* at 552.)

denied respondent Coquia's petition and sustained the NLRC's deletion of the award of backwages and moral and exemplary damages. The CA likewise sustained the award of separation pay as reinstatement was no longer possible due to strained relation between petitioner BPI and respondent Coquia.

Petitioner BPI filed a Motion for Reconsideration[27] which was denied by the CA in its Resolution dated March 16, 2005.[28] Hence, petitioner BPI filed the instant petition for review on *certiorari*, assigning the following errors:

I. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION, WHEN IT RULED ON THE ISSUE OF PAYMENT OF SEPARATION PAY IN FAVOR OF PRIVATE RESPONDENT, CONSIDERING THE FACT THAT ANOTHER DIVISION OF THE HONORABLE COURT OF APPEALS FIRST ACQUIRED JURISDICTION OVER SAID SUBJECT MATTER, AS REPEATEDLY MANIFESTED BY PETITIONER.

II. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDIGN *(SIC)* THAT PRIVATE RESPONDENT IS ENTITLED TO SEPARATION PAY, NOTWITHSTANDING THE FINDING THAT THE TERMINATION OF HIS EMPLOYMENT WAS FOR JUST CAUSE.

IT IS WELL SETTLED IN THIS JURISDICTION THAT THE AWARD OF SEPARATION PAY, OR FINANCIAL ASSISTANCE IS JUSTIFIED ONLY WHERE THE EMPLOYEE IS VALIDLY DISMISSED FOR CAUSES OTHER THAN SERIOUS MISCONDUCT OR THOSE ADVERSELY AFFECTING HIS MORAL CHARACTER.

FURTHER, THIS JURISDICTION IS REPLETE WITH JURISPRUDENTIAL DOCTRINES THAT THE POSITION OF A MANAGERIAL EMPLOYEE ENTAILS A HIGH DEGREE OF TRUST AND CONFIDENCE. THE EMPLOYER UPON WHOSE DISCRETION LIES THE CONTINUITY IN THE

[27] Annex "U" of the Petition, *id.* at 554-569.

[28] Annex "A" of the Petition, *id.* at 51-52.

SERVICE OF THE MANAGERIAL EMPLOYEE ONLY REQUIRES REASONABLE BASIS TO DETERMINE THE QUALIFICATION OF THE OCCUPANT. UNLESS TAINTED WITH MALICE AND ARBITRARINESS, THE EMPLOYER'S DECISION TO DISMISS AN EMPLOYEE UPON LOSS OF TRUST AND CONFIDENCE CANNOT BE SUBJECT OF JUDICIAL INTERFERENCE.[29]

Petitioner BPI submits that the CA acted in excess of its jurisdiction in ruling that respondent Coquia is entitled to separation pay because its jurisdiction is confined only to the lone issue of whether the deletion of the award of damages and attorney's fees was proper, as advanced by respondent Coquia in his petition. Petitioner BPI also argues that the propriety of the payment of separation pay is the subject matter of an earlier petition it filed, so that the portion granting such award in favor of respondent Coquia should not be binding on the parties. At any rate, according to petitioner BPI, the CA ruling on the matter is erroneous since respondent Coquia's acts of fraud and dishonesty amounted to serious misconduct and breach of trust and confidence which justify his dismissal and do not give him the right to separation pay.

Our Ruling

We grant the petition.

The issues regarding the validity of respondent Coquia's dismissal and the correctness of the award of separation pay have been barred by the principle of res judicata by virtue of a final and executory judgment rendered in CA G.R.SP No. 83883 involving the same parties,issues and cause of action.

On March 4, 2009, the Special Former Eleventh Division of the CA rendered a Decision[30] in CA-G.R. SP No. 83883, holding

[29] *Id.* at 28-29.

[30] Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Vicente S.E. Veloso and Japar B. Dimaampao.

the dismissal of respondent Coquia as legal since violations of bank's policies, rules and regulations, amount to an abuse of the trust reposed in him by his employer. As a result, the NLRC's award of separation pay and accumulated leave credits were reversed and set aside. However, the CA, on equitable grounds, still granted respondent Coquia financial assistance for his 26 years of service to the bank. The dispositive part the Decision reads as follows:

> WHEREFORE, the petition is partially GRANTED. The Resolution of December 13, 2003 (*sic*) is SET ASIDE. The dismissal is held legal on the ground of loss of trust and confidence; The award of separation pay and accumulated leave credits is likewise SET ASIDE. A financial assistance of ₱260,000.00 is, however, ALLOWED.
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> SO ORDERED.

This Decision became final and executory on September 9, 2010. Moreover, Entry of Judgment was made on December 16, 2010.

Therefore, in view of this significant development, petitioner BPI's prayer in the instant petition to set aside the award of separation pay in favor of respondent Coquia has already become moot as the same has already been set aside in the March 4, 2009 Decision of the CA which had long become final and executory.

Moreover, petitioner BPI's prayer in the instant petition to set aside the award of separation pay is likewise barred by the principle of *res judicata.* In its concept as a bar by prior judgment under Section 47(b) of Rule 39 of the Rules of Court,[31] *res judicata* dictates that a judgment on the merits rendered by a

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[31] SEC. 47. *Effect of judgments of final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

(a) x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; x x x

court of competent jurisdiction operates as an absolute bar to a subsequent action involving the same cause of action since that judgment is conclusive not only as to the matters offered and received to sustain it but also as to any other matter which might have been offered for that purpose and which could have been adjudged therein.[32] To apply this doctrine, the following essential requisites should be satisfied: 1) finality of the former judgment; 2) the court which rendered the judgment had jurisdiction over the subject matter and the parties; 3) it must be a judgment on the merits; and 4) there must be, between the first and second actions, identity of parties, subject matter and causes of action.[33]

As mentioned, the judgment rendered in CA-G.R. SP No. 83883 has already become final and executory. It was rendered based on the merits by a court which has jurisdiction thereon. The parties involved in that case and in the present petition are the same as well as the subject matter and cause of action, which revolves around the validity of respondent Coquia's termination from employment and the propriety of the award of separation pay in his favor.

Clearly, then, this Court may not pass upon the same issues which had been finally adjudicated since a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the Supreme Court.[34] This principle of immutability of final judgment renders it unalterable as nothing further can be done except to execute it.[35] A judgment must be final at some definite time as it is only proper to allow the case to take its rest on grounds of public

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[32] *Garcia v. Philippine Airlines*, G.R. No. 162868, July 14, 2008, 558 SCRA 171, 187-188.

[33] *Del Rosario v. Far East Bank & Trust Company*, G.R. No. 150134, October 31, 2007, 537 SCRA 571, 584.

[34] *Barnes v. Judge Padilla*, 482 Phil. 903, 915 (2004).

[35] *Tamayo v. People*, G.R. No. 174698, July 28, 2008, 560 SCRA 312, 322-323.

policy and sound practice.[36] Although there are recognized exceptions to this fundamental principle, such as *nunc pro tunc* entries, void judgments and cases which would not cause any prejudice to any party,[37] none of these exceptions obtain in the case at bench.

Thus, the Court may not dwell on petitioner BPI's assigned errors since to resolve the same would allow the revival or review of an already immutable judgment. In the same perspective, the Court cannot affirm the findings and ruling of the herein assailed Decision because to allow its affirmance would permit a reversal of a duly promulgated decision that has become final and executory. As the Decision of the Special Sixteenth Division of the CA in CA-G.R. SP No. 84230 completely varies with the final and executory Decision of the CA in CA-G.R. SP No. 83883 upholding the legality of respondent Coquia's dismissal, the former has to be set aside to conform to what has already been finally adjudicated between the parties.

WHEREFORE, the petition is *GRANTED*. The December 14, 2004 Decision and March 16, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 84230 which affirmed the December 17, 2003 Resolution of the National Labor Relations Commission finding the dismissal of respondent Pio Roque S. Coquia, Jr. as illegal and ordering petitioner Bank of the Philippine Islands to pay the former separation pay are *REVERSED* and *SET ASIDE* in view of the March 4, 2009 Decision of the Court of Appeals in CA-G.R. SP No. 83883.

SO ORDERED.

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

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[36] *Id.*

[37] *Lalican v. Insular Life Assurance Company Limited*, G.R. No. 183526, August 25, 2009, 597 SCRA 159, 173.

FIRST DIVISION

[G.R. No. 169260. March 23, 2011]

SANDEN AIRCON PHILIPPINES and ANTONIO ANG, *petitioners, vs.* **LORESSA P. ROSALES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE; TO BE A VALID GROUND FOR DISMISSAL, THE BREACH OF TRUST MUST BE WILLFUL; EXPLAINED.— Article 282(c) of the Labor Code prescribes two separate and distinct grounds for termination of employment, namely: (1) fraud or (2) willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. Settled is the rule that under Article 282(c), the breach of trust must be willful. Ordinary breach will not suffice. "A breach is willful if it is done intentionally and knowingly without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly or inadvertently." "As firmly entrenched in our jurisprudence, loss of trust and confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected." "The betrayal of this trust is the essence of the offense for which an employee is penalized."

2. ID.; ID.; ID.; BURDEN OF PROOF TO PROVE ALLEGATIONS OF BREACH OF TRUST AND CONFIDENCE RESTS WITH THE EMPLOYER; THE DISMISSAL ON GROUND OF LOSS OF TRUST AND CONFIDENCE MUST HAVE SOME BASIS BUT PROOF BEYOND REASONABLE DOUBT IS NOT REQUIRED.— "Unlike in other cases where the complainant has the burden of proof to [prove] its allegations, the burden of establishing facts as bases for an employer's loss of confidence in an employee – facts which reasonably generate belief by the employer that the employee was connected with some misconduct and the nature of his participation therein is such as to render him unworthy of trust and confidence demanded of his position – is on the employer."

While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must, however, have some basis. Proof beyond reasonable doubt is not required. It is sufficient that there must only be some basis for such loss of confidence or that there is reasonable ground to believe if not to entertain the moral conviction that the concerned employee is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.

3. ID.; ID.; ID.; REQUISITES IN ORDER TO BE A VALID GROUND FOR DISMISSAL.— The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be holding a position of trust and confidence. In this case, we agree that Loressa, who had immediate access to Sanden's confidential files, papers and documents, held a position of trust and confidence as Coordinator and Data Custodian of the MIS Department. "The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary." Sanden's evidence against Loressa fails to meet this standard.

4. ID.; ID.; ID.; ABSENT JUST CAUSE, THE DISMISSAL SHALL BE DECLARED ILLEGAL.— During the Administrative Investigation conducted by Sanden, there was no evidence presented to prove that Loressa indeed committed "data sabotage." The Minutes of the Discussion with respect to the May 16, 1997 data only made mention that "Bobot's theory is that it was zapped, meaning permanently deleted." It is therefore a mere theory with no apparent factual basis, testimonial or documentary evidence, that would establish the guilt of Loressa for the charges of "data sabotage." On the other hand, Loressa was able to provide documentary evidence to show that Sanden's computer system was experiencing some problems even before May 16, 1997. x x x. Having shown that Sanden failed in discharging the burden of proof that the dismissal of Loressa is for a just cause, we have no other recourse but to declare that she was illegally dismissed based on the ground of loss

of trust and confidence. This is in consonance with the constitutional guarantee of security of tenure.

APPEARANCES OF COUNSEL

Villaraza Cruz Marcelo & Angangco for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

An employer has the discretion to dismiss an employee for loss of trust and confidence but the former may not use the same to cloak an illegal dismissal.

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated May 24, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 85698, which granted the petition for *certiorari* and reversed and set aside the Resolution[3] dated November 28, 2003 of the National Labor Relations Commission (NLRC) in NLRC CASE No. RAB-IV-9-9330-97-L (NLRC NCR CA No. 016826-98) and reinstated the Resolution[4] dated November 29, 2000 of the NLRC.

Also assailed is the Resolution[5] dated August 1, 2005 denying the Motion for Reconsideration.

Factual Antecedents

Sanden Aircon Philippines (Sanden) is a corporation engaged in the business of manufacturing, assembling, and fabricating automotive air-conditioning systems.

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[1] *Rollo*, pp. 15-57.

[2] CA *rollo*, pp. 514-528; penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr.

[3] *Id.* at 96-99.

[4] *Id.* at 87-95.

[5] *Rollo*, p. 75.

In August 1992, Sanden employed Loressa P. Rosales (Loressa) as Management Information System (MIS) Department Secretary. On December 26, 1996, she was promoted as Data Custodian and Coordinator. As such, Loressa had access to all computer programs and marketing computer data, including the Delivery Receipt Transaction files of Sanden. The Finance Department based its billing and collection activities on the marketing delivery receipt transactions. Loressa's functions and authority include opening, editing and copying files in Sanden's computers. She was also charged with the duty of creating back-up copies of all files under her custody. For this purpose, she can request all computer users at a particular time to log out or exit from the system.

On May 16, 1997, Sanden discovered that the marketing delivery receipt transactions computer files were missing. The Internal Auditing Department, through its Audit Officer, Ernesto M. Bayubay (Ernesto), immediately sent a memorandum[6] dated May 17, 1997 to Garrick L. Ang (Garrick), the MIS Manager, requesting that a technical investigation be conducted.

On May 19, 1997, Garrick issued a memorandum[7] enumerating the findings of the MIS Department, the pertinent portions of which read:

> This is in response on [sic] your request for a technical investigation regarding the missing Marketing Delivery Receipt (DR) transactions filed inside our computer system. The incident happened at [sic] the 16 of May 1997 12:35 noon in which we discovered a data corruption in the Marketing DR transactions file wherein all the data were missing. We immediately conducted an investigation of the incident and found out the following:
>
> 1. Before the incident, [the] Marketing Staff are still using the said file until 12:00 noon [when they] were instructed by the Data Custodian (Ms. Loressa Rosales) to log out from the system because a back-up was to be conducted. The back-up activities never took place for [unknown reasons];

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[6] CA *rollo*, p. 308.

[7] *Id.* at 309.

2. We don't have an updated back up on the mentioned file which was the responsibility of the Data Custodian, the last back up of the file was [conducted] on 10 of May 1997.

3. The incident can only happen when only one user [was] using the file and after the incident we immediately look[ed] into the Server Manager, a security auditing tool of the system, and found out that Ms. Loressa Rosales was the only one log[ged] in on the system at 12:05 noon to 12:21 noon with 16 minutes of usage time as witnesse[d] by many MIS personnel including one audit officer.

4. The Data Custodian [has] all the rights of Add, Edit, Delete on all the files found in the system.

5. So based on the facts that we have gathered it is highly probable that Ms. Loressa Rosales was the culprit in the said incident.

On June 26, 1997, Atty. Reynaldo B. Destura (Atty. Reynaldo), the Personnel and Administrative Services Manager sent a letter[8] to Loressa charging her with data sabotage and absences without leave (AWOL). She was given 24 hours to explain her side.

On July 2, 1997, Loressa submitted her letter[9] to Atty. Reynaldo where she vehemently denied the allegations of data sabotage. According to her, only a computer programmer equipped with the necessary expertise and not a mere data custodian like her would be capable of such an act. As to the charge of incurring absences without leave, she challenged Sanden to specify the dates and circumstances of her alleged AWOL.

In a memorandum[10] dated July 3, 1997, Atty. Reynaldo scheduled the administrative investigation on the charge of "data sabotage" in the afternoon of the next day. The investigation pushed through as scheduled.

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[8] *Id.* at 311.

[9] *Id.* at 312-313.

[10] *Id.* at 314.

On July 17, 1997, the husband of Loressa received a Notice[11] of Disciplinary Action from Sanden notifying Loressa that management is terminating Loressa's employment effective upon receipt of the said communication. The reason cited by Sanden was the loss of trust on her capability to continue as its Coordinator and Data Custodian. Sanden indicated in the said letter that based on all the documents and written testimonies gathered during the investigation, Loressa caused the deliberate sabotage of the marketing data involving the Delivery Receipts.

On September 9, 1997, Loressa filed a complaint[12] for illegal dismissal with a prayer for the payment of 13th month pay, attorney's fees and other benefits.

In her position paper,[13] Loressa alleged that no evidence was presented during the investigation conducted by Sanden to prove that she indeed committed "data sabotage." She claimed that she was singled out as the culprit based on mere suspicion unsupported by any testimonial or documentary evidence. The Delivery Receipts, which Sanden claims to have been deleted, were not presented during the investigation process. Moreover, there were no witnesses presented who pointed to Loressa as the one who actually committed the "data sabotage."

On the other hand, in Sanden's position paper,[14] it alleged that at around noon of May 16, 1997, Loressa requested the Marketing Staff to log out or exit from the computer system because she would create a backup of the Marketing Delivery Receipt Transaction files. At that time, some members of the Marketing Staff were still using and encoding additional data but as requested, all of them logged out from the network. The Server Manager showed that from 12:05 p.m. to 12:21 p.m., the only computer logged in was that of Loressa. This is precisely the period when the deletion of the Marketing Delivery Receipt Transaction files occurred.

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[11] *Id.* at 319-332.

[12] *Id.* at 21.

[13] *Rollo*, pp. 179-183.

[14] CA *rollo*, pp. 43-78.

Ruling of the Labor Arbiter

On May 28, 1998, Labor Arbiter Nieves De Castro rendered a Decision[15] finding that Sanden is guilty of illegal dismissal. She ruled that there exists no justifiable basis for Sanden's act of terminating the services of Loressa. Nowhere in the records can be found evidence, documentary or otherwise (i) that will directly point to Loressa's having committed "data sabotage" or (ii) that she absented herself without leave. The Labor Arbiter also ruled that since animosity between Sanden and Loressa already exists, the award of separation pay in lieu of reinstatement is in order and in accord with industrial peace and harmony. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered, declaring the dismissal of the complainant illegal and respondent Sanden Aircon Philippines, Inc. is ordered:
>
> 1. To pay complainant backwages from the time of [her] dismissal up to the date of promulgation of this decision[;]
> 2. To pay complainant separation pay of one (1) month for every year of service [from] the date of employment up to the date of promulgation of this decision[;]
> 3. To pay attorney's fees of 10% of the total award[; and]
> 4. [To have its] financial analyst x x x compute the monetary award[s which form] part of this decision.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[16]

Ruling of the National Labor Relations Commission

Sanden sought recourse to the NLRC by submitting its Notice[17] of Appeal and Memorandum on Appeal on September 28, 1998.

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[15] *Id.* at 79-84.

[16] *Id.* at 84.

[17] *Id.* at 116-191.

On November 29, 2000, the NLRC issued a Resolution[18] affirming the May 28, 1998 Decision of the Labor Arbiter with the modification that the computation of the amount of separation pay to be awarded be reckoned from December 26, 1996 which was the date when Loressa was hired by Sanden as Data Custodian and Coordinator. The NLRC found that Loressa was paid separation pay corresponding to the period beginning August 1992 (the date she was hired) up to December 26, 1996.

Sanden filed a Motion for Reconsideration[19] of the NLRC Resolution.

On November 28, 2003, the NLRC issued another Resolution[20] which reversed its November 29, 2000 Resolution and dismissed the complaint for lack of merit.

Ruling of the Court of Appeals

Aggrieved, Loressa filed with the CA a petition for *certiorari*.[21] The CA through a Resolution[22] dated August 19, 2004, directed her to submit within five days from receipt of said resolution copies of Sanden's appeal memorandum and motion for reconsideration of the November 29, 2000 resolution which were mentioned in her petition but were not attached thereto. On September 8, 2004, Loressa submitted the documents as directed by the CA.[23] On September 27, 2004, the CA issued its Resolution[24] noting the compliance of Loressa and also directing Sanden to file its comment.

On October 18, 2004, Sanden filed a Motion for Extension of Time to File Comment.[25] This was granted by the CA through

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[18] *Id.* at 87-95.

[19] *Id.* at 441-452.

[20] *Id.* at 96-99.

[21] *Id.* at 2-19.

[22] *Id.* at 101.

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

[24] *Id.* at 193.

[25] *Id.* at 197-200.

its Resolution[26] dated November 3, 2004. On November 5, 2004, Sanden filed its comment.[27]

On May 24, 2005, the CA granted the petition and reversed and set aside the November 28, 2003 Resolution of the NLRC and reinstated the latter's November 29, 2000 Resolution.

Petitioners moved for reconsideration,[28] but to no avail. Hence, this appeal anchored on the following grounds:

Issues

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER SANDEN FAILED TO SUBSTANTIATE RESPONDENT ROSALES'S DISMISSAL, CONSIDERING THAT:

A. THE ASSERTION MADE BY THE COURT OF APPEALS AS TO THE POSSIBLE EXISTENCE OF A PARALLEL SET OF DOCUMENTS CORRESPONDING TO THE DELETED FILES, AS WELL AS THE POSSIBILITY OF A GLITCH IN THE COMPUTER SYSTEM WHICH CAUSED THE DELETION OF THE SUBJECT FILES, ARE HIGHLY SPECULATIVE AND CANNOT STAND AGAINST THE EVIDENCE ON RECORD.

B. SIMILARLY, THE CLAIM THAT THE DELETION OF THE SUBJECT FILES COULD HAVE OCCURRED AT ANY POINT IN TIME IS PURELY SPECULATIVE AND CANNOT STAND AGAINST THE EVIDENCE ON RECORD.

C. LIKEWISE, THE CLAIM THAT ANOTHER PERSON COULD HAVE CAUSED THE DELETION OF THE SUBJECT FILES CONSIDERING THAT RESPONDENT ROSALES COULD NOT POSSIBLY HAVE BEEN THE SOLE PERSON WITH ACCESS THERETO IS PURELY SPECULATIVE AND CANNOT STAND AGAINST THE EVIDENCE ON RECORD.

D. HENCE, THERE IS MORE THAN SUFFICIENT SUBSTANTIAL EVIDENCE WARRANTING THE VALID DISMISSAL OF RESPONDENT ROSALES.[29]

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[26] *Id.* at 205.

[27] *Id.* at 210-241.

[28] *Id.* at 532-553.

[29] *Rollo*, pp. 33-34.

These matters boil down to a single issue of whether Sanden legally terminated Loressa's employment on the ground of willful breach of trust and confidence as Coordinator and Data Custodian.

Petitioners' Arguments

Petitioners contend that Loressa was vested with the delicate position of safekeeping the records of Sanden. She was charged with the duty of creating back up files so that Sanden may be fully protected in any eventuality. Loressa's act, therefore, of maliciously deleting the Marketing Delivery Receipt Transaction files is a valid ground to dismiss her from her employment on the ground of loss of trust. It is betrayal of the highest order when the very custodian of the records deleted the same.

According to petitioners, it was clearly shown by evidence that before the deletion of said files, the Marketing Staff were still using the files until noon when they were instructed by Loressa to log out from the system because a back up was to be conducted. The back up activities never took place and worse the data were deleted from the system. Petitioners emphasized that as Data Custodian, Loressa has capability to add, edit, or delete all the files in the system of Sanden.

Petitioners also aver that from the time the data sabotage occurred on May 16, 1997 to May 30, 1997, Loressa went on AWOL for at least five times.

Respondent's Arguments

Loressa insists that Sanden failed to provide sufficient evidence which would clearly point to her as the one who erased the files. For loss of trust and confidence to be a valid ground for dismissal of an employee, it must be founded on clearly established facts.

In this case, the fact that Loressa's computer was the only one logged on during the period that the alleged deletion of data occurred does not mean that she was the one who deleted the missing files. Loressa maintains that Sanden failed to substantially prove her direct involvement in the alleged deletion of the files except for a mere suspicion that it was she who deleted the data in question.

As to the charge of her absences without leave, Loressa claims that they were not substantiated by any documentary evidence or testimony of a witness. As such, her dismissal from employment is without any legal ground.

Our Ruling

The petition is bereft of merit.

Article 282 of the Labor Code states:

ART. 282. *TERMINATION BY EMPLOYER*. – An employer may terminate an employment for any of the following causes:

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

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

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

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

(e) Other causes analogous to the foregoing.

Article 282(c) of the Labor Code prescribes two separate and distinct grounds for termination of employment, namely: (1) fraud or (2) willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

Settled is the rule that under Article 282(c), the breach of trust must be willful. Ordinary breach will not suffice. "A breach is willful if it is done intentionally and knowingly without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly or inadvertently."[30]

"As firmly entrenched in our jurisprudence, loss of trust and confidence as a just cause for termination of employment is

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[30] *Philippine National Construction Corporation v. Matias*, 497 Phil. 476, 486 (2005).

premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected."[31] "The betrayal of this trust is the essence of the offense for which an employee is penalized."[32]

Sanden has the burden of proof to prove its allegations.

"Unlike in other cases where the complainant has the burden of proof to [prove] its allegations, the burden of establishing facts as bases for an employer's loss of confidence in an employee – facts which reasonably generate belief by the employer that the employee was connected with some misconduct and the nature of his participation therein is such as to render him unworthy of trust and confidence demanded of his position – is on the employer."[33]

While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must, however, have some basis. Proof beyond reasonable doubt is not required. It is sufficient that there must only be some basis for such loss of confidence or that there is reasonable ground to believe if not to entertain the moral conviction that the concerned employee is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.[34]

Sanden failed to discharge the burden of proof that the dismissal of Loressa is for a just cause.

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[31] *Caingat v. National Labor Relations Commission*, 493 Phil. 299, 308 (2005).

[32] *Santos v. San Miguel Corporation*, 447 Phil. 264, 277 (2003).

[33] *Felix v. National Labor Relations Commission*, 485 Phil. 140, 153 (2004).

[34] *Central Pangasinan Electric Cooperative v. Macaraeg*, 443 Phil. 866, 874-875 (2003).

The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be holding a position of trust and confidence.

In this case, we agree that Loressa, who had immediate access to Sanden's confidential files, papers and documents, held a position of trust and confidence as Coordinator and Data Custodian of the MIS Department.

"The second requisite is that there must be an act that would justify the loss of trust and confidence. Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary."[35]

Sanden's evidence against Loressa fails to meet this standard.

Worth noting are the pertinent portions of the Resolution of the NLRC dated November 29, 2000 before it reversed itself, to wit:

> As correctly found by the Labor Arbiter, nowhere in the records can be found evidence that directly point to complainant as having committed acts of sabotage. Also, during the administrative investigation, the guilt of complainant-appellee was based on mere allegations not supported by documentary evidence nor any factual basis. Even appellants cannot directly pinpoint appellee as the culprit. They were only thinking of her as the one probably responsible thereto, considering that when she used the computer, she told the other users to log out and thereafter, used the computer for 16 minutes, with only 1 minute as usage time. But these allegations would not suffice (sic) termination of employment of appellee. Note that security of tenure is protected by constitutional mandate.
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> The same holds true with AWOL. Appellant failed to prove that complainant-appellee went on absence without official leave. The appellant should have at least presented the daily time record of

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[35] *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 694.

appellee to prove that the latter was absent. Mere allegations again would not suffice.[36]

During the Administrative Investigation conducted by Sanden, there was no evidence presented to prove that Loressa indeed committed "data sabotage." The Minutes[37] of the Discussion with respect to the May 16, 1997 data only made mention that "Bobot's theory is that it was zapped, meaning permanently deleted." It is therefore a mere theory with no apparent factual basis, testimonial or documentary evidence, that would establish the guilt of Loressa for the charges of "data sabotage."

On the other hand, Loressa was able to provide documentary evidence to show that Sanden's computer system was experiencing some problems even before May 16, 1997. The March 22, 1996 Report[38] of the System Administrator, stated, *viz*:

> Marketing could not use their system due to error encountered such as an abnormal program termination (problem in pairing). Warehouse A is affected by this. o.e. in updating marketing inventory qty. (DR Transaction)[39]
>
> x x x x x x x x x

Furthermore, in the entry dated March 27, 1996, it was indicated:

> Restored Marketing Data from March 23 back-up.
> Files restored:
> 1. DR – HEAD
> 2. DR – ITEM
> Reindexed both.
>
> * lacking data shall be reentered 3/25/95 & 3/26/95 transactions[40]

The following entries as reported by the System Administrator clearly show that the problem of missing data already existed as early as 1995, when Loressa was still an MIS Secretary and

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[36] CA *rollo*, p. 93.

[37] *Id.* at 35.

[38] *Rollo*, pp. 196-198.

[39] *Id.* at 197.

[40] *Id.* at 196.

was not yet tasked to back up the Marketing Delivery Receipt Transaction files.

We also fully agree with the CA when it ruled that:

> On the contrary, we find the records bereft of any substantial evidence to show that the petitioner was indeed directly responsible for the deletion of the subject files or the alleged data sabotage. It is not difficult to see that the imputed guilt of the petitioner was based on mere allegations and theories held by private respondents as possible causes for the deletion of the subject files. In the first place, if the subject delivery receipt files were as crucial to the operations of the company as what the private respondents claimed them to be, then sound business judgment would dictate that it keep a record or paper trail of all its delivery transactions which could still be made available to the Finance Department for its billing and collection activities. It is common knowledge that no computer system is absolutely 'crash proof" or "bug-free" and that a total obliteration of a particular computer file could be attributed to so many other causes other than the deliberate deletion of the same. In the second place, the deletion of the subject files could have occurred at any one point or time and not necessarily during the time at which the petitioner was the only registered user in the system. In this case,the private respondents failed to determine with absolute certainty and to show proof of the exact date or time when it occurred. Third and last, while it may be true that the petitioner had access to the subject files as well as the code to delete the same, it is hardly believable that she would be the sole person in the company who could access the same. It is noted that the petitioner worked under the supervision of an MIS Manager as well as other company officers, who in all probability also had access to the same files and codes available to the petitioner. x x x[41]

Having shown that Sanden failed in discharging the burden of proof that the dismissal of Loressa is for a just cause, we have no other recourse but to declare that she was illegally dismissed based on the ground of loss of trust and confidence. This is in consonance with the constitutional guarantee of security of tenure.

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[41] CA *rollo*, pp. 525-526.

WHEREFORE, the instant petition for review on *certiorari* is *DENIED.* The Decision of the Court of Appeals in CA-G.R. SP No. 85698 dated May 24, 2005 and its Resolution dated August 1, 2005 are *AFFIRMED.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169895. March 23, 2011]

ISAGANI M. YAMBOT, LETTY JIMENEZ-MAGSANOC, JOSE MA. D. NOLASCO, ARTEMIO T. ENGRACIA, JR. and VOLT CONTRERAS, *petitioners, vs.* **Hon. ARTEMIO TUQUERO in his capacity as Secretary of Justice, and ESCOLASTICO U. CRUZ, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; UNDER EXCEPTIONAL CIRCUMSTANCES, A PETITION FOR *CERTIORARI* ASSAILING THE SECRETARY OF JUSTICE'S RULING ON PROBABLE CAUSE MAY BE ALLOWED, NOTWITHSTANDING THE FILING OF AN INFORMATION WITH THE TRIAL COURT.— At the outset, it should be made clear that the Court is not abandoning the ruling in *Advincula*. However, *Advincula* cannot be read to completely disallow the institution of *certiorari* proceedings against the Secretary of Justice's determination of probable cause when the criminal information has already been filed in court. Under exceptional circumstances, a petition for *certiorari* assailing the resolution of the Secretary of Justice (involving

an appeal of the prosecutor's ruling on probable cause) may be allowed, notwithstanding the filing of an information with the trial court. x x x In light of the particular factual context of the present controversy, we find that the need to uphold the constitutionally guaranteed freedom of the press and crystal clear absence of a *prima facie* case against the PDI staff justify the resort to the extraordinary writ of *certiorari*.

2. CRIMINAL LAW; LIBEL; ELEMENTS; THE ABSENCE OF MALICIOUSNESS IN THE SUBJECT NEWS ARTICLE NEGATES THE EXISTENCE OF PROBABLE CAUSE THAT LIBEL HAS BEEN COMMITTED.— Libel is defined as a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to discredit or cause the dishonor or contempt of a natural or juridical person, or to blacken the memory of one who is dead. Consequently, the following elements constitute libel: (a) imputation of a discreditable act or condition to another; (b) publication of the imputation; (c) identity of the person defamed; and, (d) existence of malice. The glaring absence of maliciousness in the assailed portion of the news article subject of this case negates the existence of probable cause that libel has been committed by the PDI staff.

3. ID.; ID.; ID.; A NEWSPAPER SHOULD NOT BE HELD TO ACCOUNT TO A POINT OF SUPPRESSION FOR HONEST MISTAKES, OR IMPERFECTION IN THE CHOICE OF WORDS.— A newspaper should not be held to account to a point of suppression for honest mistakes, or imperfection in the choice of words. While, indeed, the allegation of inappropriate sexual advances in an appeal of a contempt ruling does not turn such case into one for sexual harassment, we agree with petitioners' proposition that the subject news article's author, not having any legal training, cannot be expected to make the fine distinction between a *sexual harassment suit* and a *suit where there was an allegation of sexual harassment*. In fact, three other newspapers reporting the same incident committed the same mistake: the Manila Times article was headlined "Judge in sex case now in physical injury rap"; the Philippine Star article described Judge Cruz as "(a) Makati judge who was previously charged with sexual harassment by a lady prosecutor"; and the Manila Standard Article referred

to him as "(a) Makati judge who was reportedly charged with sexual harassment by a lady fiscal."

4. ID.; ID.; ELEMENT OF MALICE, WHEN PRESENT.— The questioned portion of the news article, while unfortunately not quite accurate, on its own, is insufficient to establish the elements of malice in libel cases. We have held that malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm. Malice is present when it is shown that the author of the libelous remarks made such remarks with knowledge that it was false or with reckless disregard as to the truth or falsity thereof.

5. ID.; ID.; FAIR REPORTS ON MATTERS OF PUBLIC INTEREST SHOULD BE INCLUDED UNDER THE PROTECTIVE MANTLE OF PRIVILEGED COMMUNICATIONS AND SHOULD NOT BE SUBJECTED TO MICROSCOPIC EXAMINATION TO DISCOVER GROUNDS OF MALICE OR FALSITY.— The lack of malice on the part of the PDI Staff in the quoting of Mendoza's allegation of a sexual harassment suit is furthermore patent in the tenor of the article: it was a straightforward narration, without any comment from the reporter, of the alleged mauling incident involving Judge Cruz. The subject article was, in fact, replete with other allegations by Mendoza of purported misconduct on the part of Judge Cruz. Except for the above-quoted statement, Judge Cruz did not find the other assertions by Mendoza as reported by the PDI article to be libelous x x x. In *Borjal v. Court of Appeals*, we held that "[a] newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community." Like fair commentaries on matters of public interest, fair reports on the same should thus be included under the protective mantle of privileged communications, and should not be subjected to microscopic examination to discover grounds of malice or falsity. The concept of privileged communication is implicit in the constitutionally protected freedom of the press, which would be threatened when criminal suits are unscrupulously leveled by persons wishing to silence

the media on account of unfounded claims of inaccuracies in news reports.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioners.

Rodolfo U. Jimenez for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* (under Rule 45 of the Rules of Court), assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 62479 dated July 8, 2005 and its Resolution[2] dated September 29, 2005 in the same case.

The antecedents of this case are as follows:

On May 26, 1996, the Philippine Daily Inquirer (PDI) printed an article[3] headlined *Judge mauled me, says court employee*, carrying the by-line of petitioner Volt Contreras (Contreras). The article reported an alleged mauling incident that took place between respondent Makati Regional Trial Court (RTC) Judge Escolastico U. Cruz, Jr. (Judge Cruz) and Robert Mendoza (Mendoza), an administrative officer assigned at the Office of the Clerk of Court of the Makati RTC.

Reckoning the article to be false and malicious, Judge Cruz initiated a Complaint[4] for libel with the City Prosecutor of Makati. In particular, Judge Cruz protested the following sentence in said article:

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[1] *Rollo*, pp. 51-60; penned by Associate Justice Mario L. Guariña III with Associate Justices Marina L. Buzon and Santiago Javier Ranada, concurring.

[2] *Id.* at 62.

[3] *Id.* at 67.

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

According to Mendoza, Cruz still has a pending case of sexual harassment filed with the Supreme Court by Fiscal Maria Lourdes Garcia, also of the Makati RTC.[5]

Rebutting the statement, Judge Cruz alleged that there was no suit for sexual harassment pending against him before this Court, and attached a certification dated July 16, 1996[6] of the Deputy Court Administrator attesting to the pendency of only two administrative cases against him, namely RTJ-96-1352 (*Re: Mauling incident*) and OCA IPI No. 96-185-RTJ (For *gross ignorance of the law, Partiality and Rendering an unjust judgment*).

For his part, Contreras filed a counter-affidavit[7] with the Makati City Prosecutor's Office, explaining the supposed factual basis for his article. It appeared that Atty. Maria Lourdes Paredes-Garcia (Paredes-Garcia) had filed with this Court a Petition for Review to question a contempt order issued against her by Judge Cruz. In connection with said Petition for Review, which was docketed as G.R. No. 120654, Paredes-Garcia filed a Reply dated February 5, 1996 asking this Court to look deeply into allegations of one Enrina Talag-Pascual (Talag-Pascual) that Judge Cruz made sexual advances to her while she was a member of his staff at the Metropolitan Trial Court (MeTC) of Manila. Paredes-Garcia claimed that she suffered similar indignities from Judge Cruz, and prayed that her Petition be treated as an administrative case against said judge. Paredes-Garcia appended a January 29, 1996 affidavit executed by Talag-Pascual to purportedly show the proclivity of Judge Cruz for seducing women who became objects of his fancy. Contreras claimed that the statement in his news article constituted a fair and true report of a matter of grave public interest as it involved the conduct of a regional trial court judge.

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[5] *Id.* at 67.

[6] *Id.* at 68.

[7] *Id.* at 69-76; this was adopted by Contreras' co-petitioners as their own counter-affidavit.

In the meantime, on September 11, 1996, this Court rendered its Decision[8] on the Petition of Paredes-Garcia, granting her prayer to set aside Judge Cruz' contempt order. The prayer in Paredes-Garcia's Reply that the Petition be treated as an administrative case against Judge Cruz was not passed upon by the Court.

Subsequently, the City Prosecutor of Makati approved a Resolution[9] finding probable cause against Mendoza and six PDI officers and employees, namely: Contreras, Isagani Yambot, Letty Jimenez-Magsanoc, Jose Ma. Nolasco, Artemio Engracia, Jr. and Carlos Hidalgo (the PDI Staff). On February 21, 1997, the City Prosecutor filed an Information[10] for libel against Mendoza and the PDI Staff. Thereafter, the PDI Staff filed a Motion with the trial court for the deferment of the arraignment to allow them to appeal to the Secretary of the Department of Justice.

On March 3, 2000, then Secretary of Justice Artemio Tuquero (Secretary Tuquero) dismissed the PDI Staff's Petition for Review of the Resolution of the City Prosecutor.[11] Secretary Tuquero rejected the argument of therein petitioners that the complaint should be dismissed on the ground of lack of supporting affidavits from third persons. According to Secretary Tuquero, affidavits of third persons are not essential for a libel complaint to prosper, as it is enough that the person defamed can be identified.[12] As regards the factual basis presented by Contreras, Secretary Tuquero noted it cannot be said that Judge Cruz was indeed facing a sexual harassment suit in this Court.[13] The Motion for Reconsideration[14] was denied in a Resolution[15] dated October 12, 2000.

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[8] *Paredes-Garcia v. Court of Appeals*, 330 Phil. 420 (1996).

[9] *Rollo*, pp. 108-116.

[10] *Id.* at 117-118.

[11] *Id.* at 185-186.

[12] *Id.* at 185.

[13] *Id.*

[14] *Id.* at 187-207.

[15] *Id.* at 226-227.

The PDI Staff with the exception of Hidalgo (herein petitioners) filed a Petition for *Certiorari* with the Court of Appeals to challenge the aforementioned Resolutions of Secretary Tuquero. The Petition was docketed as CA-G.R. SP No. 62479.

On July 8, 2005, the Court of Appeals rendered the assailed Decision dismissing the Petition for *Certiorari*. Applying our ruling in *Advincula v. Court of Appeals*,[16] the appellate court held that since the Information had already been filed with the trial court, the primary determination of probable cause is now with the latter.[17] The Court of Appeals denied the ensuing Motion for Reconsideration in the assailed Resolution dated September 29, 2005.

Hence, petitioners filed this Petition for Review with this Court, raising the following issues:

(A) WHETHER OR NOT A CRIMINAL COMPLAINT FOR LIBEL IS FATALLY DEFECTIVE OR DEFICIENT IF IT IS NOT SUPPORTED BY AFFIDAVITS OF THIRD PERSONS.

(B) WHETHER OR NOT A NEWS REPORT ON THE ACTUATIONS OF A PUBLIC OFFICIAL IS PRIVILEGED IN NATURE AND HENCE, THE PRESUMPTION OF MALICE IS DESTROYED.

(C) WHETHER OR NOT THE PRIVILEGED NATURE OF A PUBLICATION IS A GROUND FOR DISMISSAL AND THAT THE RESPONDENT NEED NOT WAIT UNTIL TRIAL TO RAISE THE ISSUE OF PRIVILEGE.

(D) WHETHER OR NOT THE PUBLISHER AND EDITORS ARE JOINTLY LIABLE WITH THE AUTHOR OF THE ALLEGEDLY OFFENDING NEWS REPORT EVEN IF THEY DID NOT PARTICIPATE IN THE WRITING AND EDITING OF SAID NEWS REPORT.[18]

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[16] 397 Phil. 641 (2000).

[17] *Rollo*, pp. 58-59.

[18] *Id.* at 31.

In raising the above issues, petitioners essentially questioned the Makati City Prosecutors Office's finding of probable cause to charge them with libel, as affirmed by the Secretary of Justice. As stated above, the Court of Appeals dismissed the Petition for *Certiorari* by applying the procedural doctrine laid down in *Advincula*.

Similar to the present case, in *Advincula*, respondents Amando and Isagani Ocampo filed a Petition for *Certiorari* and Prohibition with the Court of Appeals questioning the Resolution of the Secretary of Justice which had earlier led to the filing of Informations against them in court. The Court of Appeals granted the Petition and set aside the Resolution of the Secretary of Justice. In reversing the Decision of the Court of Appeals, we applied the rule that *certiorari*, being an extraordinary writ, cannot be resorted to when other remedies are available. The Court observed that respondents had other remedies available to them, such as the filing of a *Motion to Quash* the Information under Rule 117 of the Rules of Court, or allowing the trial to proceed where they could either file a demurrer to evidence or present their evidence to disprove the charges against them.[19]

At the outset, it should be made clear that the Court is not abandoning the foregoing ruling in *Advincula*. However, *Advincula* cannot be read to completely disallow the institution of *certiorari* proceedings against the Secretary of Justice's determination of probable cause when the criminal information has already been filed in court. Under exceptional circumstances, a petition for *certiorari* assailing the resolution of the Secretary of Justice (involving an appeal of the prosecutor's ruling on probable cause) may be allowed, notwithstanding the filing of an information with the trial court.

In *Ching v. Secretary of Justice*,[20] petitioner filed a Petition for *Certiorari* with the Court of Appeals assailing the Resolution of the Secretary of Justice finding probable cause for violation of Presidential Decree No. 115, otherwise known as the Trust

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[19] *Advincula v. Court of Appeals*, supra note 16 at 651-653.

[20] G.R. No. 164317, February 6, 2006, 481 SCRA 609.

Receipts Law. Conformably with said Resolution, the City Prosecutor filed 13 Informations against petitioner. Upon denial of the Motion for Reconsideration, petitioner filed a petition for *certiorari*, prohibition and *mandamus* with the Court of Appeals assailing the Resolution of the Secretary of Justice. While this Court ultimately affirmed the Court of Appeals' ruling denying the Petition for *Certiorari*, the discussion affirming the resort to said extraordinary writ is enlightening:

> In *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, this Court held that **the acts of a quasi-judicial officer may be assailed by the aggrieved party *via* a petition for *certiorari* and enjoined (a) when necessary to afford adequate protection to the constitutional rights of the accused; (b) when necessary for the orderly administration of justice; (c) when the acts of the officer are without or in excess of authority; (d) where the charges are manifestly false and motivated by the lust for vengeance; and (e) when there is clearly no *prima facie* case against the accused.** The Court also declared that, if the officer conducting a preliminary investigation (in that case, the Office of the Ombudsman) acts without or in excess of his authority and resolves to file an Information despite the absence of probable cause, such act may be nullified by a writ of *certiorari*.
>
> Indeed, under Section 4, Rule 112 of the 2000 Rules of Criminal Procedure, the Information shall be prepared by the Investigating Prosecutor against the respondent only if he or she finds probable cause to hold such respondent for trial. **The Investigating Prosecutor acts without or in excess of his authority under the Rule if the Information is filed against the respondent despite absence of evidence showing probable cause therefor. If the Secretary of Justice reverses the Resolution of the Investigating Prosecutor who found no probable cause to hold the respondent for trial, and orders such prosecutor to file the Information despite the absence of probable cause, the Secretary of Justice acts contrary to law, without authority and/or in excess of authority. Such resolution may likewise be nullified in a petition for *certiorari* under Rule 65 of the Revised Rules of Civil Procedure**.[21]

In light of the particular factual context of the present controversy, we find that the need to uphold the constitutionally

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[21] *Id.* at 628-629.

guaranteed freedom of the press and crystal clear absence of a *prima facie* case against the PDI staff justify the resort to the extraordinary writ of *certiorari*.

Libel is defined as a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to discredit or cause the dishonor or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[22] Consequently, the following elements constitute libel: (a) imputation of a discreditable act or condition to another; (b) publication of the imputation; (c) identity of the person defamed; and, (d) existence of malice.[23] The glaring absence of maliciousness in the assailed portion of the news article subject of this case negates the existence of probable cause that libel has been committed by the PDI staff.

As previously stated, Judge Cruz initiated the complaint for libel, asserting the falsity and maliciousness of the statement in a news report that "(a)ccording to Mendoza, Cruz still has a pending case of sexual harassment filed with the Supreme Court by Fiscal Maria Lourdes Garcia, also of the Makati RTC."[24] It can be easily discerned that the article merely reported the statement of Mendoza that there was allegedly a pending case of sexual harassment against Judge Cruz and that said article did not report the existence of the alleged sexual harassment suit as a confirmed fact. Judge Cruz never alleged, much less proved, that Mendoza did not utter such statement. Nevertheless, Judge Cruz concludes that there was malice on the part of the PDI Staff by asserting that they did not check the facts. He claimed that the report got its facts wrong, pointing to a certification from the Deputy Court Administrator attesting to the pendency of only two administrative cases against him, both of which bear captions not mentioning sexual harassment.

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[22] Revised Penal Code, Article 353.

[23] *Daez v. Court of Appeals*, G.R. No. L-47971, October 31, 1990, 191 SCRA 61, 67.

[24] *Rollo,* p. 65.

A newspaper should not be held to account to a point of suppression for honest mistakes, or imperfection in the choice of words.[25] While, indeed, the allegation of inappropriate sexual advances in an appeal of a contempt ruling does not turn such case into one for sexual harassment, we agree with petitioners' proposition that the subject news article's author, not having any legal training, cannot be expected to make the fine distinction between a *sexual harassment suit* and a *suit where there was an allegation of sexual harassment*. In fact, three other newspapers reporting the same incident committed the same mistake: the Manila Times article was headlined "Judge in sex case now in physical injury rap";[26] the Philippine Star article described Judge Cruz as "(a) Makati judge who was previously charged with sexual harassment by a lady prosecutor";[27] and the Manila Standard Article referred to him as "(a) Makati judge who was reportedly charged with sexual harassment by a lady fiscal."[28]

The questioned portion of the news article, while unfortunately not quite accurate, on its own, is insufficient to establish the element of malice in libel cases. We have held that malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm.[29] Malice is present when it is shown that the author of the libelous remarks made such remarks with knowledge that it was false or with reckless disregard as to the truth or falsity thereof.[30]

The lack of malice on the part of the PDI Staff in the quoting of Mendoza's allegation of a sexual harassment suit is furthermore patent in the tenor of the article: it was a straightforward narration,

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[25] *Lopez v. Court of Appeals*, 145 Phil. 219, 233 (1970).

[26] *Rollo*, p. 98.

[27] *Id.* at 99.

[28] *Id.* at 100.

[29] *United States v. Cañete*, 38 Phil. 253, 264 (1918).

[30] *Vasquez v. Court of Appeals*, 373 Phil. 238, 254 (1999).

without any comment from the reporter, of the alleged mauling incident involving Judge Cruz. The subject article was, in fact, replete with other allegations by Mendoza of purported misconduct on the part of Judge Cruz. Except for the above-quoted statement, Judge Cruz did not find the other assertions by Mendoza as reported by the PDI article to be libelous:

> At around 2 p.m., Mendoza said, an employee at Cruz' court fetched him to the judge's chamber.
>
> He was walking along the corridor when Cruz looked out, saw him, and yelled, "Mendoza, *halika nga rito* (come here)."
>
> "He dragged me to his chamber and locked the door. *Tatlo kami doon, kasama ang sheriff niya na si Nory Santos*," Mendoza said.
>
> Inside, Mendoza said Cruz began taunting him, asking him, "*Matigas ba ang dibdib mo, ha?* (Do you have a strong chest?)" Mendoza said, (h)e was made to sit in a guest's chair in front of Cruz's desk. He recalled seeing placed on top of a side table a .99mm and a .45 caliber pistol which he presumed to belong to the judge.
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> While standing, Mendoza said the judge began punching him, at the same time subjecting him to verbal abuse. The first punch was at the left side of his chest, the second at the right. The third was at his left knee, then last was at the right knee, Mendoza said.
>
> His right knee was still swollen as of yesterday.
>
> "*Hinamon pa niya ako*, square *daw kami*," he said. "*At hindi daw niya ako titigilan at ipapatanggal pa daw niya ako* (He even dared me to a fight. He threatened me that he would not stop until I am fired from my job)," Mendoza said.
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> "*Kung anak pa daw niya ang nakalaban ko, babarilin na lang daw niya ako sa sentido at babayaran na lang ako* (He said if it was his son with whom I quarreled, he would have simply put a bullet to my head and paid for my life)."[31]

In *Borjal v. Court of Appeals*,[32] we held that "[a] newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has

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[31] *Rollo*, p. 67.

[32] 361 Phil. 1 (1999).

a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community."[33] Like fair commentaries on matters of public interest,[34] fair reports on the same should thus be included under the protective mantle of privileged communications, and should not be subjected to microscopic examination to discover grounds of malice or falsity.[35] The concept of privileged communication is implicit in the constitutionally protected freedom of the press,[36] which would be threatened when criminal suits are unscrupulously leveled by persons wishing to silence the media on account of unfounded claims of inaccuracies in news reports.

WHEREFORE, the instant Petition for Review on *Certiorari* is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 62479 dated July 8, 2005 and its Resolution dated September 29, 2005 are hereby *REVERSED* and *SET ASIDE*.

No pronouncement as to costs.

SO ORDERED.

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

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[33] *Id.* at 27.

[34] *Id.*

[35] *Villanueva v. Philippine Daily Inquirer*, G.R. No. 164437, May 15, 2009, 588 SCRA 1, 15.

[36] *Borjal v. Court of Appeals*, supra note 32.

SECOND DIVISION

[G.R. No. 170446. March 23, 2011]

EDGEWATER REALTY DEVELOPMENT, INC., *petitioner, vs.* **METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM and MANILA WATER COMPANY, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; MATTERS NOT RAISED IN THE COMPLAINT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— ERDI invokes the provisions of R.A. 8041 as cause for rendering a decision in its favor which would require MWSS and MWCI to disconnect all existing water service on ERDI's property. But fair play dictates that matters, which ERDI did not raise in its complaint, are not allowed to be raised for the first time on appeal. Here, the Court cannot entertain ERDI's new cause of action based on its alleged right under the provisions of R.A. 8041 since it is only in the course of its appeal to the CA that ERDI brought up the matter.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC UTILITIES; AN ACT TO ADDRESS THE NATIONAL WATER CRISIS AND FOR OTHER PURPOSES (R.A. 8041); TO BE CONSIDERED ILLEGAL UNDER THE PURVIEW THEREOF, THE WATER CONNECTIONS MUST BE UNAUTHORIZED BY THE WATER UTILITY COMPANY, NOT BY ANY OTHER ENTITY.— [A]ssuming that ERDI could still invoke in its favor the provisions of R.A. 8041, its claim must still fail. The water connections ERDI complained of are not the "illegal connections" subject of R.A. 8041. In ERDI's case, those water connections were either a) installed by MWSS or MWCI and, therefore, cannot be regarded as illegal or b) illegally installed by the settlers themselves but were subsequently ratified by the water utility company. To be considered illegal under the purview of R.A. 8041, the water connections must be unauthorized by the water utility company, not by any other entity.

3. ID.; ID.; ID.; REPUBLIC ACT 6234, AS AMENDED (AN ACT CREATING THE METROPOLITAN WATERWORKS SYSTEM AND DISSOLVING THE NATIONAL WATERWORKS AND SEWERAGE AUTHORITY; AND FOR OTHER PURPOSES); THE RIGHTS AND THE REMEDIES FOR REMOVAL OF ILLEGAL CONNECTIONS BELONG TO THE WATER UTILITIES.— Nor can ERDI invoke the charter of MWSS as source of its right to compel MWSS or MWCI to remove the existing connections. The rights and the remedies for removal of illegal connections under that charter belong to the water utilities, not to ERDI.

4. ID.; ID.; ID.; THE LOCAL GOVERNMENT HAS THE OBLIGATION TO REMOVE THE WATER CONNECTIONS WHICH IT ALLOWED TO BE INTRODUCED ON THE PROPERTY OCCUPIED BY THE INFORMAL SETTLERS, NOT THE WATER UTILITY COMPANY.— The Court is not unmindful of its December 2, 1998 resolution in G.R. 135727 that affirmed the rescission of the MOA between ERDI and the Marikina government. Before its rescission, the MOA authorized the Marikina government to lay ground works for infrastructures such as lights and other amenities of community life. Undoubtedly, it was this provision of the MOA that opened the way for settlers to apply with the MWSS for water connections. While the witness for ERDI testified that he did not know when the construction of the water lines began, it may be assumed that the same took place during the time the MOA was still in force. No evidence has been presented to show that the water system on ERDI's land was put in place during the pendency of the earlier ejectment case. Consequently, it cannot be said that the water connections were illegal from the beginning. True, the MOA has been rescinded by final judgment but the obligation to remove the water connections fell upon the Marikina government, not upon respondent water utilities who were not parties to the earlier case. For this reason, ERDI's remedy is to have the final judgments of the Marikina MTC in Civil Case 92-5592 and the Quezon City RTC in Civil Case Q-96-28338 executed, not only for the eviction of the settlers but also for the eventual removal of all structures, constructions, and projects that the Marikina government introduced or allowed to be introduced in the place.

5. ID.; ID.; ID.; THE WATER UTILITY COMPANY CAN COLLECT PAYMENT OF BILLS FOR WATER CONNECTIONS ON THE LAND OCCUPIED BY THE INFORMAL SETTLERS WHERE THE WATER SYSTEM WAS NOT INSTALLED ILLEGALLY THEREIN.— ERDI contends that MWCI should not be allowed to collect payments for the water bills of its customers on ERDI's land. But, having ruled that MWSS and MWCI put the water service in place on that land for certain customers there when this was still permitted, there is no valid reason for such water service to be severed before the informal settlers concerned are properly evicted. And if it is not severed, it would be unreasonable to prevent MWCI from collecting from its customers the cost of its service.

APPEARANCES OF COUNSEL

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The Government Corporate Counsel for MWSS.
Jhoel P. Raquedan and Josephine B. Faustino-Pagdanganan for Manila Water Co., Inc.

D E C I S I O N

ABAD, *J.*:

This case is about the demand of a landowner, on whose land a large number of informal settlers have lived, to compel the water utility company to discontinue providing water to such settlers.

The Facts and the Case

Edgewater Realty Development, Inc., (ERDI) a realty company, owned several parcels of land in Tumana, Concepcion, Marikina City.[1] ERDI filed a complaint for ejectment against about 200 informal settlers that then occupied portions of its land but, despite a final court decision evicting them, the settlers refused to leave.

[1] Covered by TCTs 469922, 56860, 24436, 24437, 2977 and 34848.

To resolve the problem, on April 14, 1994 ERDI and the Municipality of Marikina executed a Memorandum of Agreement (MOA), identifying one of ERDI's own properties[2] as an emergency relocation site.[3] The agreement resulted in the taking of additional settlers (estimated around 3,500) at the site and the placing of improvements in it. In turn, the settlers were to buy the land from ERDI. But because of the inability of the Municipality to control the influx of settlers and its breach of several other provisions of the MOA, ERDI rescinded the same and filed an action before the Marikina Regional Trial Court (RTC) for confirmation of the rescission of the MOA and for injunction against the Municipality, its Mayor Bayani M. Fernando, the Marikina Settlement Office, and Harry Singh.[4]

On August 5, 1997 the RTC rendered a decision, confirming the rescission of the MOA and ordering the Municipality to remove all structures, constructions, and projects that it introduced on ERDI's property and to pay damages. Subsequently, the RTC decision was affirmed by the Court of Appeals (CA)[5] and later by the Supreme Court.[6]

On May 7, 1998 the MTC which tried the ejectment case[7] issued a break-open and demolition order in the case and appointed a Special Sheriff to implement the order. The ERDI also applied for a writ of execution of the August 5, 1997 RTC decision.

Meantime, ERDI noticed that the settlers had maintained several facilities on its property, including a water system, without

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[2] Property covered by TCT 24437.

[3] *Sangguniang Bayan ng Marikina* Resolution 49, Series of 1996, records, pp. 276-277; *Sangguniang Bayan ng Marikina* Ordinance 58, Series of 1994, *id*. at 278 -281; and *Sangguniang Bayan ng Marikina* Resolution 38, Series of 1994, *id*. at 282-283.

[4] Docketed as Civil Case Q-96-28338, raffled to RTC Quezon City, Branch 98.

[5] Docketed as CA-G.R. SP 47711, decided on September 28, 1998.

[6] Docketed as G.R. 135727, decided on December 2, 1998. Motion for reconsideration was denied per resolution dated April 12, 1999.

[7] Docketed as Civil Case 92-5592, MTC Marikina, Branch 76.

its consent. On September 13, 1995 it wrote the Metropolitan Waterworks and Sewerage System (MWSS) a letter to formalize a water distribution system in the area but asked that it hold actual implementation of such system until an agreement was signed. To ERDI's dismay, however, it received information that some of the settlers already have water connections while the others had pending application for theirs.

Consequently, ERDI filed a complaint for injunction with prayer for temporary retraining order (TRO) and preliminary injunction against MWSS before the RTC of Quezon City,[8] praying that it order MWSS to disconnect all water connections in ERDI's properties and to refrain from putting in place any further connections without its prior consent. The RTC issued a TRO against MWSS and, after due hearing, issued a writ of preliminary injunction restraining it from installing water connections on ERDI's properties.

In its Answer with counterclaims, MWSS averred that ERDI had no cause of action against it since it provided connections to some of the occupants only after the Municipality issued clearances to them through the Marikina Settlement Office. But, from the time it received ERDI's letter in September 1995, MWSS stopped processing applications for service connection in the area.

On January 15, 1998 the Quezon City RTC issued a Pre-Trial Order, detailing the issues it needed to resolve as follows: (1) whether or not the existing water connections within the properties of ERDI were illegal, and if so, whether MWSS has an obligation to remove or disconnect them; (2) whether or not MWSS may be enjoined from supplying water into the properties without ERDI's consent; (3) whether or not ERDI is entitled to the reliefs it asked in its complaint; and (4) whether or not MWSS is entitled to the reliefs it asked in its counterclaim.

Subsequently, ERDI amended its complaint to join Manila Water Company, Inc. (MWCI) as additional party defendant

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[8] Branch 82; docketed as Civil Case Q-96-28405.

based on the concession agreement between the latter company and MWSS, which gave MWCI the sole right to manage and operate the MWSS water facilities in Marikina, including those in ERDI properties. The RTC allowed the amendment and the inclusion of MWCI in the coverage of the preliminary injunction.

Answering the amended complaint, MWCI denied that it installed a water system in the area. After it assumed operations, the settlers got clearances from the Marikina City Government and so MWCI allowed them to apply for the registration of their illegal connections. But, on receipt of ERDI's letter of July 9, 1998, MWCI stopped accepting applications for such registration and placed on hold those that it had already accepted.

On January 15, 2001 the Quezon City RTC rendered judgment, declaring the water connections on ERDI's land illegal and permanently enjoined MWSS and MWCI from installing water connections on it. The RTC did not, however, order the removal of existing water connections, pointing out that ERDI's remedy was to await the eviction of the settlers pursuant to the decision in the ejectment case. While the RTC dismissed MWSS's counterclaim, it allowed MWCI to collect payment of water bills by settlers who had existing water connections prior to the court's issuance of the writ of preliminary injunction in the case.

Dissatisfied with the decision, ERDI appealed from it to the CA.[9] ERDI additionally argued that both MWSS and MWCI have the authority under Republic Act (R.A.) 8041[10] to remove illegal connections. On June 27, 2005 the CA rendered judgment, affirming the decision of the RTC, hence the present petition for review.

The Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in failing to rule that MWSS and MWCI can be compelled to dismantle existing water

[9] Docketed as CA-G.R. CV 69925.

[10] "*An Act to Address the National Water Crisis and for other Purposes.*"

connections on ERDI's land that was occupied by informal settlers; and

2. Whether or not MWCI can collect payment of bills for water connections on that land.

The Court's Rulings

One. ERDI invokes the provisions of R.A. 8041 as cause for rendering a decision in its favor which would require MWSS and MWCI to disconnect all existing water service on ERDI's property. But fair play dictates that matters, which ERDI did not raise in its complaint, are not allowed to be raised for the first time on appeal.[11] Here, the Court cannot entertain ERDI's new cause of action based on its alleged right under the provisions of R.A. 8041 since it is only in the course of its appeal to the CA that ERDI brought up the matter.

Besides, assuming that ERDI could still invoke in its favor the provisions of R.A. 8041, its claim must still fail. The water connections ERDI complained of are not the "illegal connections" subject of R.A. 8041.[12] In ERDI's case, those water connections were either a) installed by MWSS or MWCI and, therefore, cannot be regarded as illegal or b) illegally installed by the settlers themselves but were subsequently ratified by the water utility company. To be considered illegal under the purview of R.A. 8041, the water connections must be unauthorized by the water utility company, not by any other entity.

Nor can ERDI invoke the charter of MWSS[13] as source of its right to compel MWSS or MWCI to remove the existing connections. The rights and the remedies for removal of illegal connections under that charter belong to the water utilities, not to ERDI.

The Court is not unmindful of its December 2, 1998 resolution in G.R. 135727 that affirmed the rescission of the MOA between

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[11] *Orosa v. Court of Appeals*, 386 Phil. 94, 103 (2000).

[12] *See* Sections 8 and 9 of R.A. 8041.

[13] Republic Act 6234, as amended.

ERDI and the Marikina government. Before its rescission, the MOA authorized the Marikina government to lay ground works for infrastructures such as lights and other amenities of community life.[14] Undoubtedly, it was this provision of the MOA that opened the way for settlers to apply with the MWSS for water connections. While the witness for ERDI testified that he did not know when the construction of the water lines began, it may be assumed that the same took place during the time the MOA was still in force.[15] No evidence has been presented to show that the water system on ERDI's land was put in place during the pendency of the earlier ejectment case. Consequently, it cannot be said that the water connections were illegal from the beginning.

True, the MOA has been rescinded by final judgment but the obligation to remove the water connections fell upon the Marikina government, not upon respondent water utilities who were not parties to the earlier case. For this reason, ERDI's remedy is to have the final judgments of the Marikina MTC in Civil Case 92-5592 and the Quezon City RTC in Civil Case Q-96-28338 executed, not only for the eviction of the settlers but also for the eventual removal of all structures, constructions, and projects that the Marikina government introduced or allowed to be introduced in the place.

ERDI claims that the RTC and the CA's rulings, which allowed water service to illegal settlers to continue, are acts of cowardice in the face of the need to enforce its right as owner of the land to disallow such service. But as ERDI knows, the problem is not that easy. Its land has become a colony of thousands of informal settlers who have nowhere to go, posing a serious social problem. ERDI is not exactly blameless for this result. It ought to know that empty lands in places like Marikina are susceptible to the entry of such settlers and that both the national and local governments have difficulty in preventing squatting.

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[14] Decision dated August 5, 1997, Exhibit "H" for ERDI, records, p. 244.

[15] RULES OF COURT, Rule 131, Sec. 3(q) & (ff).

Consequently, ERDI has itself to blame for letting the problem deteriorate. It was of course generous of ERDI to enter into the MOA with the Marikina government but it failed to exercise adequate prudence and care to prevent the agreement from being overwhelmed by the uncontrolled surge of settlers.

The task of evicting the large number of settlers from its land belongs to ERDI with the assistance of the authorities. It had obtained final judgment in its favor against the initial group of settlers that occupied the same. Still, ERDI had been unable to use these judgments, no doubt because it frowned on the terrible violence and human sufferings that such would cause. Surely, ERDI would not be justified in using MWSS and MWCI as tool for depriving the people on its land of the water they need for drinking, washing, and sanitation, subjecting them to the diseases that absence or shortage of water would cause, considering that the water connections were installed lawfully when the MOA was still in effect.

Two. ERDI contends that MWCI should not be allowed to collect payments for the water bills of its customers on ERDI's land. But, having ruled that MWSS and MWCI put the water service in place on that land for certain customers there when this was still permitted, there is no valid reason for such water service to be severed before the informal settlers concerned are properly evicted. And if it is not severed, it would be unreasonable to prevent MWCI from collecting from its customers the cost of its service.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the Decision of the Court of Appeals in CA-G.R. CV 69925 dated June 27, 2005.

SO ORDERED.

Carpio, Nachura, Brion,[*] and *Peralta, JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 975 dated March 21, 2011.

FIRST DIVISION

[G.R. No. 172678. March 23, 2011]

SEA LION FISHING CORPORATION, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IMPROPER REMEDY ABSENT JURISDICTIONAL ERROR OR GRAVE ABUSE OF DISCRETION.— We note, at the outset, that petitioner pursued an incorrect remedy when it sought recourse before the CA. The filing of a Petition for *Certiorari* under Rule 65 of the Rules of Court before the CA is limited only to the correction of errors of jurisdiction or grave abuse of discretion on the part of the trial court. "A special civil action for *certiorari* is an independent action, raising the question of jurisdiction where the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction." The CA did not find either lack or error of jurisdiction or grave abuse of discretion. There was no jurisdictional error because based on the Informations, the offenses were committed within the territorial jurisdiction of the trial court. The penalties imposable under the law were also within its jurisdiction. As a necessary consequence, the trial court had the authority to determine how the subject fishing vessel should be disposed of. Likewise, no grave abuse of discretion attended the issuance of the trial court's order to confiscate F/V Sea Lion considering the absence of evidence showing that said vessel is owned by a third party. Evidently, the remedial relief pursued by the petitioner was infirm and improper.

2. ID.; ID.; ID.; THE ORDERS AND RULINGS OF A COURT ON ALL CONTROVERSIES PERTAINING TO THE CASE CANNOT BE CORRECTED BY *CERTIORARI* IF THE COURT HAS JURISDICTION OVER THE SUBJECT MATTER AND OVER THE PERSON.— We also agree with the CA's observation that the trial court impliedly recognized petitioner's right to intervene when it pronounced that petitioner

failed to exercise its right to claim ownership of the F/V Sea Lion. This being the case, petitioner should have filed an appeal instead of a petition for *certiorari* before the CA. Under Rule 65 of the Rules of Court, *certiorari* is unavailing when an appeal is the plain, speedy, and adequate remedy. "The nature of the questions intended to be raised on appeal is of no consequence. It may well be that those questions will treat exclusively of whether x x x the judgment or final order was rendered without or in excess of jurisdiction, or with grave abuse of discretion x x x. This is immaterial. The remedy, to repeat, is appeal, not *certiorari* as a special civil action." The jurisdiction of a court is not affected by its erroneous decision. The orders and rulings of a court on all controversies pertaining to the case cannot be corrected by *certiorari* if the court has jurisdiction over the subject matter and over the person. Thus, we agree with the CA's dismissal of the petition.

3. ID.; EVIDENCE; THIRD-PARTY CLAIM OF OWNERSHIP OF THE VESSEL USED IN THE COMMISSION OF THE CRIME, NOT ESTABLISHED.— Petitioner's claim of ownership of F/V Sea Lion is not supported by any proof on record. The only document on record that is relevant in this regard is a request for the release of the F/V Sea Lion based on petitioner's alleged ownership filed with the Provincial Prosecutor. While the latter authorized the release of said fishing vessel, this was conditioned upon petitioner's submission of a proof of ownership and the filing of a bond, with which petitioner failed to comply. Even when judicial proceedings commenced, nothing was heard from the petitioner. No motion for intervention or any manifestation came from petitioner's end during the period of arraignment up to the rendition of sentence. While petitioner later explained before the CA that its inaction was brought about by its inability to put up the required bond due to financial difficulties, same is still not a sufficient justification for it to deliberately not act at all.

4. ID.; ID.; ID.; DOCUMENTARY EVIDENCE NOT FORMALLY OFFERED CANNOT BE CONSIDERED BY THE TRIAL COURT; A MOTION FOR NEW TRIAL OR REOPENING OF THE TRIAL IS THE PROPER REMEDY TO ASSAIL THE CONFISCATION ORDER, NOT A MOTION FOR RECONSIDERATION.— It was only after the trial court ordered the confiscation of F/V Sea Lion in its assailed twin

Sentences that petitioner was heard from again. This time, it filed a Motion for Reconsideration dated June 24, 2005 to which was attached a copy of an alleged Certificate of Registration issued by the Maritime Industry Authority (MARINA). x x x. [P]etitioner's recourse to a motion for reconsideration was not proper. Although it attached a copy of an alleged Certificate of Registration, the same cannot be considered by the trial court because it has not been formally offered, pursuant to Section 34, Rule 132 of the Rules of Court. As suggested by the CA, petitioner should have instead moved for a new trial or reopening of the trial on the confiscation aspect, rather than a mere motion for reconsideration.

5. POLITICAL LAW; RIGHT TO DUE PROCESS; NO DENIAL THEREOF IN CASE AT BAR.— [P]etitioner's contention that it was deprived of its right to due process in the confiscation of F/V Sea Lion has no factual basis. As correctly pointed out by the CA: That the trial court concluded that no denial of due process occurred is likewise legally correct, perhaps not in the exact way expressed in the assailed order, but for what the reason articulated in the assailed order directly implies. As we discussed above, the petitioner did not intervene before the trial court to claim ownership of the fishing vessel, nor were there records before the court showing a third-party claim of ownership of the vessel; the formal introduction of evidence that would have formally brought the third-party ownership of the vessel to light was prevented by the plea of guilt of the accused. There was therefore no third-party property right sought to be protected when the trial court ordered the confiscation of the vessel. x x x.

6. CRIMINAL LAW; VIOLATION OF REPUBLIC ACT 8550, OTHERWISE KNOWN AS "THE PHILIPPINE FISHERIES CODE OF 1998"; FORFEITURE OF THE VESSEL USED IN THE COMMISSION OF THE CRIME IN FAVOR OF THE GOVERNMENT, PROPER.— In fine, it has been established beyond reasonable doubt that F/V Sea Lion was used by the 17 Chinese fishermen in the commission of the crimes. On the other hand, petitioner presented no evidence at all to support its claim of ownership of F/V Sea Lion. Therefore, the forfeiture of F/V Sea Lion in favor of the government was proper.

APPEARANCES OF COUNSEL

Palabasan Taala & Santiago Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

When an instrument or tool used in a crime is being claimed by a third-party not liable to the offense, such third-party must first establish its ownership over the same.

This is a Petition for Review on *Certiorari* assailing the January 10, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 91270 which denied the Petition for *Certiorari* and *Mandamus*[2] questioning the twin Sentences[3] both dated May 16, 2005 and the Order[4] dated August 4, 2005 of the Regional Trial Court (RTC) of Puerto Princesa City, Branch 52 in Criminal Case Nos. 18965 and 19422. Likewise assailed is the May 5, 2006 Resolution[5] of the CA denying the Motion for Reconsideration[6] thereto.

Factual Antecedents

In response to fishermen's report of poaching off Mangsee Island in Balabac, Palawan, a combined team of Philippine Marines, Coast Guard and *barangay* officials conducted search and seizure operations therein. There they found F/V Sea Lion anchored three nautical miles northwest of Mangsee Island. Beside it were five boats and a long fishing net already spread

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[1] CA *rollo*, pp. 114-126; penned by Associate Justice Arturo D. Brion (now a Member of this Court) and concurred in by Associate Justices Bienvenido L. Reyes and Mariflor Punzalan Castillo.

[2] *Id.* at 2-14.

[3] *Id.* at 51-56; penned by Judge Toribio E. Ilao, Jr.

[4] *Id.* at 73-75.

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

[6] *Id.* at 134-137.

over the water. The team boarded the vessel and apprehended her captain, a Filipino, and a crew composed of three Filipinos and three Chinese. Also arrested were 17 Chinese fishermen aboard F/V Sea Lion.

Various charges were thereafter filed as follows: (1) Violation of Section 97[7] of Republic Act (RA) No. 8550[8] against all those arrested, docketed as I.S. No. 2004-032; (2) Violation of Section 90[9] of the same law against the captain of F/V Sea Lion, the Chief Engineer, and the President of the corporation which owned said vessel, docketed as I.S. No. 2004-061; and (3) Violation of Section 27(a) and (f)[10] of

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[7] **Section 97.** ***Fishing Or Taking of Rare, Threatened or Endangered Species.*** — It shall be unlawful to fish or take rare, threatened or endangered species as listed in the CITES and as determined by the Department.

Violation of the provision of this section shall be punished by imprisonment of twelve (12) years to twenty (20) years and/or a fine of One hundred and twenty thousand pesos (₱120,000.00) and forfeiture of the catch, and the cancellation of fishing permit.

[8] Otherwise known as "The Philippine Fisheries Code of 1998."

[9] **Section 90.** ***Use of Active Gear in the Municipal Waters and Bays and Other Fishery Management Areas.*** — It shall be unlawful to engage in fishing in municipal waters and in all bays as well as other fishery management areas using active fishing gears as defined in this Code.

Violators of the above prohibitions shall suffer the following penalties:

(1) The boat captain and master fisherman of the vessels who participated in the violation shall suffer the penalty of imprisonment from two (2) years to six (6) years;

(2) The owner/operator of the vessel shall be fined from Two thousand pesos (₱2,000.00) to Twenty thousand pesos (₱20,000.00) upon the discretion of the court.

If the owner/operator is a corporation, the penalty shall be imposed on the chief executive officer of the Corporation.

If the owner/operator is a partnership the penalty shall be imposed on the managing partner.

(3) The catch shall be confiscated and forfeited.

[10] **Section 27.** *Illegal Acts*. — Unless otherwise allowed in accordance with this Act, it shall be unlawful for any person to willfully and knowingly exploit wildlife resources and their habitats, or undertake the following acts;

RA 9147[11] and of Section 87[12] of RA 8550 against all those arrested and the President of the corporation which owned the vessel, respectively docketed as I.S. Nos. 2004-68, 2004-69, and 2004-70.

Ruling of the Provincial Prosecutor

While the Provincial Prosecutor of Palawan dismissed I.S. Nos. 2004-61, 2004-68 and 2004-69, he nevertheless found probable cause for the remaining charges[13] but only against

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(a) killing and destroying wildlife species, except in the following instances;

(i) when it is done as part of the religious rituals of established tribal groups or indigenous cultural communities;

(ii) when the wildlife is afflicted with an incurable communicable disease;

(iii) when it is deemed necessary to put an end to the misery suffered by the wildlife;

(iv) when it is done to prevent an imminent danger to the life or limb of a human being; and

(v) when the wildlife is killed or destroyed after it has been used in authorized research or experiments.

x x x x x x x x x

(f) collecting, hunting or possessing wildlife, their by-products and derivatives;

[11] Otherwise known as "Wildlife Resources Conservation and Protection Act."

[12] **Section 87.** ***Poaching in Philippine Waters.*** – It shall be unlawful for any foreign person, corporation or entity to fish or operate any fishing vessel in Philippine waters.

The entry of any foreign fishing vessel in Philippine waters shall constitute a *prima facie* evidence that the vessel is engaged in fishing in Philippine waters.

Violation of the above shall be punished by a fine of One hundred thousand U.S. Dollars (US$100,000.00), in addition to the confiscation of its catch, fishing equipment and fishing vessel: Provided, That the Department is empowered to impose an administrative fine of not less than Fifty thousand U.S. Dollars (US$50,000.00) but not more than Two hundred thousand U.S. Dollars (US$200,000.00) or its equivalent in the Philippine Currency.

[13] Except for I.S. No. 2004-61. Here, the Provincial Prosecutor dismissed the case against F/V Sea Lion's Owner, Captain and Chief Engineer but owing to reports that the 17 Chinese nationals made use of active fishing gears, he ordered that a subpoena be issued against them to afford them

the 17 Chinese fishermen.[14] This was after it was found out that the crew of F/V Sea Lion did not assent to the illegal acts of said 17 Chinese fishermen who were rescued by the crew of the F/V Sea Lion from a distressed Chinese vessel. The prosecutor concluded that the crew, unarmed, outnumbered and hampered by language barrier, acted only out of uncontrollable fear of imminent danger to their lives and property which hindered them from asserting their authority over these Chinese nationals. Accordingly, corresponding Informations against the 17 Chinese fishermen were filed in court.

With the crew of F/V Sea Lion now exculpated, petitioner Sea Lion Fishing Corporation filed before the Office of the Provincial Prosecutor an Urgent Motion for Release of Evidence[15] alleging that it owns the vessel. Said Office thus issued a Resolution[16] dated August 25, 2004, *viz*:

> WHEREFORE, F/[V] Sea Lion is hereby recommended to be released to the movant **upon proper showing of evidence of its ownership of the aforesaid vessel** and the posting of a bond double the value of said vessel as appraised by the MARINA, if through any court accredited company surety, or equal to the aforesaid value[,] if by cash bond. Said bond shall be on the condition that [the] vessel owner shall make [the vessel] available for inspection during the course of the trial.[17] (Emphasis supplied.)

This Resolution was later amended through a Supplemental Resolution[18] dated September 10, 2004 reading as follows:

> This pertains to the Resolution of the undersigned dated 25 August 2004 recommending the release of the vessel F/[V] Sea Lion. In

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their right to a preliminary investigation. See the Concurring Resolution of Provincial Prosecutor Alen Ross B. Rodriguez, CA *rollo*, pp. 32-38.

[14] *Id*.

[15] As mentioned in the August 25, 2004 Resolution of the Office of the Provincial Prosecutor, *id.* at 47-49.

[16] *Id*.

[17] *Id.* at 49.

[18] *Id.* at 50.

addition to the conditions therein, the release of the said vessel shall be with the approval of the Provincial Committee on Illegal Entrants which has jurisdiction over all apprehended vessels involved in poaching.[19]

Petitioner, however, failed to act in accordance with said Resolutions.

Ruling of the Regional Trial Court

The case for Violation of Section 97 of RA 8550 was docketed as Criminal Case No. 18965 while that for Violation of Section 87 of the same law was docketed as Criminal Case No. 19422. The Chinese nationals entered separate pleas of "not guilty" for both offenses. Later, however, in Criminal Case No. 18965, they changed their pleas from "not guilty" to "guilty" for the lesser offense of Violation of Section 88, sub-paragraph (3)[20] of RA 8550. Hence, they were accordingly declared guilty of said lesser offense in a Sentence[21] issued by the RTC of Puerto Princesa City, Branch 52 on May 16, 2005, the dispositive portion of which reads:

WHEREFORE, with the plea of guilty of all the accused to the lesser offense, the Court hereby finds the Seventeen (17) accused guilty beyond reasonable doubt as principals for the crime of Violation of Section 88, sub-par. (3) of R.A. 8550 and sentences them to suffer an imprisonment of FIVE (5) YEARS TO SIX (6) YEARS, SIX (6) MONTHS AND SEVEN (7) DAYS. The Fishing Vessel F/V Sea Lion I as well as the fishing paraphernalia and equipments used by the accused in committing the crime [are] hereby ordered confiscated in favor of the government.

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[19] *Id.* at 51-53.

[20] **Section 88.** ***Fishing Through Explosives, Noxious or Poisonous Substance, and/or Electricity.*** **—**

x x x x x x x x x

(3) Actual use of explosives, noxious or poisonous substances or electrofishing devices for illegal fishing shall be punishable by imprisonment ranging from five (5) years to ten (10) years without prejudice to the filing of separate criminal cases when the use of the same result to physical injury or loss of human life.

[21] CA *rollo*, pp. 54-56.

The x x x confiscated vessel and all the fishing gadgets, paraphernalia and equipment are hereby ordered to be placed under the [temporary] custody of the Philippine Coast Guard. The latter is hereby directed to prepare and submit to this Court the inventory of all confiscated items within 15 days from receipt of this order. Further, the Commander of the Philippine Coast Guard should observe the diligence of a good father of the family in the preservation and maintenance of the entrusted confiscated items until the final disposition thereof by the Court.

Having appeared that the accused have been detained since January 19, 2004, the period of their detention is hereby credited in their favor.

SO ORDERED.[22]

A Sentence[23] in Criminal Case No. 19422 was also issued on even date, the dispositive portion of which reads:

WHEREFORE, with the plea of guilty of all seventeen (17) accused, the Court hereby finds them guilty beyond reasonable doubt as principals of the crime of Violation of Section 87 of R.A. 8550 (Poaching) and sentences them to pay a fine of One Hundred Thousand (US$100,000.00) Dollars to be paid to the Republic of the Philippines. The Fishing Vessel F/V Sea Lion 1 as well as the fishing paraphernalia and equipments used by the accused in committing the crime [are] hereby ordered confiscated in the favor of the government.

The x x x confiscated vessel and all the fishing gadgets, paraphernalia and equipment are hereby ordered to be placed under the [temporary] custody of the Philippine Coast Guard. The latter is hereby directed to prepare and submit to this Court the inventory of all confiscated items within 15 days from receipt of this order. Further, the commander of the Philippine Coast Guard should observe the diligence of a good father of the family in the preservation and maintenance of the entrusted confiscated items until the final disposition thereof by the Court.

The Provincial Jail Warden of Palawan is hereby ordered to release all the above-named accused unless held for some other lawful cause or causes.

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

[23] *Id.* at 54-56.

SO ORDERED.[24]

It was only after the issuance of the above Sentences that petitioner again made its move by filing a Motion for Reconsideration[25] on June 24, 2005. It prayed for the trial court to delete from said Sentences the confiscation of F/V Sea Lion. The Office of the Provincial Prosecutor filed an Opposition thereto.[26] After receipt of petitioner's Reply[27] to said Opposition, the trial court denied petitioner's Motion for Reconsideration.

Hence, petitioner filed a Petition for *Certiorari* and *Mandamus*[28] with the CA.

Ruling of the Court of Appeals

On January 10, 2006, the CA promulgated its assailed Decision denying the petition.[29] The CA ruled that there was no lack of jurisdiction, excess of jurisdiction or grave abuse of discretion on the part of the trial court since it had jurisdiction over the crimes as alleged in the Informations and the penalty for violating the laws stated therein. Necessarily, it had the authority to seize the F/V Sea Lion which was mentioned in the said Informations. The CA further held that while the petitioner attempted to claim as its own the fishing vessel in its Motion for Reconsideration dated June 24, 2005, its effort is undeserving of merit due to failure to adduce evidence. Lastly, the CA declared that the petitioner did not avail of the proper procedural remedy. After the trial court recognized its personality to intervene in the Order dated August 4, 2005, petitioner's recourse should have been an appeal and not *certiorari* under Rule 65 of the Rules of Court.[30]

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[24] *Id.* at 55-56.

[25] *Id.* at 59-64.

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

[27] *Id.* at 69-72

[28] *Id.* at 2-15.

[29] *Id.* at 114-126.

[30] *Id.* at 9-12.

The appellate court also denied petitioner's subsequent Motion for Reconsideration[31] in its assailed Resolution dated May 5, 2006.[32]

Thus, petitioner filed this Petition for Review on *Certiorari* raising the sole issue of whether the confiscation of F/V Sea Lion was valid.[33]

The Parties' Arguments

Petitioner contends that F/V Sea Lion should be released to it because it is the registered owner of said vessel and her captain and crew members were not among those accused of and convicted in Criminal Case Nos. 18965 and 19422. To buttress its contention, petitioner invokes Article 45 of the Revised Penal Code which provides:

> ART. 45. *Confiscation and forfeiture of the proceeds or instruments of the crime.* — Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.
>
> Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, ***unless they be the property of a third person not liable for the offense***, but those articles which are not subject of lawful commerce shall be destroyed. (Emphasis supplied.)

Petitioner also claims that it was denied its right to due process of law when it was not notified of the judicial proceedings relative to the confiscation of the fishing vessel. It argues that such notification was necessary considering that the provincial prosecutor was duly informed of its claim of ownership of the F/V Sea Lion.

On the other hand, respondent People of the Philippines through the Office of the Solicitor General (OSG) argues that since the 17 Chinese nationals were charged with violations of the provisions of RA 8550, a special law, Article 45 of the Revised

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[31] *Id.* at 134-137.

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

[33] *Rollo*, p. 13.

Penal Code does not apply. This is in view of Article 10 of said Code which specifically declares that acts punishable by special laws are not subject to the provisions of the Revised Penal Code. They are only supplementary to such laws unless the latter should specifically provide the contrary. Hence, the forfeiture and confiscation of the fishing vessel under RA 8550 are different from the forfeiture and confiscation under the Revised Penal Code which are additional penalties imposed in the event of conviction. And, since RA 8550 provides that the vessel used in connection with or in direct violation of the provisions of RA 8550 shall be subjected to forfeiture in favor of the government without mention of any distinction as to who owns the vessel, the forfeiture of F/V Sea Lion was proper.

The OSG also contends that even if Article 45 of the Revised Penal Code is applicable, still the present petition must fail due to petitioner's failure to present its third-party claim at the earliest opportunity. It likewise argues that petitioner was not deprived its right to due process considering that it was given ample opportunity to be heard particularly when its motion for release of the F/V Sea Lion was granted by the Office of the Provincial Prosecutor subject to certain conditions. However, it opted not to comply with the conditions imposed by the prosecutor and instead waited for the trial court's final disposition of the case.

Our Ruling

The petition has no merit.

We note, at the outset, that petitioner pursued an incorrect remedy when it sought recourse before the CA. The filing of a Petition for *Certiorari* under Rule 65 of the Rules of Court before the CA is limited only to the correction of errors of jurisdiction or grave abuse of discretion on the part of the trial court.[34] "A special civil action for *certiorari* is an independent action, raising the question of jurisdiction where the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave

[34] *Borromeo Bros. Estate, Inc. v. Garcia*, G.R. Nos. 139594-95, February 26, 2008, 546 SCRA 543, 551.

abuse of discretion amounting to lack or excess of jurisdiction."[35] The CA did not find either lack or error of jurisdiction or grave abuse of discretion. There was no jurisdictional error because based on the Informations,[36] the offenses were committed within the territorial jurisdiction of the trial court. The penalties imposable under the law were also within its jurisdiction. As a necessary consequence, the trial court had the authority to determine how the subject fishing vessel should be disposed of. Likewise, no grave abuse of discretion attended the issuance of the trial court's order to confiscate F/V Sea Lion considering the absence of evidence showing that said vessel is owned by a third party. Evidently, the remedial relief pursued by the petitioner was infirm and improper.

We also agree with the CA's observation that the trial court impliedly recognized petitioner's right to intervene when it pronounced that petitioner failed to exercise its right to claim ownership of the F/V Sea Lion. This being the case, petitioner should have filed an appeal instead of a petition for *certiorari* before the CA. Under Rule 65 of the Rules of Court, *certiorari* is unavailing when an appeal is the plain, speedy, and adequate remedy.[37] "The nature of the questions intended to be raised on appeal is of no consequence. It may well be that those questions will treat exclusively of whether x x x the judgment or final order was rendered without or in excess of jurisdiction, or with grave abuse of discretion x x x. This is immaterial.

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[35] *Id.*

[36] CA *rollo*, pp. 41-44.

[37] The pertinent portion of Section 1, Rule 65 of the Rules of Court provides:

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

x x x x x x x x x

The remedy, to repeat, is appeal, not *certiorari* as a special civil action."[38] The jurisdiction of a court is not affected by its erroneous decision.[39] The orders and rulings of a court on all controversies pertaining to the case cannot be corrected by *certiorari* if the court has jurisdiction over the subject matter and over the person.[40] Thus, we agree with the CA's dismissal of the petition.

Even assuming that the CA may resolve an error of procedure or judgment, there was none committed in this particular case.

Petitioner's claim of ownership of F/V Sea Lion is not supported by any proof on record. The only document on record that is relevant in this regard is a request for the release of the F/V Sea Lion based on petitioner's alleged ownership filed with the Provincial Prosecutor. While the latter authorized the release of said fishing vessel, this was conditioned upon petitioner's submission of a proof of ownership and the filing of a bond, with which petitioner failed to comply. Even when judicial proceedings commenced, nothing was heard from the petitioner. No motion for intervention or any manifestation came from petitioner's end during the period of arraignment up to the rendition of sentence. While petitioner later explained before the CA that its inaction was brought about by its inability to put up the required bond due to financial difficulties, same is still not a sufficient justification for it to deliberately not act at all.

It was only after the trial court ordered the confiscation of F/V Sea Lion in its assailed twin Sentences that petitioner was heard from again. This time, it filed a Motion for Reconsideration dated June 24, 2005[41] to which was attached a copy of an alleged Certificate of Registration issued by the Maritime Industry

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[38] HERRERA, *REMEDIAL LAW*, Volume III, 1999 Ed., p. 220, citing *Pan Realty Corporation v. Court of Appeals*, 249 Phil. 521, 530-531 (1988).

[39] *Estrada v. Sto. Domingo*, 139 Phil. 158, 187-188. (1969).

[40] *Paramount Insurance Corporation v. Judge Luna*, 232 Phil. 526, 534 (1987).

[41] CA *rollo*, pp. 59-64.

Authority (MARINA).[42] However, as correctly observed by the CA:

> Significantly, the lack of any factual basis for the third-party claim of ownership was not cured at all when the petitioner filed its motion for reconsideration before the trial court. At that point, evidence should have been adduced to support the petitioner's claim (so that a new trial or reopening of the trial on the confiscation aspect should have been prayed for, rather than a mere motion for reconsideration.) There is firstly the factual issue — to be proved by proper evidence in order to be properly considered by the court — that the vessel is owned by a third party other than the accused. Article 45 required too that proof be adduced that the third party is not liable for the offense. *After the admission by the accused through their guilty plea that the vessel had been used in the commission of a crime*, we believe and so hold that this additional Article 45 requirement cannot be simply inferred from the mere fact that the alleged owner is not charged in the same case before the court.[43]

Accordingly, petitioner's recourse to a motion for reconsideration was not proper. Although it attached a copy of an alleged Certificate of Registration, the same cannot be considered by the trial court because it has not been formally offered, pursuant to Section 34, Rule 132 of the Rules of Court. As suggested by the CA, petitioner should have instead moved for a new trial or reopening of the trial on the confiscation aspect, rather than a mere motion for reconsideration.[44]

Finally, petitioner's contention that it was deprived of its right to due process in the confiscation of F/V Sea Lion has no factual basis. As correctly pointed out by the CA:

> That the trial court concluded that no denial of due process occurred is likewise legally correct, perhaps not in the exact way expressed in the assailed order, but for what the reason articulated in the assailed order directly implies. As we discussed above, the

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[42] *Id.* at 76.

[43] *Id.* at 124.

[44] *Id*.

petitioner did not intervene before the trial court to claim ownership of the fishing vessel, nor were there records before the court showing a third-party claim of ownership of the vessel; the formal introduction of evidence that would have formally brought the third-party ownership of the vessel to light was prevented by the plea of guilt of the accused. There was therefore no third-party property right sought to be protected when the trial court ordered the confiscation of the vessel.

Significantly, the lack of any factual basis for the third-party claim of ownership was not cured at all when the petitioner filed its motion for reconsideration before the trial court. At that point, evidence should have been adduced to support the petitioner's claim (so that a new trial or reopening of the trial on the confiscation aspect should have been prayed for, rather than a mere motion for reconsideration.) There is firstly the factual issue — to be proved by proper evidence in order to be properly considered by the court — that the vessel is owned by a third party other than the accused. Article 45 required too that proof be adduced that the third party is not liable for the offense. *After the admission by the accused through their guilty plea that the vessel had been used in the commission of a crime*, we believe and so hold that this additional Article 45 requirement cannot be simply inferred from the mere fact that the alleged owner is not charged in the same case before the court.

It was under this legal situation that the trial court issued its assailed order that correctly concluded that there had been no denial of due process. Given the absence of any admissible evidence of third-party ownership and the failure to comply with the additional Article 45 requirement, the court's order to confiscate the F/V Sea Lion pursuant to Article 87 of R.A. No. 8550 cannot be incorrect to the point of being an act in grave abuse of discretion.[45]

In fine, it has been established beyond reasonable doubt that F/V Sea Lion was used by the 17 Chinese fishermen in the commission of the crimes. On the other hand, petitioner presented no evidence at all to support its claim of ownership of F/V Sea Lion. Therefore, the forfeiture of F/V Sea Lion in favor of the government was proper.

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[45] *Id.* at 123-125.

WHEREFORE, the petition is *DENIED*. The Decision dated January 10, 2006 and the Resolution dated May 5, 2006 of the Court of Appeals in CA-G.R. SP No. 91270 are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175697. March 23, 2011]

RURAL BANK OF TOBOSO, INC. (now UCPB Savings Bank), *petitioner, vs.* **JEAN VENIEGAS AGTOTO,** *respondent.*

[G.R. No. 176103. March 23, 2011]

JEAN VENIEGAS AGTOTO, *petitioner, vs.* **RURAL BANK OF TOBOSO, INC. and ANTONIO ARBIS in his capacity as *Ex-Officio* Provincial Sheriff of Negros Occidental,** *respondents.*

SYLLABUS

1. CIVIL LAW; AGENCY; SPECIAL POWER OF ATTORNEY; THE GRANT OF THE POWER TO ENTER INTO A MORTGAGE CONTRACT INCLUDES THE POWER TO CONSTITUTE THE MORTGAGEE BANK AS ATTORNEY-IN-FACT FOR EXTRAJUDICIAL FORECLOSURE PURPOSES.— Agtoto contends that the foreclosure sale was void since she did not authorize her husband, Rodney, to act as her attorney-in-fact for purposes of the foreclosure proceedings. As the appellate court correctly ruled, however, the powers she vested in Rodney

as her attorney-in-fact in connection with the mortgage of her land included the power to constitute the mortgagee bank as Rodney's attorney-in-fact for foreclosure purposes for, otherwise, the grant to him of the power to enter into a mortgage contract would have been incomplete in the usual course. Here, moreover, the SPA authorized Rodney to make, sign, execute, and deliver contracts, documents, agreements and other writings of whatever nature or kind, with any person or persons, upon such terms and conditions as were acceptable to him as attorney-in-fact. The constitution of the Bank as attorney-in-fact for purposes of extrajudicial foreclosure was a condition that Rodney accepted and it bound Agtoto as principal, the same being a legitimate exercise of his powers under the SPA. What is more, even assuming that Rodney exceeded his powers under the SPA, Agtoto should be deemed to have ratified the same when she herself signed the mortgage document.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; FORECLOSURE SALE OF THE SUBJECT PROPERTY, DECLARED VALID; THE MORTGAGEE BANK HAS NO RIGHT TO INCLUDE IN THE FORECLOSURE OF THE LAND THE PORTION OF THE LOAN SEPARATELY SECURED BY THE CHATTEL MORTGAGE.— The foreclosure sale covering the land was likewise valid, notwithstanding the chattel mortgage that covered the ₱69,432.00 portion of the loan of ₱130,500.00. The chattel mortgage was a contract distinct from the real estate mortgage, which latter mortgage covered the separate amount of ₱61,068.00. Thus, the Bank had no right to include in the foreclosure of the land the portion of the loan separately secured by the chattel mortgage.

3. ID.; ID.; ID.; PROCEEDS OF THE FORECLOSURE SALE SHOULD BE APPLIED TO SATISFY ONLY THE DEBT THAT THE FORECLOSED LAND SECURED; SURPLUS FORECLOSURE SALE PROCEEDS BELONG TO THE MORTGAGOR.— The Court finds no reason to deviate from the CA's ruling that the proceeds of the foreclosure sale should be applied to satisfy only the debt and related charges that the foreclosed land secured. Since the Bank collected the entire amount of the loan from the proceeds of the foreclosure sale, including the portion that was not covered by the real estate mortgage, it must return such to Agtoto, which amounted to ₱189,497.10 (₱305,000.00 less the ₱115,502.90 portion covered by the real

estate mortgage.) Although the Bank insists that no excess amount remained out of the proceeds of its winning bid after payment of what was due it, it miserably failed to present evidence to substantiate its assertion. The Court cannot simply ignore the importance of surplus foreclosure sale proceeds because they stand in the place of the land itself and are constructively, at least, real property that belongs to the mortgagor.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FORBEARANCE OF MONEY; DEFINED; SURPLUS FORECLOSURE SALE PROCEEDS WITHHELD BY THE MORTGAGEE BANK REGARDED IN EQUITY AS EQUIVALENT OF A FORBEARANCE OF MONEY; IMPOSITION OF 12% INTEREST PER ANNUM, PROPER.— [F]orbearance of money refers to the obligation of the creditor to desist for a fixed period from requiring the debtor to repay the debt then due and for which 12% *per annum* is imposed as interest rate. Since the excess amount that the Bank withheld may be regarded in equity as the equivalent of a forbearance of money, given that it charged the borrower interest for the same, the Bank should be made to pay 12% interest on it until fully paid. Such interest should, however, be computed only from the time the CA rendered its decision on October 27, 2005 when it determined with reasonable certainty the amount of the surplus proceeds the Bank has to return to Agtoto.

APPEARANCES OF COUNSEL

Edmundo Manlapao for J.V. Agtoto.

Rowena B. Austria-Generoso for Rural Bank of Toboso, Inc.

D E C I S I O N

ABAD, *J.*:

This case is about the foreclosure of a real estate mortgage for the whole amount of the loan when the mortgage covered only a part of it.

The Facts and the Case

On August 18, 1981 Jean Veniegas Agtoto (Agtoto) executed a special power of attorney (SPA) authorizing her husband, Rodney, to secure a loan on her behalf and mortgage a registered land that she owned.[1] Using the SPA, on August 20, 1981 Rodney got a loan of ₱130,500.00 from the Rural Bank of Toboso, Inc. (the Bank), with the ₱61,068.00 portion secured by a real estate mortgage on his wife's land. On the following day, he secured the remaining ₱69,432.00 of the loan with a chattel mortgage over two service boats and one Yanmar Marine engine.

After paying only ₱14,500.00, Agtoto failed to pay her loan with the Bank. After several unheeded demands to pay, on August 6, 1990 the Bank extrajudicially foreclosed the mortgage on her land, pegging her debt at ₱130,500.00 as of December 31, 1989 plus the stipulated interest of 14% *per annum* from the date of default until full payment and liquidated damages. After notice and publication, the sheriff foreclosed the mortgage on the land on September 12, 1990 and sold it at public auction to the Bank, which made the highest bid of ₱305,000.00 "as of December 31, 1989" plus stipulated interest of 14% *per annum*. The sheriff subsequently issued a certificate of sale in the Bank's favor.

Later, Agtoto filed a complaint with the Regional Trial Court (RTC) of Bacolod City against the Bank for the annulment of the sale of her land, damages, and injunction with prayer for the issuance of a temporary restraining order (TRO).

On July 15, 1996 the RTC rendered a decision, ordering the Bank to pay Agtoto ₱305,000.00, which was its bid for her land, less the ₱61,068.00 due from her loan. On November 26, 1997 the RTC issued an order, amending the dispositive portion of its decision to include an award of 6% interest *per annum* on the amount of the award, counted from the date of the auction sale on September 13, 1990 until Agtoto would have been fully paid; her previous payment of ₱14,500.00 could not be deducted from the principal loan, however, since this

[1] TCT T-102384.

was charged against the interests, surcharges, and penalties due on her loan. Agtoto appealed to the Court of Appeals (CA) from the decision, asserting that the RTC erred in not declaring the foreclosure sale null and void.

On October 27, 2005 the CA affirmed the trial court's decision with modification in that it awarded to Agtoto ₱189,497.10 plus 12% interest *per annum* from January 29, 1992 or the date of judicial demand until full payment. Both parties brought the case to this Court through a petition for review, the Bank in G.R. 175697 and Agtoto in G.R. 176103.

The Issues Presented

The case presents the following issues:

1. Whether or not the Bank validly foreclosed on Agtoto's mortgaged land; and

2. Whether or not the Bank should pay ₱189,497.10 to Agtoto as excess bid proceeds with 12% interest *per annum*, computed from January 29, 1992, the date of judicial demand, until the award is fully paid.

The Rulings of the Court

Agtoto contends that the foreclosure sale was void since she did not authorize her husband, Rodney, to act as her attorney-in-fact for purposes of the foreclosure proceedings. As the appellate court correctly ruled, however, the powers she vested in Rodney as her attorney-in-fact in connection with the mortgage of her land included the power to constitute the mortgagee bank as Rodney's attorney-in-fact for foreclosure purposes for, otherwise, the grant to him of the power to enter into a mortgage contract would have been incomplete in the usual course.

Here, moreover, the SPA authorized Rodney to make, sign, execute, and deliver contracts, documents, agreements and other writings of whatever nature or kind, with any person or persons, upon such terms and conditions as were acceptable to him as attorney-in-fact.[2] The constitution of the Bank as attorney-in-

[2] *Rollo* (G.R. No. 176103), p. 59.

fact for purposes of extrajudicial foreclosure was a condition that Rodney accepted and it bound Agtoto as principal, the same being a legitimate exercise of his powers under the SPA. What is more, even assuming that Rodney exceeded his powers under the SPA, Agtoto should be deemed to have ratified the same when she herself signed the mortgage document.

The foreclosure sale covering the land was likewise valid, notwithstanding the chattel mortgage that covered the ₱69,432.00 portion of the loan of ₱130,500.00. The chattel mortgage was a contract distinct from the real estate mortgage, which latter mortgage covered the separate amount of ₱61,068.00. Thus, the Bank had no right to include in the foreclosure of the land the portion of the loan separately secured by the chattel mortgage.

The Court finds no reason to deviate from the CA's ruling that the proceeds of the foreclosure sale should be applied to satisfy only the debt and related charges that the foreclosed land secured. Since the Bank collected the entire amount of the loan from the proceeds of the foreclosure sale, including the portion that was not covered by the real estate mortgage, it must return such to Agtoto, which amounted to ₱189,497.10 (₱305,000.00 less the ₱115,502.90 portion covered by the real estate mortgage.)[3]

Although the Bank insists that no excess amount remained out of the proceeds of its winning bid after payment of what was due it, it miserably failed to present evidence to substantiate its assertion. The Court cannot simply ignore the importance of surplus foreclosure sale proceeds because they stand in the place of the land itself and are constructively, at least, real property that belongs to the mortgagor.[4]

Lastly, forbearance of money refers to the obligation of the creditor to desist for a fixed period from requiring the debtor to repay the debt then due and for which 12% *per annum* is imposed as interest rate.[5] Since the excess amount that the Bank withheld

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[3] *Rollo* (G.R. No. 175697), pp. 109-110.

[4] *Sulit v. Court of Appeals*, 335 Phil. 914, 929 (1997).

[5] *Land Bank of the Philippines v. Ong*, G.R. No. 190755, November 24, 2010.

may be regarded in equity as the equivalent of a forbearance of money, given that it charged the borrower interest for the same, the Bank should be made to pay 12% interest on it until fully paid.[6] Such interest should, however, be computed only from the time the CA rendered its decision on October 27, 2005 when it determined with reasonable certainty the amount of the surplus proceeds the Bank has to return to Agtoto.

WHEREFORE, the Court *AFFIRMS* the Decision of the Court of Appeals in CA-G.R. CV 59246 dated October 27, 2005 with the *MODIFICATION* that the 12% interest rate *per annum* shall be computed from the date of such CA Decision.

SO ORDERED.

Carpio (Chairperson), Nachura, Brion,[*] and *Peralta, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176058. March 23, 2011]

PRESIDENTIAL ANTI-GRAFT COMMISSION (PAGC) and THE OFFICE OF THE PRESIDENT, *petitioners, vs.* **SALVADOR A. PLEYTO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; CONCLUSIVENESS OF JUDGMENT; EXPLAINED; APPLIED TO THE CASE AT BAR; FAILURE OF THE EMPLOYEE TO DISCLOSE IN HIS

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[6] *Eastern Shipping Lines, Inc. v. Court of Appeals,* G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 975 dated March 21, 2011.

STATEMENT OF ASSETS, LIABILITIES AND NETWORTH (SALN) THE BUSINESS INTERESTS AND FINANCIAL CONNECTIONS OF HIS WIFE CONSTITUTES SIMPLE NEGLIGENCE, NOT GROSS MISCONDUCT OR DISHONESTY. — This is the second time Pleyto's SALNs are before this Court. The first time was in G.R. 169982, *Pleyto v. Philippine National Police Criminal Investigation and Detection Group* (PNP-CIDG). In that case, the PNP-CIDG filed on July 28, 2003 administrative charges against Pleyto with the Office of the Ombudsman for violating, among others, Section 8 of R.A. 6713 in that he failed to disclose in his 2001 and 2002 SALNs his wife's business interests and financial connections. x x x After threshing out the other issues, this Court found that Pleyto's failure to disclose his wife's business interests and financial connections constituted simple negligence, not gross misconduct or dishonesty x x x. [T]he present case, on the other hand, is about his 1999, 2000 and 2001 SALNs but his omissions are identical. While he said that his wife was a businesswoman, he also did not disclose her business interests and financial connections in his 1999, 2000 and 2001 SALNs. Since the facts and the issues in the two cases are identical, the judgment in G.R. 169982, the first case, is conclusive upon this case. There is "conclusiveness of judgment" when any right, fact, or matter in issue, directly adjudicated on the merits in a previous action by a competent court or necessarily involved in its determination, is conclusively settled by the judgment in such court and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same. Thus, as in G.R. 169982, Pleyto's failure to declare his wife's business interest and financial connections does not constitute dishonesty and grave misconduct but only simple negligence, warranting a penalty of forfeiture of the equivalent of six months of his salary from his retirement benefits.

2. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (R.A. 6713); REVIEW AND COMPLIANCE PROCEDURE (SECTION 10 OF R.A. 6713); CONSTRUED. — [N]owhere in R.A. 6713 does it say that the Review and Compliance Procedure is a prerequisite to the filing of administrative charges for false declarations or concealments in one's SALN. x x x The provision that gives an impression that the Review and Compliance Procedure is a prerequisite to the filing of an administrative complaint is found in paragraph (b) of Section 10

which states that "The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after the issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act." This provision must not, however, be read in isolation. Paragraph (b) concerns the power of the Review and Compliance Committee to interpret the law governing SALNs. It authorizes the Committee to issue interpretative opinions regarding the filing of SALNs. Officers and employees affected by such opinions "as well as" all who are similarly situated may be allowed to correct their SALNs according to that opinion. What the law prohibits is merely the retroactive application of the committee's opinions. In no way did the law say that a public officer clearly violating R.A. 6713 must first be notified of any concealed or false information in his SALN and allowed to correct the same before he is administratively charged. Furthermore, the only concern of the Review and Compliance Procedure, as per paragraph (a), is to determine whether the SALNs are complete and in proper form. This means that the SALN contains all the required data, *i.e.*, the public official answered all the questions and filled in all the blanks in his SALN form. If it finds that required information has been omitted, the appropriate Committee shall so inform the official who prepared the SALN and direct him to make the necessary correction.

3. ID.; ID.; ID.; ID.; ASCERTAINMENT OF THE TRUTH AND ACCURACY OF ALL THE INFORMATION THAT THE PUBLIC OFFICER OR EMPLOYEE STATED IN HIS SALN IS NOT THE FUNCTION OF THE REVIEW AND COMPLIANCE COMMITTEE. — The Court cannot accept the view that the review required of the Committee refers to the substance of what is stated in the SALN, *i.e.*, the truth and accuracy of the answers stated in it, for the following reasons: **First**. Assuring the truth and accuracy of the answers in the SALN is the function of the filer's oath that to the best of his knowledge and information, the data he provides in it constitutes the true statements of his assets, liabilities, net worth, business interests, and financial connections, including those of his spouse and unmarried children below 18 years of age. Any falsity in the SALN makes him liable for falsification of public documents under Article 172 of the Revised Penal Code. **Second**. The law will not require the impossible, namely, that the Committee must ascertain the truth of all the information that the public officer or employee stated or failed to state in his SALNs and remind him of it. x x x. Indeed, if the Committee knows the

truth about the assets, liabilities, and net worth of its department's employees, there would be no need for the law to require the latter to file their sworn SALNs yearly. In this case, the PAGC succeeded in discovering the business interest of Pleyto's wife only after it subpoenaed from the Department of Trade and Industry—Bulacan certified copies of her business interests there. The Heads of Offices do not have the means to compel production of documents in the hands of other government agencies or third persons.

4. ID.; ID.; ID.; PURPOSE; PUBLIC OFFICIALS ARE ACCOUNTABLE TO THE PEOPLE IN THE MATTER OF THEIR INTEGRITY AND COMPETENCE. — The purpose of R.A. 6713 is "to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest." The law expects public officials to be accountable to the people in the matter of their integrity and competence. Thus, the Court cannot interpret the Review and Compliance Procedure as transferring such accountability to the Committee.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Libarios Jalandoni Dimayuga & Magtanong for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the dismissal of a department undersecretary for failure to declare in his Sworn Statement of Assets, Liabilities, and Net Worth (SALN) his wife's business interests and financial connections.

The Facts and the Case

On December 19, 2002 the Presidential Anti-Graft Commission (PAGC) received an anonymous letter-complaint[1] from alleged employees of the Department of Public Works and Highways

[1] *Rollo,* pp. 83-89.

(DPWH). The letter accused DPWH Undersecretary Salvador A. Pleyto of extortion, illicit affairs, and manipulation of DPWH projects.

In the course of the PAGC's investigation, Pleyto submitted his 1999,[2] 2000,[3] and 2001[4] SALNs. PAGC examined these and observed that, while Pleyto said therein that his wife was a businesswoman, he did not disclose her business interests and financial connections. Thus, on April 29, 2003 PAGC charged Pleyto before the Office of the President (OP) for violation of Section 8 of Republic Act (R.A.) 6713,[5] also known as the Code of Conduct and Ethical Standards for Public Officials and Employees" and Section 7 of R.A. 3019[6] or "The Anti-Graft and Corrupt Practices Act."[7]

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[2] *Id.* at 92.

[3] *Id.* at 90.

[4] *Id.* at 91.

[5] **Section 8.** *Statements and Disclosure.* — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

[6] **Section 7.** *Statement of assets and liabilities.* Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.

[7] *Rollo*, pp. 93-95.

Pleyto claimed that he and his wife had no business interests of any kind and for this reason, he wrote "NONE" under the column "Business Interests and Financial Connections" on his 1999 SALN and left the column blank in his 2000 and 2001 SALNs.[8] Further, he attributed the mistake to the fact that his SALNs were merely prepared by his wife's bookkeeper.[9]

On July 10, 2003 PAGC found Pleyto guilty as charged and recommended to the OP his dismissal with forfeiture of all government financial benefits and disqualification to re-enter government service.[10]

On January 29, 2004 the OP approved the recommendation.[11] From this, Pleyto filed an Urgent Motion for Reconsideration[12] claiming that: 1) he should first be allowed to avail of the review and compliance procedure in Section 10 of R.A. 6713[13] before he is administratively charged; 2) he indicated "NONE" in the

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[8] *Id.* at 96-101.

[9] *Id.* at 108-109.

[10] *Id.* at 124-132.

[11] *Id.* at 133-138.

[12] *Id.* at 139-152.

[13] **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 which 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 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 by affirmative vote of the majority of the particular House concerned.

The individual to whom an 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.

column for financial and business interests because he and his wife had no business interests related to DPWH; and 3) his failure to indicate his wife's business interests is not punishable under R.A. 3019.

On March 2, 2004 PAGC filed its comment,[14] contending that Pleyto's reliance on the Review and Complicance Procedure was unavailing because the mechanism had not yet been established and, in any case, his SALN was a sworn statement, the contents of which were beyond the corrective guidance of the DPWH Secretary. Furthermore, his failure to declare his wife's business interests and financial connections was highly irregular and was a form of dishonesty.

On March 11, 2005 Executive Secretary Eduardo R. Ermita ordered PAGC to conduct a reinvestigation of Pleyto's case.[15] In compliance, PAGC queried the Department of Trade and Industry of Region III–Bulacan regarding the businesses registered in the name of Miguela Pleyto, his wife. PAGC found that she operated the following businesses: 1) R.S. Pawnshop, registered since May 19, 1993; 2) M. Pleyto Piggery and Poultry Farm, registered since December 29, 1998; 3) R.S. Pawnshop–Pulong Buhangin Branch, registered since July 24, 2000; and 4) RSP Laundry and Dry Cleaning, registered since July 24, 2001.[16]

The PAGC also inquired with the DPWH regarding their Review and Compliance procedure. The DPWH said that, they merely reminded their officials of the need for them to comply with R.A. 6713 by filing their SALNs on time and that they had

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(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.

[14] *Rollo,* pp. 153-162.

[15] *Id.* at 163.

[16] *Id.* at 164-172.

no mechanism for reviewing or validating the entries in the SALNs of their more than 19,000 permanent, casual and contractual employees.[17]

On February 21, 2006 the PAGC maintained its finding and recommendation respecting Pleyto.[18] On August 29, 2006 the OP denied Pleyto's Motion for Reconsideration.[19] Pleyto raised the matter to the Court of Appeals (CA),[20] which on December 29, 2006 granted Pleyto's petition and permanently enjoined the PAGC and the OP from implementing their decisions.[21] This prompted the latter offices to come to this Court on a petition for review.[22]

Issues Presented

This case presents the following issues:

1. Whether or not the CA erred in not finding Pleyto's failure to indicate his spouse's business interests in his SALNs a violation of Section 8 of R.A. 6713.

2. Whether or not the CA erred in finding that under the Review and Compliance Procedure, Pleyto should have first been allowed to correct the error in his SALNs before being charged for violation of R.A. 6713.

The Court's Rulings

This is the second time Pleyto's SALNs are before this Court. The first time was in G.R. 169982, *Pleyto v. Philippine National Police Criminal Investigation and Detection Group* (PNP-CIDG).[23] In that case, the PNP-CIDG filed on July 28, 2003

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[17] *Id.* at 173.

[18] *Id.* at 174.

[19] *Id.* at 175-184.

[20] *Id.* at 185-228.

[21] *Id.* at 60-82.

[22] *Id.* at 32-59.

[23] November 23, 2007, 538 SCRA 534.

administrative charges against Pleyto with the Office of the Ombudsman for violating, among others, Section 8 of R.A. 6713 in that he failed to disclose in his 2001 and 2002 SALNs his wife's business interests and financial connections.

On June 28, 2004 the Office of the Ombudsman ordered Pleyto dismissed from the service. He appealed the order to the CA but the latter dismissed his petition and the motion for reconsideration that he subsequently filed. Pleyto then assailed the CA's ruling before this Court raising, among others, the following issues: 1) whether or not Pleyto violated Section 8(a) of R.A. 6713; and 2) whether or not Pleyto's reliance on the Review and Compliance Procedure in the law was unwarranted.

After threshing out the other issues, this Court found that Pleyto's failure to disclose his wife's business interests and financial connections constituted simple negligence, not gross misconduct or dishonesty. Thus:

Neither can petitioner's failure to answer the question, "Do you have any business interest and other financial connections including those of your spouse and unmarried children living in your household?" be tantamount to gross misconduct or dishonesty. On the front page of petitioner's 2002 SALN, it is already clearly stated that his wife is a businesswoman, and it can be logically deduced that she had business interests. Such a statement of his wife's occupation would be inconsistent with the intention to conceal his and his wife's business interests. That petitioner and/or his wife had business interests is thus readily apparent on the face of the SALN; it is just that the missing particulars may be subject of an inquiry or investigation.

An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, does not qualify as gross misconduct, and is merely simple negligence. *Thus, at most, petitioner is guilty of negligence for having failed to ascertain that his SALN was accomplished properly, accurately, and in more detail.*

Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure

to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. Both Section 7 of the Anti-Graft and Corrupt Practices Act and Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees require the accomplishment and submission of a true, detailed and sworn statement of assets and liabilities. Petitioner was negligent for failing to comply with his duty to provide a detailed list of his assets and business interests in his SALN. He was also negligent in relying on the family bookkeeper/accountant to fill out his SALN and in signing the same without checking or verifying the entries therein. Petitioner's negligence, though, is only simple and not gross, in the absence of bad faith or the intent to mislead or deceive on his part, and in consideration of the fact that his SALNs actually disclose the full extent of his assets and the fact that he and his wife had other business interests.

Gross misconduct and dishonesty are serious charges which warrant the removal or dismissal from service of the erring public officer or employee, together with the accessory penalties, such as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in government service. Hence, a finding that a public officer or employee is administratively liable for such charges must be supported by substantial evidence.[24]

The above concerns Pleyto's 2001 and 2002 SALN; the present case, on the other hand, is about his 1999, 2000 and 2001 SALNs but his omissions are identical. While he said that his wife was a businesswoman, he also did not disclose her business interests and financial connections in his 1999, 2000 and 2001 SALNs. Since the facts and the issues in the two cases are identical, the judgment in G.R. 169982, the first case, is conclusive upon this case.

There is "conclusiveness of judgment" when any right, fact, or matter in issue, directly adjudicated on the merits in a previous action by a competent court or necessarily involved in its determination, is conclusively settled by the judgment in such court and cannot again be litigated between the parties and their

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[24] *Id.* at 586-588.

privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[25]

Thus, as in G.R. 169982, Pleyto's failure to declare his wife's business interest and financial connections does not constitute dishonesty and grave misconduct but only simple negligence, warranting a penalty of forfeiture of the equivalent of six months of his salary from his retirement benefits.[26]

With regard to the issue concerning compliance with the Review and Compliance Procedure provided in R.A. 6713, this Court already held in G.R. 169982 that such procedure cannot limit the authority of the Ombudsman to conduct administrative investigations. R.A. 6770, otherwise known as "The Ombudsman Act of 1989," intended to vest in the Office of the Ombudsman full administrative disciplinary authority.[27] Here, however, it was the PAGC and the OP, respectively, that conducted the investigation and meted out the penalty of dismissal against Pleyto. Consequently, the ruling in G.R. 169982 in this respect cannot apply.

Actually, nowhere in R.A. 6713 does it say that the Review and Compliance Procedure is a prerequisite to the filing of administrative charges for false declarations or concealments in one's SALN. Thus:

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 which 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 Congress shall have

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[25] *Abelita III v. Doria*, G.R. No. 170672, August 14, 2009, 596 SCRA 220, 230.

[26] *Pleyto v. Philippine National Police-CIDG*, *supra* note 23, at 595-596.

[27] *Id.* at 593.

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 by affirmative vote of the majority of the particular House concerned.

The individual to whom an 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.

The provision that gives an impression that the Review and Compliance Procedure is a prerequisite to the filing of an administrative complaint is found in paragraph (b) of Section 10 which states that "The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after the issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act." This provision must not, however, be read in isolation.

Paragraph (b) concerns the power of the Review and Compliance Committee to interpret the law governing SALNs. It authorizes the Committee to issue interpretative opinions regarding the filing of SALNs. Officers and employees affected by such opinions "as well as" all who are similarly situated may be allowed to correct their SALNs according to that opinion. What the law prohibits is merely the retroactive application of the committee's opinions. In no way did the law say that a public officer clearly violating R.A. 6713 must first be notified of any concealed or false information in his SALN and allowed to correct the same before he is administratively charged.

Furthermore, the only concern of the Review and Compliance Procedure, as per paragraph (a), is to determine whether the SALNs are complete and in proper form. This means that the SALN contains all the required data, *i.e.*, the public official

answered all the questions and filled in all the blanks in his SALN form. If it finds that required information has been omitted, the appropriate Committee shall so inform the official who prepared the SALN and direct him to make the necessary correction.

The Court cannot accept the view that the review required of the Committee refers to the substance of what is stated in the SALN, *i.e.*, the truth and accuracy of the answers stated in it, for the following reasons:

First. Assuring the truth and accuracy of the answers in the SALN is the function of the filer's oath[28] that to the best of his knowledge and information, the data he provides in it constitutes the true statements of his assets, liabilities, net worth, business interests, and financial connections, including those of his spouse and unmarried children below 18 years of age.[29] Any falsity in the SALN makes him liable for falsification of public documents under Article 172 of the Revised Penal Code.

Second. The law will not require the impossible, namely, that the Committee must ascertain the truth of all the information that the public officer or employee stated or failed to state in his SALNs and remind him of it. The DPWH affirms this fact in its certification below:

This is to certify that this Department issues a memorandum every year reminding its officials and employees to submit their Statement of Assets and Liabilities and Networth (SALN) in compliance with R.A. 6713. Considering that it has approximately 19,000 permanent employees plus a variable number of casual and contractual employees, the Department does not have the resources to review or validate the entries in all the SALNs. Officials and employees are assumed to be accountable for the veracity of the entries considering that the SALNs are under oath.[30]

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[28] Republic Act 6713 (1989), Sec. 8.

[29] Pleyto's SALN Form, *rollo,* p. 113.

[30] *Rollo,* p. 173.

Indeed, if the Committee knows the truth about the assets, liabilities, and net worth of its department's employees, there would be no need for the law to require the latter to file their sworn SALNs yearly.

In this case, the PAGC succeeded in discovering the business interest of Pleyto's wife only after it subpoenaed from the Department of Trade and Industry—Bulacan certified copies of her business interests there. The Heads of Offices do not have the means to compel production of documents in the hands of other government agencies or third persons.

The purpose of R.A. 6713 is "to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest."[31] The law expects public officials to be accountable to the people in the matter of their integrity and competence. Thus, the Court cannot interpret the Review and Compliance Procedure as transferring such accountability to the Committee.

WHEREFORE, the Court *GRANTS* the petition but finds petitioner Salvador A. Pleyto guilty only of simple negligence and imposes on him the penalty of forfeiture of the equivalent of six months of his salary from his retirement benefits.

SO ORDERED.

Carpio, Brion,[*] *Peralta,* and *Bersamin,*[**] *JJ.,* concur.

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[31] Republic Act 6713 (1989), Sec. 2.

[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 975 dated March 21, 2011.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated August 3, 2009.

SECOND DIVISION

[G.R. No. 176596. March 23, 2011]

JUDGE ADORACION G. ANGELES, *petitioner, vs.* **HON. MANUEL E. GAITE, Deputy Executive Secretary for Legal Affairs, Office of the President; HON. RAUL GONZALES, Secretary, and HON. JOVENCITO ZUÑO, Chief State Prosecutor, both of the Department of Justice (DOJ); HON. RAMON R. GARCIA (Substituted by Hon. JOSEPH LOPEZ), City Prosecutor, ACP MARLINA N. MANUEL, and ACP ADELIZA H. MAGNO-GUINGOYON, all of the Manila Prosecution Service; and SSP EMMANUEL VELASCO, Department of Justice,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; MEMORANDUM CIRCULAR NO. 58; DECLARED VALID; DELEGATION TO THE SECRETARY OF JUSTICE THE POWER TO DETERMINE EXISTENCE OF PROBABLE CAUSE FOR OFFENSES WHERE IMPOSABLE PENALTY IS LESS THAN *RECLUSION PERPETUA* IS WITHIN THE PURVIEW OF THE DOCTRINE OF QUALIFIED POLITICAL AGENCY.— Petitioner claims that MC No. 58 ties the hands of the Chief Executive in the exercise of her constitutional power of control over all the executive departments as mandated by the Constitution and the Administrative Code of 1987; hence, an invalid issuance of the OP. In *Angeles v. Gaite,* wherein petitioner raised the same arguments, we find the same unmeritorious and ruled in this wise: x x x Petitioner argues in the main that Memorandum Circular No. 58 is an invalid regulation, because it diminishes the power of control of the President and bestows upon the Secretary of Justice, a subordinate officer, almost unfettered power. This argument is absurd. The President's act of delegating authority to the Secretary of Justice by virtue of said Memorandum Circular is well within the purview of the doctrine of qualified political agency, long been established in our jurisdiction. x x x.

Memorandum Circular No. 58, promulgated by the Office of the President on June 30, 1993 reads: x x x. No appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by *reclusion perpetua* to death x x x. It is quite evident from the foregoing that the President himself set the limits of his power to review decisions/orders/resolutions of the Secretary of Justice in order to expedite the disposition of cases. x x x. Petitioner cannot second-guess the President's power and the President's own judgment to delegate whatever it is he deems necessary to delegate in order to achieve proper and speedy administration of justice, especially that such delegation is upon a cabinet secretary — his own alter ego. x x x. Petitioner's contention that Memorandum Circular No. 58 violates both the Constitution and Section 1, Chapter 1, Book III of EO No. 292, for depriving the President of his power of control over the executive departments deserves scant consideration. In the first place, Memorandum Circular No. 58 was promulgated by the Office of the President and it is settled that the acts of the secretaries of such departments, performed and promulgated in the regular course of business are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. Memorandum Circular No. 58 has not been reprobated by the President; therefore, it goes without saying that the said Memorandum Circular has the approval of the President.

2. ID.; ID.; ID.; ID.; PROHIBITS THE FILING OF PETITION FOR REVIEW BEFORE THE OFFICE OF THE PRESIDENT TO ASSAIL THE DECISION OF THE SECRETARY OF JUSTICE DENYING THE PARTY'S MOTION FOR RECONSIDERATION OF THE RESOLUTIONS OF THE PROSECUTORS DISMISSING HER COMPLAINT FOR LIBEL.— After petitioner's receipt of the DOJ Secretary's resolution denying her motion for reconsideration of the resolution dismissing her petition for review of the prosecutors' resolutions dismissing her complaint for libel, she filed a petition for review before the OP on the pretext that she should first exhaust administrative remedies. Unfortunately, such action was fatal to her case, since MC No. 58 prohibits the filing of such petition with the OP. As provided under MC No. 58, no appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice

on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by *reclusion perpetua* to death. Clearly, there was no need for petitioner to file her petition with the OP.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; THE DETERMINATION OF PROBABLE CAUSE DURING THE PRELIMINARY INVESTIGATION IS NECESSARILY DEPENDENT ON THE SOUND DISCRETION OF THE INVESTIGATING PROSECUTOR AND ULTIMATELY, THAT OF THE SECRETARY OF JUSTICE.— Notably, in the determination of probable cause during the preliminary investigation, the executive branch of government has full discretionary authority. Thus, the decision whether or not to dismiss the criminal complaint against the private respondent is necessarily dependent on the sound discretion of the Investigating Prosecutor and ultimately, that of the Secretary of Justice. The resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who, under the Revised Administrative Code, exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor.

4. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS; PROPER REMEDY TO ASSAIL THE RESOLUTION OF THE SECRETARY OF JUSTICE, ON GROUND OF GRAVE ABUSE OF DISCRETION, WHERE THERE WAS NO MORE APPEAL OR OTHER REMEDY AVAILABLE IN THE ORDINARY COURSE OF LAW.— Indeed, petitioner filed her appeal with the DOJ Secretary, but her appeal was dismissed. Petitioner filed her motion for reconsideration which was also dismissed. As there was no more appeal or other remedy available in the ordinary course of law, her remedy was to file a petition for *certiorari* under Rule 65 of the Rules of Court on the ground of grave abuse of discretion. However, petitioner failed to file a petition for *certiorari* within 60 days from receipt of the DOJ resolution denying her motion for reconsideration.

5. ID.; ID.; ID.; ID.; RESOLUTIONS OF THE SECRETARY OF JUSTICE BECAME FINAL AND EXECUTORY WHERE THE PARTY FAILED TO ASSAIL THE SAME BEFORE THE COURT OF APPEALS WITHIN THE 60-DAY REGLEMENTARY

PERIOD.— Petitioner's filing of the petition for review with the OP, which is prohibited, did not toll the running of the reglementary period for filing a petition with the CA. Accordingly, the DOJ resolutions became final and executory after the lapse of the period for assailing the same in the CA. Thus, we find no reversible error committed by the CA in dismissing the petition for having been filed beyond the reglementary period.

6. ID.; JUDGMENTS; FINALITY OF JUDGMENT; DOCTRINE; EXCEPTIONS; NOT PRESENT.— The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable. None of the exceptions is present to warrant a review.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* filed by petitioner Adoracion G. Angeles, former Presiding Judge of the Regional Trial Court (RTC), Branch 121, Caloocan City, assailing the Decision[1] dated August 30, 2006 and the Resolution[2] dated February 8, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 87003. The antecedent facts are as follows:

It appears that sometime in June 1999, petitioner was charged of child abuse by her grandniece Maria Mercedes Vistan. The preliminary investigation of the complaint was assigned to State Prosecutor Emmanuel Y. Velasco (respondent Velasco) of the

[1] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Rodrigo V. Cosico and Celia C. Librea-Leagogo; concurring; *rollo*, pp. 24-42.

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

Department of Justice (DOJ). In a Resolution dated June 20, 1999, respondent Velasco filed a case against petitioner for 21 counts of Child Abuse under Republic Act (RA) No. 7610, otherwise known as the *Special Protection of Children against Child Abuse, Exploitation and Discrimination Act*. Petitioner filed a petition for review with the DOJ Secretary who, in a Resolution dated April 4, 2000, ordered the withdrawal of the Information against petitioner.

On July 7, 2000, petitioner filed with the DOJ an administrative complaint for Gross Misconduct, Gross Ignorance of the Law, Incompetence and Manifest Bad Faith against respondent Velasco, which the DOJ subsequently dismissed. Petitioner filed a motion for reconsideration, which the DOJ Secretary denied in a Resolution dated February 18, 2002. Petitioner then filed a Petition for Review[3] with the Office of the President (OP) assailing the DOJ's Resolutions dismissing the administrative complaint she filed against respondent Velasco. The OP asked respondent Velasco to file his comment thereto. In his Comment,[4] respondent Velasco stated among others:

x x x x x x x x x

Herein respondent-appellee hereby manifests his challenge to petitioner-appellant to finally agree to the conduct of such investigation in order to determine the veracity of the following information which were provided very recently by unimpeachable sources from the judiciary, schoolmates and close friends of Judge ANGELES, to wit:

(a) That Judge ANGELES is still single because she belongs to the third sex (and there is nothing wrong for being so frankly.)

(b) In fact, Judge ANGELES is carrying an affair with a lady lawyer (still there is nothing wrong with this, everybody has the freedom whom to love.);

(c) But this lady lawyer is often seen with Judge ANGELES even in her courtroom. Said lawyer is the conduit or

[3] *Rollo*, pp. 46-54.

[4] *Id.* at 55-136.

connection of those who has pending cases in her sala (now there's something terribly wrong with this.);

(d) That Judge ANGELES was so insecure and jealous at the time her grandniece MARIA MERCEDES VISTAN was allegedly flirting with boys (there is something wrong here also because there is a manifestation of perversity and in fact said jealousy led to the abuse of the child.)[5]

On the basis of the above statements which petitioner claimed to be a direct attack on her character and reputation as a public servant, she filed a Complaint[6] for four counts of libel against respondent Velasco before the Office of the City Prosecutor of Manila.

In a Resolution[7] dated August 13, 2003, Assistant City Prosecutor (ACP) Adeliza Magno-Gingoyon recommended the dismissal of petitioner's complaint for Libel due to insufficiency of evidence and/or lack of merit. The pertinent portions of the Resolution read:

A charge for libel will only be sufficient if the words uttered or stated are calculated to induce the hearers or readers to suppose and understand that the persons against whom they are uttered were guilty of certain offenses, or are sufficient to impeach their honesty, virtue or reputation, or to hold the persons up to public ridicule.

Such calculation does not and will not arise in this case since complainant herself has not clearly manifested if being single and/or member of the third sex; or carrying an affair with a lady lawyer; or being seen in her courtroom with the said lawyer; or feeling insecure and jealous of her grandniece Ma. Mercedes Vistan, is on her own view, a crime, vice or defect or an act of omission which tends to cause her dishonor, discredit or contempt.

Beyond the omission of the complainant to elaborate on the defamatory character of the statements she quoted, a reading of the portion of the reply/comment of the respondent where the questioned statements were lifted, particularly in paragraph 55 of the said reply/

[5] *Id.* at 80-81.

[6] *Id.* at 138-141.

[7] *Id.* at 142-145.

comment, reveals that respondent did not categorically declare therein that Judge Angeles is really single and belongs to the third sex; is carrying an affair with a lady lawyer who is often seen in her courtroom; and was so insecure and jealous of her grandniece.

Quite vividly, respondent premised his disclosures with a challenge to the complainant to agree to the conduct of an investigation to determine the veracity of the information he cited therein, thereby conveying that his disclosures are more of questions begging for answers rather than a direct imputation of any wrongdoing.

Even assuming *arguendo* that complainant was defamed or maligned by the subject statements, we cannot, nonetheless, find any presumptive malice therein because the said statements can be considered as privileged communication for they were made in the course of official proceedings before the Office of the President.

Although the said proceedings may not be strictly considered as judicial in nature, they are akin thereto as they involve litigation or hearing of contentious issues, albeit in a purely administrative matter.

The subject statements are relevant to the issues in the said administrative proceedings for they revolve around the moral fitness of the complainant to be an accuser of the respondent for acts done while the latter is in the public service and they are intended to further prove the incredibility of her accusations by making the impression that complainant herself may not be "coming to court with clean hands."

While it may be argued that the subject statements are not really germane to the issues raised in the complainant's petition for review, suffice it to state that "it is the rule that what is relevant or pertinent should be liberally considered to favor the writer, and the words are not to be scrutinized with the microscopic intensity."

Malice does not exist in this case. It is only in every defamatory imputation where malice can be presumed (see Article 354, 1st par., Revised Penal Code). Considering that, as afore-discussed, the subject statements have not been amply shown to be defamatory to the complainant, malice cannot, therefore, be presumed in the execution thereof, conformably to the above-stated provisions of the penal code. Neither can we attribute malice in fact on the part of the respondent when he wrote the subject statements considering that:

(1) He did not volunteer to provide that information to the reviewing officials in the Office of the President out of a single

> desire to malign the complainant since, apart from making the alleged derogatory statements in only a portion of his reply/comment, he has submitted his said reply/comment to the Office of the President primarily in compliance with the Order dated June 10, 2002 of Deputy Executive secretary Arthur P. Autea in O.P. Case No. 02-D-187.

The subject statements are just, therefore, incidental to the litany of defenses in his reply/comment.

It has been held that if the matter charged as libelous is only an incident in act which has another objective, there is no libel; and

> (2) In the questioned statements, respondent himself opined that there is nothing wrong if Judge Angeles belongs to the third sex or has an affair with a lady lawyer, clearly signifying that he has not treated such information as impugning complainant's honor.

While he may have stated therein that there's something wrong with the alleged connection of a lady lawyer with those who have pending cases in complainant's sala or in the latter's insecurity at her grandniece, he has not, nevertheless, averred, or even implied, just for the sake of maligning Judge Angeles, that she has, indeed, granted favors to the lady lawyer often seen in her courtroom or that she has actually manifested perversity in her relation with her grandniece mentioned.[8]

Petitioner filed a motion for reconsideration, which was denied in a Resolution[9] dated December 12, 2003. In denying the motion, ACP Marlina N. Manuel found that there was no concrete showing that respondent made a categorical or direct malicious accusation or imputation of any crime or vice against petitioner; that apparently, respondent entertaining uncertainty of the informations gathered called for an investigation to determine the veracity or truth thereof.

Dissatisfied, petitioner filed with the DOJ Secretary a Petition for Review[10] assailing the dismissal of her complaint for Libel as well as her motion for reconsideration.

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[8] *Id.* at 144-145.

[9] *Id.* at 146-147.

[10] *Id.* at 148-165.

In a Resolution[11] dated March 17, 2004, the Petition for Review was dismissed by Chief State Prosecutor Jovencito R. Zuño (CSP Zuño), ruling as follows:

> We have carefully examined the record, but found no cogent reason to justify a reversal of the assailed resolution. The statements alleged to be libelous are privileged, since they were made by respondent in legitimate defense of his own interest, not to mention that the said statements bear some reasonable relation or reference to the subject matter of the inquiry or may be possibly relevant to it. Neither may it be said that respondent acted with malice or ill-will against petitioner when he informed the President of matters of public concern like the conduct or character of the latter which need imperative remedial actions.[12]
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> x x x x x x x x x

Petitioner filed a motion for reconsideration with a motion for inhibition of CSP Zuño, which the DOJ in a Resolution[13] dated June 25, 2004 denied the motion with finality. In so ruling, DOJ Acting Secretary Merceditas N. Gutierrez said:

> The Reply/Comment in OP Case No. 02-D-187 motivated solely by a desire of respondent to defend himself against pending charges, is privileged for being an exercise of the natural right of a person accused of a crime in order to bring to the attention of the President who is to pass upon his guilt all such considerations he thinks may influence her judgment in his behalf, even though he may in so doing incidentally disparage private character.
>
> As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged, the test should be the good faith of respondent. Since under the circumstances, respondent believed that the language used by him in the paragraph in question would have a tendency to move the discretion of the President to grant the relief asked, it must be deemed relevant to the issues raised in the pleadings that it may become the subject of inquiry in the course of the hearing.

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[11] CA *rollo*, pp. 57-58.

[12] *Id.* at 57.

[13] *Id.* at 46-47.

Thus, as the Comment sent by him to the President in the performance of a legal duty, as an explanation of the matter contained in the order sent to him by the President, although employing a language somewhat harsh and uncalled for, is excusable in the interest of public policy, respondent, rather is not guilty of libel.[14]

On July 15, 2004, petitioner filed a Petition for Review[15] before the OP questioning the DOJ Resolutions dismissing her petition.

On July 29, 2004, the OP issued an Order[16] dismissing the Petition for Review filed by petitioner saying:

Under Memorandum Circular (MC) No. 58 dated 29 May 2003, no appeal from or petition for review of the decision or resolution of the Secretary of Justice on preliminary investigation of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by *reclusion perpetua* to death. An appeal or petition not clearly falling within the jurisdiction of the Office of the President, as set forth above, shall be dismissed outright.

The basic complaint of petitioner and the appealed resolutions of the Secretary of Justice involve the offense of Libel defined in Article 353 of the Revised Penal Code (RPC). By whatever means committed, libel carries only the penalty of *prision correccional* in its minimum and medium periods or fine or both. (Art. 355, RPC).

Upon the foregoing perspective, the case at hand does not fall under the exception contemplated in MC No. 58.[17]

Petitioner's motion for reconsideration was denied in an Order[18] dated September 30, 2004.

Petitioner filed with the CA a petition for review under Rule 43[19] assailing the OP orders, entitled *Judge Adoracion G.*

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[14] *Id.*

[15] *Rollo*, pp. 166-178.

[16] *Id.* at 179.

[17] *Id.*

[18] *Id.* at 180-181.

[19] CA *rollo*, pp. 2-17.

Angeles, petitioner v. Hon. Manuel B. Gaite, Deputy Executive Secretary for Legal Affairs, Office of the President, Hon. Ma. Merceditas N. Gutierrez, Acting Secretary (now substituted by Hon. Raul Gonzales, the incumbent DOJ Secretary as nominal party), and Hon. Jovencito Zuño, Chief State Prosecutor, both of the Department of Justice, Hon. Ramon R. Garcia, City Prosecutor, ACP Marlina N. Manuel, and ACP Adeliza H. Magno-Guingoyon, all of the Manila Prosecution Service; and SP Emmanuel Y. Velasco, DOJ, Manila, respondents.

After the parties filed their respective pleadings, the case was then submitted for resolution.

On August 30, 2006, the CA issued its assailed Decision which denied the petition.

In denying the petition, the CA applied the doctrine laid down in *Carpio v. Executive Secretary*[20] regarding the power of control of the President over all executive branches of the government, in relation to the doctrine of qualified political agency. We said that under the doctrine, the official acts of a Department Secretary are deemed to be the acts directly of the President herself unless disapproved or reprobated by the latter; that it was the OP's prerogative to determine whether or not it shall consent to exercise its general appellate jurisdiction in any given case emanating from the Chief Executive's power of control over all executive officers from Cabinet secretaries to the lowliest ranks. The CA then ruled that the OP, relying on MC No. 58, dismissed petitioner's petition for review and exercised its prerogative not to disapprove or overturn the DOJ Secretary's resolutions, thus, approving the acts or decision of the DOJ Secretary, being her alter ego. The CA held that petitioner cannot question the validity of MC No. 58, since it is said to be valid until annulled in proper proceedings and not in the petition filed with it.

The CA also held that the OP's outright dismissal of petitioner's Petition for Review was valid and binding, and was not tainted with grave abuse of discretion. It found that the

[20] G.R. No. 96409, February 14, 1992, 206 SCRA 290.

DOJ resolutions dismissing petitioner's petition for review became final and executory after petitioner failed to elevate the said DOJ resolutions directly with the CA in a petition for *certiorari* within the 60-day reglementary period provided for under Section 4, Rule 65 of the Revised Rules of Court. This was so because under MC No. 58, the filing of a petition for review of the decision or resolution of the Secretary of Justice on preliminary investigations of criminal cases to the OP, except those offenses punishable by *reclusion perpetua* to death, is prohibited. As the dismissal by the DOJ of petitioner's petition for review became final and executory, the CA said that the hands of the Court were tied up and cannot alter, modify or reverse such dismissal.

Petitioner's motion for reconsideration was denied in a Resolution dated February 8, 2007.

Hence, this petition for review where petitioner raises the following assignment of errors, to wit:

1. The Court of Appeals erred in its application of the doctrine of qualified political agency.
2. The Court of Appeals erred in ruling that the validity of Memorandum Circular No. 58 cannot be collaterally attacked.
3. The Court of Appeals erred in holding that the assailed Resolutions dated March 17, 2004 and June 25, 2004 of the DOJ became final and executory when petitioner failed to elevate said Resolutions directly to the Court of Appeals within sixty (60) days.
4. The Honorable Office of the President erred in not taking cognizance of the position because of Memorandum Circular No. 58.
5. The DOJ erred in not finding probable cause for libel against respondent SP Velasco.[21]

Anent the 1st, 2nd and 4th assigned errors, petitioner argues that the refusal of the OP to act on her petition could not be

[21] *Rollo*, pp. 7-8.

justified as falling within the ambit of the doctrine of qualified political agency; that while the DOJ Secretary is the President's alter ego, the President's absolute abandonment of her power of control delegating exclusively to the DOJ Secretary the power to determine the existence of probable cause in complaints where the imposable penalty is less than *reclusion perpetua* is not justified. Petitioner claims that MC No. 58 ties the hands of the Chief Executive in the exercise of her constitutional power of control over all the executive departments as mandated by the Constitution and the Administrative Code of 1987; hence, an invalid issuance of the OP. She claims that since the validity of MC No. 58 is the principal reason why the OP dismissed her petition, the validity of the circular is a key issue in this petition which must be resolved.

We are not persuaded.

In *Angeles v. Gaite*,[22] wherein petitioner raised the same arguments, we find the same unmeritorious and ruled in this wise:

> x x x Petitioner argues in the main that Memorandum Circular No. 58 is an invalid regulation, because it diminishes the power of control of the President and bestows upon the Secretary of Justice, a subordinate officer, almost unfettered power. This argument is absurd. The President's act of delegating authority to the Secretary of Justice by virtue of said Memorandum Circular is well within the purview of the doctrine of qualified political agency, long been established in our jurisdiction.
>
> Under this doctrine, which primarily recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department; the heads of the various executive departments are assistants and agents of the Chief Executive; and, except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief

[22] G.R. No. 165276, November 25, 2009, 605 SCRA 408 (2009).

Executive, presumptively the acts of the Chief Executive." The CA cannot be deemed to have committed any error in upholding the Office of the President's reliance on the Memorandum Circular as it merely interpreted and applied the law as it should be.

As early as 1939, in *Villena v. Secretary of Interior*, this Court has recognized and adopted from American jurisprudence this doctrine of qualified political agency, to wit:

> x x x With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is, the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority" (*Myers v. United States*, 47 Sup. Ct. Rep., 21 at 30; 272 U.S., 52 at 133; 71 Law. ed., 160).

Memorandum Circular No. 58, promulgated by the Office of the President on June 30, 1993 reads:

> In the interest of the speedy administration of justice, the guidelines enunciated in Memorandum Circular No. 1266 (4 November 1983) on the review by the Office of the President of resolutions/orders/decisions issued by the Secretary of Justice concerning preliminary investigations of criminal cases are reiterated and clarified.

> No appeal from or petition for review of decisions/orders/ resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by *reclusion perpetua* to death x x x.
>
> Henceforth, if an appeal or petition for review does not clearly fall within the jurisdiction of the Office of the President, as set forth in the immediately preceding paragraph, it shall be dismissed outright x x x.

It is quite evident from the foregoing that the President himself set the limits of his power to review decisions/orders/resolutions of the Secretary of Justice in order to expedite the disposition of cases. Petitioner's argument that the Memorandum Circular unduly expands the power of the Secretary of Justice to the extent of rendering even the Chief Executive helpless to rectify whatever errors or abuses the former may commit in the exercise of his discretion is purely speculative to say the least. Petitioner cannot second-guess the President's power and the President's own judgment to delegate whatever it is he deems necessary to delegate in order to achieve proper and speedy administration of justice, especially that such delegation is upon a cabinet secretary — his own alter ego.

Nonetheless, the power of the President to delegate is not without limits. No less than the Constitution provides for restrictions. Justice Jose P. Laurel, in his *ponencia* in *Villena*, makes this clear:

> x x x x x x x x x
>
> x x x There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar *gravitas* and exceptional import.

In the case at bar, the power of the President to review the Decision of the Secretary of Justice dealing with the preliminary investigation

of cases cannot be considered as falling within the same exceptional class which cannot be delegated. Besides, the President has not fully abdicated his power of control as Memorandum Circular No. 58 allows an appeal if the imposable penalty is *reclusion perpetua* or higher. Certainly, it would be unreasonable to impose upon the President the task of reviewing all preliminary investigations decided by the Secretary of Justice. To do so will unduly hamper the other important duties of the President by having to scrutinize each and every decision of the Secretary of Justice notwithstanding the latter's expertise in said matter.

x x x x x x x x x

Based on the foregoing considerations, this Court cannot subscribe to petitioner's position asking this Court to allow her to appeal to the Office of the President, notwithstanding that the crimes for which she charges respondent are not punishable by *reclusion perpetua* to death.

It must be remembered that under the Administrative Code of 1987 (EO No. 292), the Department of Justice, under the leadership of the Secretary of Justice, is the government's principal law agency. As such, the Department serves as the government's prosecution arm and administers the government's criminal justice system by investigating crimes, prosecuting offenders and overseeing the correctional system, which are deep within the realm of its expertise. These are known functions of the Department of Justice, which is under the executive branch and, thus, within the Chief Executive's power of control.

Petitioner's contention that Memorandum Circular No. 58 violates both the Constitution and Section 1, Chapter 1, Book III of EO No. 292, for depriving the President of his power of control over the executive departments deserves scant consideration. In the first place, Memorandum Circular No. 58 was promulgated by the Office of the President and it is settled that the acts of the secretaries of such departments, performed and promulgated in the regular course of business are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive Memorandum Circular No. 58 has not been reprobated by the President; therefore, it goes without saying that the said Memorandum Circular has the approval of the President.[23]

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[23] *Id.* at 415-421.

Petitioner next contends that the CA erred in holding that the DOJ resolutions became final and executory when she failed to elevate said resolutions directly to the CA within the 60-day reglementary period.

We do not agree.

After petitioner's receipt of the DOJ Secretary's resolution denying her motion for reconsideration of the resolution dismissing her petition for review of the prosecutors' resolutions dismissing her complaint for libel, she filed a petition for review before the OP on the pretext that she should first exhaust administrative remedies. Unfortunately, such action was fatal to her case, since MC No. 58 prohibits the filing of such petition with the OP. As provided under MC No. 58, no appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by *reclusion perpetua* to death. Clearly, there was no need for petitioner to file her petition with the OP.

Notably, in the determination of probable cause during the preliminary investigation, the executive branch of government has full discretionary authority. Thus, the decision whether or not to dismiss the criminal complaint against the private respondent is necessarily dependent on the sound discretion of the Investigating Prosecutor and ultimately, that of the Secretary of Justice.[24] The resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who, under the Revised Administrative Code, exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor.[25]

Indeed, petitioner filed her appeal with the DOJ Secretary, but her appeal was dismissed. Petitioner filed her motion for reconsideration which was also dismissed. As there was no

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[24] *Alcaraz v. Gonzales*, G.R. No. 164715, September 20, 2006, 502 SCRA 518, 529.

[25] *Id.*, citing *Public Utilities of Olongapo City v. Guingona, Jr.*, 417 Phil. 798, 805 (2001).

more appeal or other remedy available in the ordinary course of law, her remedy was to file a petition for *certiorari* under Rule 65 of the Rules of Court on the ground of grave abuse of discretion.[26] However, petitioner failed to file a petition for *certiorari* within 60 days from receipt of the DOJ resolution denying her motion for reconsideration.

Petitioner's filing of the petition for review with the OP, which is prohibited as discussed above, did not toll the running of the reglementary period for filing a petition with the CA. Accordingly, the DOJ resolutions became final and executory after the lapse of the period for assailing the same in the CA. Thus, we find no reversible error committed by the CA in dismissing the petition for having been filed beyond the reglementary period.

The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law.[27] The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.[28] None of the exceptions is present to warrant a review.

In *Peña v. Government Service Insurance System*,[29] we held that:

> x x x it is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, so

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[26] *Id.* at 530, citing *Filadams Pharma, Inc. v. Court of Appeals*, 426 SCRA 460, 466 (2004).

[27] *Republic v. Tango*, G.R. No. 161062, July 31, 2009, 594 SCRA 560, 568.

[28] *Id.*

[29] G.R. No. 159520, September 19, 2006, 502 SCRA 383.

also the winning party has the correlative right to enjoy the finality of the resolution of the case.[30]

x x x x x x x x x

The rule on finality of decisions, orders or resolutions of a judicial, quasi-judicial or administrative body is "*not a question of technicality but of substance and merit,*" the underlying consideration therefore, being the protection of the substantive rights of the winning party. Nothing is more settled in law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[31]

In light of the above discussion, we find no need to discuss petitioner's other arguments.

WHEREFORE, the petition for review is hereby *DENIED*. The Decision dated August 30, 2006 and the Resolution dated February 8, 2007 of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Carpio-Morales,[*] *Nachura,* and *Brion,*[**] *JJ., concur.*

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[30] *Id.* at 396-397.

[31] *Id.* at 403-404, citing *Sacdalan v. Court of Appeals*, 428 SCRA 586, 599 (2004).

[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per raffle dated March 16, 2011.

[**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 975, dated March 21, 2011.

SECOND DIVISION

[G.R. No. 178096. March 23, 2011]

ROSA DELOS REYES, *petitioner, vs.* **SPOUSES FRANCISCO ODONES and ARWENIA ODONES, NOEMI OTALES, and GREGORIO RAMIREZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; ALLEGATIONS IN THE COMPLAINT DETERMINE THE NATURE OF THE ACTION AND THE COURT WHICH HAS JURISDICTION OVER THE CASE.— Well-settled is the rule that what determines the nature of the action, as well as the court which has jurisdiction over the case, are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence.

2. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; NATURE THEREOF, DISCUSSED.— Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession by the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The proceeding is summary in nature, jurisdiction over which lies with the proper MTC or Metropolitan Trial Court. The action must be brought up within one year from the date of last demand, and the issue in the case must be the right to physical possession.

3. ID.; ID.; ID.; COMPLAINT FOR UNLAWFUL DETAINER, ESSENTIAL REQUISITES; PRESENT.— A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: 1. initially, possession of property by the defendant was by contract with or by tolerance of the

plaintiff; 2. eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; 3. thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and 4. within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. Contrary to the findings of the RTC and the CA, petitioner's allegations in the complaint clearly makes out a case for unlawful detainer, essential to confer jurisdiction over the subject matter on the MTC. Petitioner alleges that she is the owner of the lot, as shown by TCT No. 392430, issued by the Registry of Deeds of Tarlac; that respondents are occupying the lot by virtue of petitioner's tolerance; and that petitioner sent a letter to respondents on June 17, 2005, demanding that they vacate the property, but they failed and refused to do so. The complaint was filed on July 12, 2005, or within one year from the time the last demand to vacate was made. Firm is the rule that as long as these allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter.

4. ID.; ID.; ID.; DISTINGUISHED FROM FORCIBLE ENTRY; THE REQUIREMENT THAT THE COMPLAINT SHOULD AVER WHEN AND HOW ENTRY IN THE PROPERTY WAS MADE APPLIES ONLY WHEN THE ISSUE IS THE TIMELINESS OF THE FILING OF THE COMPLAINT BEFORE THE METROPOLITAN TRIAL COURT, AND NOT WHEN THE JURISDICTION THEREOF IS ASSAILED BECAUSE THE CASE IS ONE FOR *ACCION PUBLICIANA* COGNIZABLE BY THE RTC.— The requirement that the complaint should aver, as jurisdictional facts, when and how entry into the property was made by the defendants applies only when the issue is the timeliness of the filing of the complaint before the MTC, and not when the jurisdiction of the MTC is assailed because the case is one for *accion publiciana* cognizable by the RTC. This is because, in forcible entry cases, the prescriptive period is counted from the date of defendants' actual entry into the property; whereas, in unlawful detainer cases, it is counted from the date of the last demand to vacate. Hence, to determine whether the case was filed on time, there is a necessity to ascertain whether the

complaint is one for forcible entry or for unlawful detainer; and since the main distinction between the two actions is when and how defendant entered the property, the determinative facts should be alleged in the complaint.

5. ID.; ID.; ID.; RULING IN THE CASE OF *GO, JR. V. COURT OF APPEALS* (G.R. NO. 142276, AUGUST 14, 2001), INAPPLICABLE; A PARTY IS ENTITLED TO THE PHYSICAL POSSESSION OF THE PROPERTY WHERE HE PROVED BY PREPONDERANCE OF EVIDENCE, THROUGH THE REGISTERED TRANSFER CERTIFICATE OF TITLE (TCT) IN HIS NAME, THAT HE IS ENTITLED TO THE POSSESSION THEREOF AS OWNER.— The CA misapplied the ruling in *Go* that tolerance must be present right from the start of possession, which possession is sought to be recovered. x x x. In *Go*, there was evidence that the possession by the defendant was illegal at the inception and not merely tolerated as alleged in the complaint. No such similar finding is extant in this case. Further, one of the factual issues raised in *Go* was whether the action was filed within one (1) year from the date the last demand was made. Here, it is beyond dispute that the complaint for unlawful detainer was filed within one (1) year from the date the demand letter was sent on June 17, 2005. Based on the foregoing, the MTC validly acquired jurisdiction over the complaint and we agree with its conclusion that petitioner is entitled to the physical possession of the lot, she having been able to prove by preponderance of evidence, through the TCT registered in her name, that she is entitled to possession of the property as owner. The countervailing evidence presented by respondents that sought to dispute the authenticity of petitioner's TCT cannot be given weight in this case. Settled is the rule that the validity of a certificate of title cannot be attacked in an action for ejectment.

6. ID.; ID.; ID.; THE DETERMINATION OF THE PARTY'S OWNERSHIP OVER THE PROPERTY IS ONLY *PRIMA FACIE* AND ONLY FOR PURPOSES OF RESOLVING THE ISSUE OF PHYSICAL POSSESSION.— [T]he determination made herein as regards petitioner's ownership of the lot by virtue of TCT No. 392430 is only *prima facie* and only for purposes of resolving the issue of physical possession. These pronouncements are without prejudice to the case of annulment

of the deed of sale and TCT filed by respondents against petitioner. Lastly, these pronouncements are not binding on respondents Noemi Otales and Gregorio Ramirez over whose persons no jurisdiction was acquired by the MTC.

APPEARANCES OF COUNSEL

Atienza and Atienza Law Office for petitioner.
Johann Cecilio A. Ibarra for respondents.

D E C I S I O N

NACHURA, *J.*:

This petition for *certiorari* under Rule 45 of the Rules of Court seeks the reversal of the February 19, 2007 Decision[1] and the May 22, 2007 Resolution[2] of the Court of Appeals (CA), affirming the June 20, 2006 decision[3] of the Regional Trial Court (RTC), Branch 68, Camiling, Tarlac, which in turn set aside the March 28, 2006 decision[4] of the Municipal Trial Court (MTC) of Camiling, Tarlac, in a complaint for unlawful detainer, disposed as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendants, ordering defendants, spouses Arwenia Odones and Francisco Odones, their heirs and assigns and all persons acting in their behalves to vacate the premises and to surrender possession thereof to the plaintiff. Defendants are likewise ordered to pay One Thousand (₱1,000.00) Pesos as reasonable compensation for the use of the land and Attorney's fees in the amount of Five Thousand (₱5,000.00) Pesos.
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> SO ORDERED.[5]

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[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal, concurring; *rollo*, pp. 28-35.

[2] *Id.* at 38.

[3] *Id.* at 124-126.

[4] *Id.* at 85-89.

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

The Facts

This case emanated from a complaint for *Unlawful Detainer with Preliminary Injunction*[6] filed by petitioner Rosa delos Reyes (petitioner) against respondents spouses Arwenia and Francisco Odones, Noemi Otales, and Gregorio Ramirez (respondents) before the MTC of Camiling, Tarlac, on July 12, 2005. The complaint alleged these material facts:

> 3. That [petitioner] is the owner of a parcel of land covered x x x by Transfer Certificate of Title No. 392430, of the Land Records for the Province of Tarlac, located at Pao, Camiling, Tarlac, x x x.
>
> 4. That even before the document upon which the title was based, [petitioner] has long been the owner thereof;
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> 5. That [respondents] are staying on the said property with a house/improvements therein, with the mere tolerance of [petitioner] only without any contract whatsoever and for which there is an implied understanding to vacate upon the demand;
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> 6. That [petitioner] previously demanded verbally upon [respondents] to vacate which they refused and for which a written notice was sent advising them to vacate the said property within fifteen (15) days from receipt of the letter to vacate x x x.
>
> 7. That the said letter was sent by registered mail on June 17, 2005, which was duly received x x x.[7]

In their *Answer with Counterclaim*,[8] respondents claimed that they are the owners of the lot, having purchased the same by virtue of an Extrajudicial Succession of Estate and Sale[9] dated January 29, 2004, executed by the heirs of Donata Lardizabal, the land's original owner. Respondents denied that their occupancy of the property was by virtue of petitioner's tolerance.[10]

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[6] *Id.* at 54-60.

[7] *Id.* at 54-56.

[8] *Id.* at 67-70.

[9] *Id.* at 71-72.

[10] *Supra* note 8.

Respondents further argued that the basis of petitioner's Transfer Certificate of Title (TCT), which is a Deed of Absolute Sale dated April 18, 1972,[11] was a forgery because the purported vendors therein, Donata Lardizabal and Francisco Razalan, died on June 30, 1926[12] and June 5, 1971,[13] respectively. Incidentally, the said TCT and Deed of Absolute Sale are the subject of a pending case for annulment of title before the RTC, Branch 68, Camiling, Tarlac.[14]

In a decision dated March 28, 2006, the MTC ruled in favor of petitioner, and ordered respondents to vacate the property and to pay rent for the use and occupation of the same, plus attorney's fees.

Respondents appealed[15] to the RTC, arguing that since the complaint failed to allege how respondents entered the property or when they erected their houses thereon, it is an improper action for unlawful detainer, and the MTC had no jurisdiction over the same.[16]

In its June 20, 2006 decision,[17] the RTC set aside the MTC's judgment and dismissed the complaint. The RTC held that the complaint failed to aver acts constitutive of forcible entry or unlawful detainer since it did not state how entry was effected or how and when the dispossession started. Hence, the remedy should either be *accion publiciana* or *accion reivindicatoria* in the proper RTC.

Aggrieved, petitioner sought recourse with the CA, asseverating that the RTC misappreciated the allegations in the complaint and that respondents were estopped from assailing

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[11] *Id.* at 73.

[12] *Id.* at 77.

[13] *Id.* at 78.

[14] *Id.* at 74-76.

[15] Notice of Appeal; *id.* at 90.

[16] Appeal Memorandum; *id.* at 91-96.

[17] *Supra* note 3.

the MTC's jurisdiction because they did not raise such issue in the proceedings before that court. Petitioner insisted that, as the registered owner of the lot, she has a preferential right of possession over it.[18]

On February 19, 2007, the CA affirmed the judgment of the RTC, adding that, as pronounced in *Go, Jr. v. Court of Appeals*,[19] in order to justify an action for unlawful detainer, the owner's permission or tolerance must be present at the beginning of the possession.[20] Petitioner moved for reconsideration,[21] but the motion was denied in a Resolution dated May 22, 2007.[22] Hence, the instant petition[23] ascribing the following errors to the CA:

THE HON. COURT OF APPEALS ERRED IN APPLYING THE CASE OF *GO, JR. v. COURT OF APPEALS.*

THE HON. COURT OF APPEALS ERRED IN HOLDING THAT THE HON. MUNICIPAL TRIAL COURT OF CAMILING, TARLAC NEVER ACQUIRED JURISDICTION OVER THE CASE.

THE HON. COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENTS ARE ALREADY ESTOPPED FROM RAISING THE ISSUE OF JURISDICTION.

THE HON. COURT OF APPEALS ERRED IN NOT APPLYING THE PRINCIPLE OF *STARE DECISIS.*[24]

The petition is meritorious.

Well-settled is the rule that what determines the nature of the action, as well as the court which has jurisdiction over the case, are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to

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[18] Petition for Review; *rollo*, pp. 147-175.

[19] G.R. No. 142276, August 14, 2001, 362 SCRA 755.

[20] *Supra* note 1.

[21] *Rollo*, pp. 40-53.

[22] *Supra* note 2.

[23] *Rollo*, pp. 3-26.

[24] Quoted in brevity; *id.* at 10.

bring the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence.[25]

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession by the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[26] The proceeding is summary in nature, jurisdiction over which lies with the proper MTC or Metropolitan Trial Court. The action must be brought up within one year from the date of last demand, and the issue in the case must be the right to physical possession.[27]

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

1. initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
2. eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
3. thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
4. within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[28]

Contrary to the findings of the RTC and the CA, petitioner's allegations in the complaint clearly makes out a case for unlawful

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[25] *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156, citing *Domalsin v. Valenciano*, G.R. No. 158687, January 25, 2006, 480 SCRA 114, 133-134.

[26] *Valdez, Jr. v. CA*, G.R. No. 132424, May 4, 2006, 489 SCRA 369, 376.

[27] *Id.*

[28] *Cabrera v. Getaruela*, G.R. No. 164213, April 21, 2009, 586 SCRA 129, 137.

detainer, essential to confer jurisdiction over the subject matter on the MTC. Petitioner alleges that she is the owner of the lot, as shown by TCT No. 392430, issued by the Registry of Deeds of Tarlac; that respondents are occupying the lot by virtue of petitioner's tolerance; and that petitioner sent a letter to respondents on June 17, 2005, demanding that they vacate the property, but they failed and refused to do so. The complaint was filed on July 12, 2005, or within one year from the time the last demand to vacate was made.

Firm is the rule that as long as these allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter.

The CA misapplied the ruling in *Go*[29] that tolerance must be present right from the start of possession, which possession is sought to be recovered. The CA, in affirming the RTC, likewise erroneously applied the rule that jurisdictional facts must appear on the face of the complaint for ejectment, such that when the complaint fails to faithfully aver facts constitutive of unlawful detainer, as where it does not state when and how entry was effected, or how and when dispossession started, the remedy should either be *accion publiciana* or *accion reivindicatoria* in the proper RTC.

The requirement that the complaint should aver, as jurisdictional facts, when and how entry into the property was made by the defendants applies only when the issue is the timeliness of the filing of the complaint before the MTC, and not when the jurisdiction of the MTC is assailed because the case is one for *accion publiciana* cognizable by the RTC.[30] This is because, in forcible entry cases, the prescriptive period is counted from the date of defendants' actual entry into the property; whereas, in unlawful detainer cases, it is counted from the date of the last demand to vacate. Hence, to determine whether the case was filed on time, there is a necessity to ascertain whether the complaint is one for forcible entry or for unlawful detainer;

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[29] *Supra* note 19.

[30] *Canlas v. Tubil, supra* note 25, at 160.

and since the main distinction between the two actions is when and how defendant entered the property, the determinative facts should be alleged in the complaint.[31]

In *Go*, there was evidence that the possession by the defendant was illegal at the inception and not merely tolerated as alleged in the complaint. No such similar finding is extant in this case. Further, one of the factual issues raised in *Go* was whether the action was filed within one (1) year from the date the last demand was made. Here, it is beyond dispute that the complaint for unlawful detainer was filed within one (1) year from the date the demand letter was sent on June 17, 2005.

Based on the foregoing, the MTC validly acquired jurisdiction over the complaint and we agree with its conclusion that petitioner is entitled to the physical possession of the lot, she having been able to prove by preponderance of evidence, through the TCT registered in her name, that she is entitled to possession of the property as owner. The countervailing evidence presented by respondents that sought to dispute the authenticity of petitioner's TCT cannot be given weight in this case. Settled is the rule that the validity of a certificate of title cannot be attacked in an action for ejectment.[32]

This notwithstanding, the determination made herein as regards petitioner's ownership of the lot by virtue of TCT No. 392430 is only *prima facie* and only for purposes of resolving the issue of physical possession. These pronouncements are without prejudice to the case of annulment of the deed of sale and TCT filed by respondents against petitioner.[33] Lastly, these pronouncements are not binding on respondents Noemi Otales and Gregorio Ramirez over whose persons no jurisdiction was acquired by the MTC.[34]

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[31] *Id.*, citing *Javelosa v. CA*, 333 Phil. 331, 340 (1996).

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

[33] *Barias v. Heirs of Bartolome Boneo*, G.R. No. 166941, December 14, 2009, 608 SCRA 169, 175.

[34] *Supra* note 4, at 88.

WHEREFORE, the petition is *GRANTED*. The February 19, 2007 Decision and the May 22, 2007 Resolution of the Court of Appeals are hereby *REVERSED* and *SET ASIDE*. The March 28, 2006 decision of the Municipal Trial Court of Camiling, Tarlac, is *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion,[*] *Peralta,* and *Abad, JJ.*, concur.

SECOND DIVISION

[G.R. No. 179844. March 23, 2011]

EMERSON B. BAGONGAHASA, GIRLIE B. BAGONGAHASA, DEPARTMENT OF AGRARIAN REFORM-PROVINCIAL AGRARIAN REFORM OFFICER OF LAGUNA, and REGISTER OF DEEDS OF SINOLOAN, LAGUNA, *petitioners, vs.* **JOHANNA L. ROMUALDEZ,** *respondent.*

SPOUSES CESAR M. CAGUIN and GERTRUDES CAGUIN, SPOUSES TEODORO MADRIDEJOS and ANICETA IBANEZ MADRIDEJOS, DEPARTMENT OF AGRARIAN REFORM-PROVINCIAL AGRARIAN REFORM OFFICER OF LAGUNA, and REGISTER OF DEEDS OF SINOLOAN, LAGUNA, *petitioners, vs.* **DIETMAR L. ROMUALDEZ,** *respondent.*

SOTELA D. ADEA, SPOUSES ESPERANZA and LEONCIO MARIO, SPOUSES DELIA and DANILO CACHOLA, SPOUSES MA. ALICIA and REYMUNDO CAINTO,

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[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 975 dated March 21, 2011.

EDUARDO B. DALAY, SPOUSES JOSE LEVITICO and EPIFANIA DALAY, SPOUSES JIFFY and FAUSTINO DALAY, SPOUSES MA. RUTH and MELCHOR PACURIB, MA. JERIMA B. DALAY, SPOUSES CLEOFAS and TERESITA VITOR, SPOUSES CELESTINA and ALEJANDRO COSICO, SPOUSES AUREA and ANTONIO HERNANDEZ, SPOUSES JULIA and RAFAEL DELA CRUZ, SPOUSES RAQUEL and SEBASTIAN SAN JUAN, SPOUSES MARGARITA and PABLITO LLANES, SR., FIDEL M. DALAY, SPOUSES JAIME and MELVITA DALAY, SPOUSES EMILY and FLORENCIO PANGAN, SPOUSES FELIPE and ROSALIE DALAY, SPOUSES MARCELO and CATALINA B. DALAY, and SPOUSES RENATO and ELIZABETH DALAY, DEPARTMENT OF AGRARIAN REFORM-PROVINCIAL AGRARIAN REFORM OFFICER OF LAGUNA, and REGISTER OF DEEDS OF SINOLOAN, LAGUNA, *petitioners, vs.* **SPOUSES DANIEL and ANA ROMUALDEZ, and JACQUELINE L. ROMUALDEZ,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY JURISDICTION; PRECLUDES COURTS FROM RESOLVING A CONTROVERSY OVER WHICH JURISDICTION WAS INITIALLY LODGED WITH AN ADMINISTRATIVE BODY OF SPECIAL COMPETENCE. — The doctrine of primary jurisdiction precludes the courts from resolving a controversy over which jurisdiction was initially lodged with an administrative body of special competence. The doctrine of primary jurisdiction does not allow a court to arrogate unto itself authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. The Office of the DAR Secretary is in a better position to resolve the particular issue of non-issuance of a notice of coverage – an ALI case – being primarily the agency possessing the necessary expertise on the matter. The power to determine such issue lies with the DAR, not with this Court.

APPEARANCES OF COUNSEL

Rexie M. Maristela for petitioners.
De Los Angeles Aguirre Olaguer Salomon and Fabro for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Consolidated Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated May 31, 2007 and its Amended Decision (Partial)[3] dated September 25, 2007.

The facts, as summarized by the Department of Agrarian Reform Adjudication Board (DARAB) and as quoted by the CA, are as follows:

> It appears that Complainants Johanna L. Romualdez; Dietmar L. Romualdez; Sps. Daniel and [Ana] Romualdez and Jacquelin[e] C. (sic) Romualdez are absolute and lawful owners of separate parcels of lands, each parcel with an area of 36,670 square meters, 47,187.50 square meters and 55,453 square meters, respectively, all situated [in] Sitio Papatahan, Paete, Laguna. Johanna and Dietmar purchased their properties from Roberto Manalo on January 6, 1994; while Sps. Daniel and [Ana], as well as Jacqueline bought their landholdings from Leonisa A. Zarraga on August 5, 1998. They allege that the said properties are planted [with] different fruit-bearing trees. They and their predecessors-in-interest have been paying realty taxes due on the properties up to the present. However, sometime in 1994 and 1995, the then Secretary of Agrarian Reform declared the property to be part of the public domain, awarded the same to the Defendants

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[1] *Rollo*, pp. 9-24.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison, concurring; *id.* at 30-41.

[3] *Id.* at 25-29.

and forthwith issued Certificates of Land Ownership Award (CLOAs) to the respective defendants as follows:

	CLOA NO.	BENEFICIARIES	Date of Registration In Registry of Deeds of Laguna
1.	00155653	Emerson Bagongahasa, *et al.*	April 10, 1995
2.	00155652	Cesar Caguin, *et al.*	April 10, 1995
3.	00119810	Sotela Adea, *et al.*	June 30, 1994

It was only in 1998 when the complainants learned of the issuance of said CLOAs by the Register of Deeds of Siniloan, Laguna.

The Complainants pointed out that while the Defendants' respective CLOAs describe a property purportedly located in Sitio Lamao, San Antonio, Municipality of Kalayaan, Province of Laguna, each of the Complainants' tax declaration describes a property located [in] Sitio Papatahan, Municipality of Paete, Province of Laguna. Inspite of the discrepancy in the municipality and *sitio* of the respective documents, the lots described in the CLOAs and in the Tax Declarations are almost identical, except that the property described in Defendants' title covers a larger area, but the title and the tax declaration refer to the same lot; that they and their predecessors-in-interest have been in possession of the properties for more than thirty years; that the Defendants have never been in possession of the same; that they have not paid any real estate taxes and have not caused the issuance of a tax declaration over the property in their names; that there is no basis for the award of certificates of land ownership to the Defendants by the Secretary of Agrarian Reform, for the lands have already become private properties by virtue of the open, continuous, exclusive and notorious possession of the property by the Complainants and/or their predecessors-in-interest which possession was in the concept of an owner. As absolute and lawful owners thereof, the complainants also maintain that they have not been notified of any intended coverage thereof by the DAR; that to the best of their knowledge, there is no valuation being conducted by the Land Bank of the Philippines and the DAR involving the property; that there was no compensation paid and that the DAR-CENRO Certification shows that the landholdings have 24-32% slopes and therefore exempt from CARP coverage.

The complainants[,] thus, pray for the reconveyance of their respective landholdings; cancellation of the CLOAs and payment of litigation fee.

On the other hand, the Defendants specifically denied the allegations of the Plaintiff, maintaining in their Affirmative Defenses that they are farmer beneficiaries of the subject properties, covered by Proclamation No. 2280 (sic) which reclassifies certain portion of the public domain as agricultural land and declares the same alienable and disposable for agricultural and resettlement purposes of the Kilusang Kabuhayan at Kaunlaran Land Resource Management Program of the KKK, Ministry of Human Settlements and the area covered is Barangay Papatahan, Paete; that the Plaintiffs' act of questioning the issuance of title is an exercise in futility because Defendants were already in possession of the properties prior to said Proclamation; that upon the issuance of the CLOAs, they became the owners of the landholdings and that the complainants' claim for damages has no basis.

On the part of public Respondent PARO, he invoked the doctrine of regularity in the performance of their official functions and their adherence in pursuing the implementation of CARP. He claims that DAR received from the National Livelihood Support Fund (NLSF) portions of the public domain covered by Presidential Proclamation No. 2282, Series of 1983 and has been mandated to implement the agrarian reform laws by distributing alienable and disposable portions of the public domain, to which the subject lands fall; that actual investigation, proper screening of applicants-beneficiaries, survey and proper evaluation were conducted, warranting the generation of the CLOAs and that the registration of the CLOAs with the Registry of Deed brought the same under the coverage of the Torrens System of land registration and have already become indefeasible or uncontestable.[4]

On December 28, 2000, the Provincial Agrarian Reform Adjudicator (PARAD) of Laguna rendered his decision,[5] finding that the Department of Agrarian Reform (DAR) Secretary committed a mistake in placing the subject properties under the Comprehensive Agrarian Reform Program (CARP). Moreover,

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[4] *Supra* note 2, at 33-35.

[5] *Rollo*, pp. 131-136.

the PARAD found that no notice of coverage was sent to respondents and that they were also not paid any just compensation. The dispositive portion of the said decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Ordering the cancellation of Certificate of Land Ownership Award (CLOA) NOS. 00155653, 00155652 and 00119810 issued to herein private respondents; [and]
>
> 2. Ordering the Register of Deeds of Siniloan, Laguna to cause the cancellation of the Certificate of Land Ownership Award (CLOA) to herein named defendants.
>
> SO ORDERED.[6]

Aggrieved, petitioners appealed to the DARAB.

In its decision[7] dated May 3, 2005, the DARAB held that the complaints filed were virtual protests against the CARP coverage, to which it has no jurisdiction. The DARAB further held that, while it has jurisdiction to cancel the Certificate of Land Ownership Awards (CLOAs), which had been registered with the Register of Deeds (RD) of Laguna, it cannot pass upon matters exclusively vested in the DAR Secretary. Moreover, the DARAB ruled that the assailed CLOAs having been registered in 1994 and 1995 became incontestable and indefeasible. Thus:

> WHEREFORE, premises considered, the appealed decision is hereby **REVERSED** and/or **SET ASIDE**. A new judgment is hereby entered:
>
> 1. Sustaining the validity of the subject Certificates of Land Ownership Award (CLOAs) Nos. 00155653, 00155652 and 00119810 issued to the herein Defendants-Appellants: and
>
> 2. Dismissing the instant complaints for lack of merit.
>
> No costs.
>
> SO ORDERED.[8]

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[6] *Id.* at 136.

[7] *Id.* at 45-53.

[8] *Id.* at 52.

Respondents filed a Motion for Reconsideration, which the DARAB, however, denied for lack of merit.[9] Thus, respondents sought recourse from the CA.

On May 31, 2007, the CA, invoking Section 1 (1.6), Rule II of the 2003 DARAB Rules of Procedure,[10] held that the DARAB has the exclusive original jurisdiction to determine and adjudicate cases involving correction, partition, and cancellation of Emancipation Patents and CLOAs which are registered with the Land Registration Authority (LRA), as in this case. The CA ratiocinated that other than the registration of the assailed CLOAs, the RD already issued Original Certificate of Title No. OCL-474 in favor of respondents. Moreover, the CA relied on the PARAD's finding that respondents were deprived of due process when no notice of coverage was ever furnished and no just compensation was paid to them. The CA disposed of the case in this wise:

> WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Decision dated May 3, 2005 and the Resolution dated October 10, 2006 are hereby **REVERSED** and **SET ASIDE**. The Joint Decision of the Provincial Adjudicator dated December 28, 2000 is hereby **REINSTATED** with **MODIFICATION** as follows:
>
> "WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Ordering the cancellation of the Certificate of Land Ownership Award (CLOA) NOS. 00155653, 00155652 and 00119810 issued to herein private respondents [petitioners in the instant case];

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[9] *Id.* at 42-44.

[10] Section 1 (1.6), Rule II of the 2003 DARAB Rules of Procedure provides:

SECTION 1. *Primary and Exclusive Original Jurisdiction*. The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

x x x x x x x x x

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

2. Ordering the Register of Deeds of Siniloan, Laguna to cause the cancellation of OCT No. OCL-474 to herein named private respondents [petitioners in the instant case].

SO ORDERED."

SO ORDERED.[11]

Both parties filed their respective Motions for Reconsideration. The CA held, to wit:

Finding petitioners' arguments meritorious, We **PARTIALLY AMEND** our previous decision in this case by ordering the Register of Deeds of Siniloan, Laguna to cancel OCT No. OCL-475 and OCT No. OCL-395 and to issue new certificates of title deducting the area of 47,187.50 square meters claimed by petitioner Dietmar L. Romualdez and 55,453.50 square meters claimed by Spouses Daniel and Ana Romualdez and Jacqueline [L.] Romualdez, respectively.

WHEREFORE, premises considered, private respondents' Motion for Reconsideration is hereby **DENIED**. Petitioners' Motion for Partial Reconsideration is hereby **GRANTED**. The Decision dated May 31, 2007 is hereby **PARTIALLY AMENDED** to read as follows:

"WHEREFORE, premises considered, judgment is hereby rendered:

1. Ordering the cancellation of the Certificate of Land Ownership Award (CLOA) NOS. 00155653, 00155652 and 00119810 issued to herein private respondents.

2. Ordering the Register of Deeds of Siniloan, Laguna to cause the cancellation of OCT No. OCL-474 to herein named private respondents.

3. Ordering the Register of Deeds of Siniloan, Laguna to cause the cancellation of OCT No. OCL-475 and to issue a new one deducting the area of 47,187.50 square meters claimed by petitioner Dietmar L. Romualdez.

4. Ordering the Register of Deeds of Siniloan, Laguna to cause the cancellation of OCT No. OCL-395 and to issue a new one deducting the area of 55,453.50 square meters claimed by

[11] *Supra* note 2, at 40-41.

petitioners Spouses Daniel and Ana Romualdez and Jacqueline L. Romualdez.

SO ORDERED."

SO ORDERED.[12]

Hence, this Petition, assigning the following as errors:

I.

The Honorable Court of Appeals has no basis in REVERSING the DECISION of the Department of Agrarian Reform Adjudication Board in upholding the validity of Certificate of Land Ownership Award Nos. 00155653, 00155652 and 00119810 issued to herein petitioners; [and]

II.

The Honorable Court of Appeals erred in undermining [the] ISSUE OF JURISDICTION as this is cognizable by the Regional Director and not by the PARAD and/or the DARAB.[13]

Petitioners Cesar Caguin, Cleofas Vitor, Teresita Vitor, Jose Levitico Dalay, Marcelo Dalay, Esperanza Mario, Celestina Cosico, Ma. Ruth Pacurib, and Raquel San Juan, through the Legal Assistance Division of the DAR, claim that findings of fact of the DARAB should have been respected by the CA; that the CLOAs covering the subject properties were registered in 1994 and 1995 but respondents only assailed the validity of the same in 2000; and that the said CLOAs are already incontestable and indefeasible. Moreover, petitioners highlight the fact that the parties in this case are not partners to any tenancy venture. Invoking this Court's ruling in *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*,[14] petitioners submit that the DAR Secretary has jurisdiction in this case, not the DARAB.[15]

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[12] *Supra* note 3, at 28-29.

[13] *Supra* note 1, at 16.

[14] 512 Phil. 389 (2005).

[15] *Supra* note 1. Please also see *rollo*, pp. 171-174.

On the other hand, respondents prefatorily manifest that out of the 44 respondents before the CA, only 9 signed the petition filed before this Court, and that petitioners' counsel failed to indicate the full names of petitioners in the petition. Respondents argue that the errors assigned by petitioners are matters not pertaining to questions of law but rather to the CA's factual findings. Respondents rely on the CA's findings that their constitutional right to due process was violated because no notice of coverage was sent to them and that they were deprived of payment of just compensation. Moreover, respondents claim that they are not barred by prescription and petitioners cannot raise this issue for the first time on appeal; that they have been paying the real property taxes and are actually in possession of the subject properties; and that documents, which petitioners failed to refute, show that the said properties are private lands owned by respondents and their predecessors-in-interest. Respondents stress that the action initially filed before the PARAD was not a protest considered as an Agrarian Law Implementation (ALI) case, but for quieting and cancellation of title, reconveyance, and damages; that the 2003 DARAB Rules of Procedure clearly states that the DARAB has jurisdiction to cancel CLOAs registered with the LRA; and that the assailed CLOAs were already registered with the RD of Laguna.[16]

The petition is impressed with merit.

Verily, our ruling in *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*[17] is instructive:

> The Court agrees with the petitioners' contention that, under Section 2(f), Rule II of the DARAB Rules of Procedure, **the DARAB has jurisdiction over cases involving the issuance, correction and cancellation of CLOAs which were registered with the LRA. However, for the DARAB to have jurisdiction in such cases, they must relate to an agrarian dispute between landowner and tenants to whom CLOAs have been issued by the DAR Secretary.** The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the administrative implementation of agrarian

[16] *Rollo*, pp. 109-129.

[17] *Supra* note 14.

reform laws, rules and regulations to parties who are not agricultural tenants or lessees are within the jurisdiction of the DAR and not of the DARAB.[18]

It is established and uncontroverted that the parties herein do not have any tenancy relationship. In one case, this Court held that even if the parties therein did not have tenancy relations, the DARAB still has jurisdiction. However, the said case must be viewed with particularity because, based on the material allegations of the complaint therein, the incident involved the implementation of the CARP, as it was founded on the question of who was the actual tenant and eventual beneficiary of the subject land. Hence, this Court held therein that jurisdiction should remain with the DARAB and not with the regular courts.[19]

However, this case is different. Respondents' complaint was bereft of any allegation of tenancy and/or any matter that would place it within the ambit of DARAB's jurisdiction.

While it is true that the PARAD and the DARAB lack jurisdiction in this case due to the absence of any tenancy relations between the parties, lingering essential issues are yet to be resolved as to the alleged lack of notice of coverage to respondents as landowners and their deprivation of just compensation. Let it be stressed that while these issues were discussed by the PARAD in his decision, the latter was precisely bereft of any jurisdiction to rule particularly in the absence of any notice of coverage for being an ALI case.[20] Let it also be stressed that these issues

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[18] *Id.* at 404. (Emphasis supplied.)

[19] *Spouses Teofilo Carpio and Teodora Carpio v. Ana Sebastian, Vicenta Palao, Santos Estrella, and Vicenta Estrella, represented by her guardian ad litem Vicente Palao*, G.R. No. 166108, June 16, 2010.

[20] Section 3, Rule II of the 2003 DARAB 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 R.A. 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:

were not met head-on by petitioners. At this juncture, the issues should not be left hanging at the expense and to the prejudice of respondents.

However, this Court refuses to rule on the validity of the CARP coverage of the subject properties and the issuance of the assailed CLOAs. The doctrine of primary jurisdiction precludes the courts from resolving a controversy over which jurisdiction was initially lodged with an administrative body of special competence.[21] The doctrine of primary jurisdiction does not allow a court to arrogate unto itself authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.[22] The Office of the DAR Secretary is in a better position to resolve the particular issue of non-issuance of a notice of coverage – an ALI case – being primarily the agency possessing the necessary expertise on the matter.[23] The power to determine such issue lies with the DAR, not with this Court.

A final note.

It must be borne in mind that this Court is not merely a Court of law but of equity as well. Justice dictates that the DAR Secretary must determine with deliberate dispatch whether indeed no notice of coverage was furnished to respondents and payment of just compensation was unduly withheld from them despite

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3.1 Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of CLOAs and EPs, including protests or oppositions thereto and petitions for lifting of such coverage.

[21] *Ros v. Department of Agrarian Reform*, G.R. No. 132477, August 31, 2005, 468 SCRA 471, 483-484, citing *Bautista v. Mag-isa Vda. De Villena*, G.R. No. 152564, September 13, 2004, 438 SCRA 259, 262-263.

[22] *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, G.R. No. 149621, May 5, 2006, 489 SCRA 590, 615, citing *First Lepanto Ceramics, Inc. v. Court of Appeals*, G.R. No. 117680, February 9, 1996, 253 SCRA 552, 558; *Machete v. Court of Appeals*, G.R. No. 109093, November 20, 1995, 250 SCRA 176, 182; *Vidad v. RTC of Negros Oriental, Branch 42*, G.R. Nos. 98084, 98922, & 100300-03, October 18, 1993, 227 SCRA 271, 276.

[23] *Sta. Ana v. Carpo*, G.R. No. 164340, November 28, 2008, 572 SCRA 463, 483-484.

the fact that the assailed CLOAs were already registered, on the premise that respondents were unaware of the CARP coverage of their properties; hence, their right to protest the same under the law was defeated. Respondents' right to due process must be equally respected. Apropos is our ruling in *Heirs of Nicolas Jugalbot v. Court of Appeals*:[24]

> [I]t may not be amiss to stress that laws which have for their object the preservation and maintenance of social justice are not only meant to favor the poor and underprivileged. They apply with equal force to those who, notwithstanding their more comfortable position in life, are equally deserving of protection from the courts. Social justice is not a license to trample on the rights of the rich in the guise of defending the poor, where no act of injustice or abuse is being committed against them.
>
> As the court of last resort, our bounden duty to protect the less privileged should not be carried out to such an extent as to deny justice to landowners whenever truth and justice happen to be on their side. For in the eyes of the Constitution and the statutes, EQUAL JUSTICE UNDER THE LAW remains the bedrock principle by which our Republic abides.

WHEREFORE, the instant petition is *GRANTED*. The assailed Decision dated May 31, 2007 and Amended Decision (Partial) dated September 25, 2007 of the Court of Appeals in CA-G.R. SP No. 97768 are hereby *REVERSED* and *SET ASIDE*. The case is *DISMISSED* for lack of jurisdiction of the Department of Agrarian Reform Adjudication Board. This decision is without prejudice to the rights of respondents Johanna L. Romualdez, Dietmar L. Romualdez, Jacqueline L. Romualdez, and Spouses Daniel and Ana Romualdez to seek recourse from the Office of the Department of Agrarian Reform Secretary. No costs.

SO ORDERED.

Carpio (Chairperson), Brion,[*] *Peralta,* and *Abad, JJ.*, concur.

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[24] G.R. No. 170346, March 12, 2007, 518 SCRA 202, 219-220.

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 975 dated March 21, 2011.

THIRD DIVISION

[G.R. No. 182550. March 23, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RUEL VELARDE *alias* DOLOY BELARDE,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; INCONSISTENCIES ARE TO BE EXPECTED WHEN A PERSON IS RECOUNTING A TRAUMATIC EXPERIENCE; PRESENT IN CASE AT BAR.— Inconsistencies are to be expected when a person is recounting a traumatic experience. Rape, a traumatic experience, is usually not remembered in detail. This observation is more pronounced in the case of minors such as AAA who was merely ten years old at the time she testified. For this reason, we held in *People of the Philippines v. Domingo Sta. Ana y Tupig* that it is not proper to judge the actions of children who have undergone traumatic experience by norms of behavior expected from adults. Further, we have repeatedly ruled that this Court accords great respect to a trial court's assessment of witnesses as it had the advantage of actually examining their demeanor, hearing their responses and testing their credibility on the stand. x x x The testimonies of rape victims who are young and immature deserve full credence, considering that no woman, especially a young one, would concoct a story of defloration, allow an examination of her private parts, and, thereafter, subject herself to a public trial, if she had not been motivated by the desire to obtain justice for the wrong committed against her.

2. CRIMINAL LAW; RAPE; INTACT HYMEN DOES NOT NEGATE A FINDING THAT THE VICTIM HAD BEEN RAPED. — In *People of the Philippines v. Geronimo Borromeo y Marco* we reiterated our oft-repeated doctrine that an intact hymen does not negate a finding that the victim had been raped. The CA correctly labelled as unmeritorious the appellant's contention that his RTC conviction was erroneous because the examining doctor (Dr. Flores) found AAA's hymen to be intact. Our ruling in *People of the Philippines v. Gorgonio Villarama* finds particular application in this case: In most cases of rape

committed against young girls where total penetration of the victim's organ is improbable due to the small vaginal opening, it has been held that actual penetration of the victim's organ nor rupture of the hymen is not required. The settled rule is that the mere introduction of the male organ into the *labia majora* of the female pudendum is sufficient to consummate rape. This rule renders inconsequential the appellant's contention that AAA was not raped since the confluent abrasion observed by Dr. Flores on her vagina was caused by a "hard and rough object" – not by something hard and "smooth" like the male penis as the appellant argued. What is significant in this case is that a credible witness – the victim herself – testified that the appellant succeeded in introducing his penis into her vagina.

3. ID.; ID.; COURTS ARE NOT PRECLUDED FROM RENDERING JUDGMENT BASED ON THE TESTIMONY OF EVEN A SINGLE WITNESS. — The matter of deciding whom to present as witness for the prosecution is not for the accused or for the trial court to decide, but is a prerogative given to the prosecutor. What is significant is the existence of a credible testimony – the testimony of AAA – sufficient to convict the appellant. Courts are not precluded from rendering judgment based on the testimony of even a single witness.

4. ID.; ID.; ESTABLISHED WHEN A MAN HAS CARNAL KNOWLEDGE OF A WOMAN UNDER TWELVE YEARS OF AGE; PRESENT IN CASE AT BAR. — It is unnatural for a parent to use his daughter as a tool of malice, especially if the consequence is to subject the child to embarrassment and lifelong stigma. It is highly improbable, too, that a girl of tender years, one not yet exposed to the ways of the world, would impute a crime a serious as rape if the crime had not really been committed. In sum, we find that the prosecution successfully established the commission of rape under Article 266-A(I)(d) of the Revised Penal Code; rape is committed when a man has carnal knowledge of a woman who is under twelve (12) years of age. We are satisfied that the prosecution proved beyond reasonable doubt that in the evening of November 2, 1999, the appellant had carnal knowledge of AAA, who – having been born on January 19, 1990 –was only nine (9) years old at that time.

5. ID.; ID.; ALIBI IS REJECTED WHEN THE PROSECUTION SUFFICIENTLY ESTABLISHES THE IDENTITY OF THE

ACCUSED. — 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 a purely self-serving tale. 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 rules.

6. ID.; ID.; CIVIL INDEMNITY AND MORAL DAMAGES; AWARD THEREOF, JUSTIFIED. — We affirm the awards made by the lower courts of **civil indemnity** in the amount of ₱50,000.00 and **moral damages** in the amount of ₱50,000.00, which are amounts in accordance with the latest jurisprudence on rape. Civil indemnity is mandatory when rape is found to have been committed. 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. However, we **modify the awards** made by the lower courts by ordering the appellant to pay AAA **exemplary damages** in the amount of ₱30,000,00. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as a deterrent against elders who abuse and corrupt the youth.

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 *in toto* the Decision[2] of the Regional Trial Court (*RTC*),

[1] In CA-G.R. CR-H.C. No. 00117, promulgated on March 31, 2006. Penned by CA Associate Justice Apolinario D. Bruselas, Jr., and concurred in by CA Associate Justice Arsenio J. Magpale and CA Associate Justice Vicente L. Yap. *Rollo,* pp. 5-16.

[2] In Criminal Case No. 4897, dated August 15, 2001. Penned by Judge Sinforiano A. Monsanto. CA *rollo,* pp. 21-25.

Branch 27, Catbalogan, Samar, finding **RUEL VELARDE** *alias* **DOLOY BELARDE** (*appellant*) guilty beyond reasonable doubt of consummated rape as defined and penalized under paragraph 1(d) of Article 266-A and Article 266-B of the Revised Penal Code, and sentencing him to suffer the penalty of *reclusion perpetua*.

FACTS

The facts, as culled from the records, are summarized below.

In the evening of November 2, 1999, AAA[3] (at the time nine [9] years, nine [9] months and thirteen [13] days old)[4] was watching television in the house of her neighbors – the appellant's family – in *Barangay* Maputi, Municipality of Zumarraga, Samar Province. Shortly before 11:00 p.m., she became sleepy and went home. At home (located in the same *barangay*), she spread her sleeping mat on the floor and went to sleep. She awakened from this sleep when she felt the appellant on top of her. She tried to shout but he covered her mouth. The appellant then took off her shorts and panties, removed his own pants, and inserted his penis into her vagina through pumping motions. AAA felt pain in her vagina and cried. The appellant only stopped his assault when AAA's father appeared and chased him, but the appellant managed to escape by jumping out of a window.

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[3] Pursuant to Section 44 of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing R.A. No. 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members, shall not be disclosed; *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA *rollo*, p. 52.

The following day, the appellant – then on his way to Catbalogan –was apprehended by a *barangay tanod*. On February 4, 2000, he was criminally charged for rape.[5]

THE RULING OF THE TRIAL AND APPELLATE COURTS

At the trial, the prosecution presented AAA, her mother BBB, and the resident physician of the Samar Provincial Hospital in Catbalogan, Dr. Alfonso Flores. BBB testified that AAA was born on January 19, 1990 in *Barangay* Maputi, Zumarraga Island, Samar,[6] and presented AAA's *Certificate of Live Birth*[7] and *Certificate of Baptism*[8] as proof of this claim. Dr. Flores testified that while AAA's vagina had no hymenal lacerations, the confluent abrasion thereon indicated that it had been "disturbed," possibly by a hard and rough object.[9]

The appellant, his father Rolando Velarde, his first cousin Wilson Orbello, his uncle-in-law Perlito Orbello, and one Rosalinda Orbello testified for the defense.

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[5] The accusatory portion of the Information reads:

x x x x x x x x x

That on or about the 2nd day of November 1999, at nighttime, which was purposely sought, at Barangay Maputi, Municipality of Zumarraga, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation of person, did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, a ten (10) year old minor, against her will, and in her own house.

That in the commission of the offense, the aggravating circumstance in the dwelling of the offended party was present, the latter not having given provocation for the offense.

CONTRARY TO LAW. (Original Records, p. 1.)

[6] TSN dated July 17, 2000.

[7] Records, "Exhibits for Prosecution and Defense," Exhibit "D" (*Certificate of Live Birth*), p. 5.

[8] Records, "Exhibits for Prosecution and Defense," Exhibit "E" (*Certificate of Baptism*), p. 6.

[9] TSN dated August 18, 2000.

The defense rests on denial and alibi. According to the defense, on November 1, 1999, the appellant, with his cousin Wilson Orbello, went home to Barangay Maputi to observe All Souls' Day; both had come from Tacloban City where the appellant worked as a warehouse watchman. The following day, the appellant visited the cemetery and went home at around 4:00 p.m. to watch television. At 6:00 p.m., his cousin Marvin Orbello invited him to drink *tuba*, and the appellant consumed half a gallon of *tuba* at Marvin's house. He returned home by 9:00 p.m. to sleep, in preparation for his early return to Tacloban City the next morning. The appellant woke up at 5:00 a.m. the next day and hurried to catch the 6:00 a.m. boat trip to Catbalogan. He was already aboard a motorboat when a *barangay tanod* came and forced him to disembark because of the complaint AAA had filed against him.

The defense posits that AAA charged appellant with rape because AAA's father, CCC, who allegedly misbehaves in their *barangay* when drunk, held a personal grudge against the appellant's father, Rolando Velarde, whom CCC allegedly owed money to and stole chickens from.

The RTC disbelieved the defense. It found AAA's testimony to be "highly credible" and accordingly, convicted the appellant, under the following terms:

> WHEREFORE, and in view of the foregoing, the court hereby pronounces the accused RUEL VELARDE, *alias* Doloy Belarde, GUILTY, beyond reasonable doubt, as principal by direct participation, of the consummated crime of RAPE, under Article 266-A, Paragraph (1), Sub-paragraph (d) of the Revised Penal Code, and condemns the said accused to suffer the penalty of *reclusion perpetua*, with the accessories of the law, to indemnify the offended girl, [AAA] in the amount of ₱50,000.00, as well as pay her another amount of ₱50,000.00 by way of moral damages, and to bear the costs of this action.
>
> SO ORDERED.

The CA affirmed the RTC Decision *in toto*.

THE APPEAL

The appellant claims that his guilt was not proven beyond reasonable doubt. He argues that (1) his identity was not sufficiently established due to the dim light in the room where the rape allegedly took place; (2) the confluent abrasion observed by Dr. Flores on AAA's vagina, being caused by a "hard and rough object," was allegedly not caused by a man's penis; and (3) the "failure" of the prosecution to present AAA's father on the witness stand was "perplexing." Finally, the appellant also argues that AAA was "incredible and unbelievable" due to the following "material" inconsistencies in her testimony: (a) AAA initially testified that she was raped twice by the appellant, but later declared that she was raped only once;[10] (b) AAA first stated that the rape occurred "inside a room in her house," then changed it to "outside the room;"[11] and (c) AAA initially testified that her father came upon them *while* the appellant was having sexual intercourse with her, but later declared that she went down their house and saw her father *after* the appellant had abused her.[12] Citing *People of the Philippines v. Ernesto*

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[10] TSN dated May 4, 2000, pp. 18-20 and 30.

[11] *Id.* at 17.

[12] *Id.* at 16-20. The parts of the TSN pertinent to this inconsistency are reproduced below:

FISCAL VILLARIN

Q. Has the accused any movement [*sic*] when he was inserting his penis into your vagina?

A. He was pumping.

Q. And while the accused was pumping and his penis at [*sic*] the lavia of your vagina that [*sic*] was the time that you felt pain, is it not [*sic*]?

A. Yes, sir.

Q. And when did he stop?

A. **Upon the arrival of my father.**

Q. When your father arrived, where were you then?

A. I was already standing without my pantie [*sic*] and shorts.

Q. What about the accused Roel Belarde [*sic*], where was he?

A. He was about to jump out of the window.

Q. What you mean is that your father caught you and Roel Belarde [*sic*] while Roel Belarde [*sic*] was having sexual intercourse with you, is that what you mean?

A. He was already about to jump out of our window.

x x x x x x x x x

FISCAL VILLARIN

Q. What did you do after the accused consummated his first sexual intercourse with you?

A. I kept on crying.

Q. What about Roel Belarde, where was he after the first sexual intercourse?

A. He was already on the ground.

COURT

Q. You said that the accused had sexual intercourse with you two times, how do you divide these two incidents, why do you say that there were two sexual intercourse?

A. Because she [*sic*] wanted to kill me.

Q. On that evening, you said that the accused had sexual intercourse with you two times, the fiscal was asking you, after the first time that he had sexual intercourse with you, where was the accused?

A. He was drinking.

COURT

Proceed.

FISCAL VILLARIN

Q. Drinking where?

A. Near their place.

Q. What was he drinking?

A. *Tuba*.

Q. How did you know that?

A. **Because when I passed by them I saw them in going to my father. I saw them drinking *tuba*.**

COURT

Q. You mean after the first sexual intercourse you went down your house?

A. Yes, sir, I went to my father.

Q. And after you went to your father, where did you go?

A. I did not leave my father anymore.

Q. But you told us just a while ago that there were two sexual intercourses committed against you by the accused, when did the second one occur?

A. He said that he only deficated [*sic*].

Q. After he deficated [*sic*], what happened?

A. I was with my father sleeping already.

Q. So how did the second sexual intercourse occur since you were with your father?

A. I do not know already about the second one.

Q. Now, I am asking you, tell the truth, how many times did the accused have sexual intercourse with you?

A. Only once.

x x x x x x x x x

Q. Are you sure that it was the accused who allegedly molested you or had sexual intercourse with you that evening?

A. Yes, sir.

Q. A while ago you said that you went down your house and went to your father after the sexual intercourse was committed against you, do you remember that?

A. Yes, sir.

Q. Now, but you also told the court that your father discovered … you also told the court that after the sexual intercourse, your father arrived and the accused was about to jump and he was already inside the room, do you remember having said that?

A. Yes, sir.

Q. When your father arrived, you mean arrived inside the place where the rape was allegedly committed?

A. Yes, sir.

Q. He was inside the house?

A. Yes, sir.

Q. Why did you go down to your father when he was already inside the house?

A. When I went down my father was about to go home.

Q. Was it already after this alleged rape was committed against you?

A. Yes, sir.

Q. He was down or inside the house at that time when your father was about to go home?

A. He was still down.

Q. So after the rape was committed against you your father was down?

A. Yes, sir.

Q. And then you went down to him after the rape?

A. Yes, sir, I embraced my father.

Q. What was that occasion that you were talking about when you said he arrived?

Flores,[13] and *People of the Philippines v. Ronie Caboverde y Acas*,[14] the appellant posits that these "irreconcilable and unexplained contradictions" in AAA's testimony engender "serious doubts" as to her reliability and veracity, and cast reasonable doubt on his guilt.

THE COURT'S RULING

We **AFFIRM with modification** the lower courts' decisions.

The CA did not err on the credibility of AAA.

We are satisfied that AAA is a credible witness.

We agree with the CA that while AAA's testimony had inconsistencies, these inconsistencies do not at all affect her credibility. Inconsistencies are to be expected when a person

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A. When my father noticed that our floor was cricking [*sic*], he went to peep inside.

Q. And where was your father when he peeped?

A. He was about to enter inside our house.

Q. Where was he precisely, was he still on the ground?

A. He was about to enter the house.

Q. And when he was about to enter the house, what happened?

A. My father was about to chase that person but he did not pursue because he was already far away.

Q. And that was the time already when you went to your father?

A. Yes, sir.

Q. You said that the accused tried to insert his penis inside your vagina?

A. Yes, sir.

Q. Did he succeed in putting his penis inside your vagina?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. How many times did the penis of the accused enter your vagina, if you can remember?

A. Only once. [Emphasis ours.]

[13] No. 65647, August 30, 1988, 165 SCRA 71.

[14] No. 66646, April 15, 1988, 160 SCRA 550.

is recounting a traumatic experience.[15] Rape, a traumatic experience, is usually not remembered in detail.[16] This observation is more pronounced in the case of minors such as AAA who was merely ten years old at the time she testified. For this reason, we held in *People of the Philippines v. Domingo Sta. Ana y Tupig* that it is not proper to judge the actions of children who have undergone traumatic experience by norms of behavior expected from adults.[17]

Further, we have repeatedly ruled that this Court accords great respect to a trial court's assessment of witnesses as it had the advantage of actually examining their demeanor, hearing their responses and testing their credibility on the stand. We note the following declaration of the RTC:

> The court finds the testimony of the offended girl highly credible. The court has carefully observed the manner the girl testified and studied the contents of her testimony. It sees no reason to doubt the essential veracity of the offended girl's declarations in court, especially as they referred to the all-important issue of the accused's carnal knowledge of her.[18]

We agree with the CA that the RTC did not err in believing the testimony of AAA; we are satisfied that the RTC had undertaken precautions to ensure that AAA, a child-witness, would not perjure herself.[19] While mindful of our pronouncement

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[15] *People v. Sta. Ana*, G.R. Nos. 115657-59, June 26, 1998, 291 SCRA 188, cited in the *Brief for the Appellee*, CA *Rollo*, p. 94.

[16] *People v. Alipio*, G.R. No. 185285, October 5, 2009, 603 SCRA 40.

[17] *Supra* note 15.

[18] CA *rollo*, p. 24.

[19] The pertinent part of the TSN dated May 4, 2000 is as follows:

COURT

Swear in the witness. (Interpreter swears in the witness.)

[AAA], 10 years old, Grace IV pupil, residing at Catbalogan, Samar, after being duly sworn to, declare the following:

COURT (to the witness-minor)

You have nothing to fear here in this courtroom, do not be afraid of anybody, nobody will harm you here. What is important to us is you tell

in *People of the Philippines v. Avelino Gazmen, et al.*,[20] we, nonetheless take note that the judge who conducted the trial of the case, the Hon. Sinforiano A. Monsanto, also penned the decision of the court.

That said, the testimonies of rape victims who are young and immature deserve full credence, considering that no woman, especially a young one, would concoct a story of defloration, allow an examination of her private parts, and, thereafter, subject herself to a public trial, if she had not been motivated by the desire to obtain justice for the wrong committed against her.[21]

In these lights, we see no reason to disturb the ruling of the CA on AAA's credibility.

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the truth, we do not want to put in prison those who are innocent and at the same time we also would like to see to it that those who commit the crime must be punished. Do not be afraid of anybody.

WITNESS

Yes, sir.

x x x x x x x x x

COURT

Before you testified [*sic*], you raised your right hand and you promised to tell the truth, the whole truth and nothing but the whole truth. Now, we told you already that what is important is to tell the truth. If you do not tell the truth, is there anything bad that will happen?

A. It is not good to tell a lie.

Q. Do you know what will happen to you if you tell a lie?

A. I will go to prison.

Q. Now, it is important, besides going to prison [sic] and I would like also to tell you, that it is very important that you tell the truth because it is very bad that by telling a lie somebody will suffer, do you understand that?

A. Yes, sir.

[20] G.R. No. 110034, August 16, 1995, 247 SCRA 414. In this case, we held that while it is true that the judge who heard the witnesses testify is in a better position to observe the witnesses on the stand, it does not necessarily follow that a judge who was not present during the trial cannot render a valid decision since he can rely on the transcript of stenographic notes taken during the trial as basis of his decision.

[21] *People v. Salazar*, G.R. No. 181900, October 20, 2010.

The CA did not err on AAA's positive identification of the appellant as her rapist.

We are likewise satisfied with the CA's disposition of the appellant's contention that AAA could not have positively identified him as her rapist given the dim lighting of the room where the rape took place. The CA correctly observed that the appellant was already on top of AAA when she awakened; this proximity, coupled with the fact that AAA knew the appellant well as he was her neighbor, enabled AAA to positively identify him as her attacker. In addition, we note that AAA reiterated her positive identification of the appellant as her attacker on two occasions in open court:

FISCAL VILLARIN

Q. You said that you noticed that he was already on top of you, whom are you referring to?

A. Him (witness pointing to a person who answers to the name of Roel [*sic*] Belarde).[22]

Q. Are you sure that it was the accused who allegedly molested you or had sexual intercourse with you that evening?

A. Yes, sir.[23]

Ruptured hymen not an element of rape.

In *People of the Philippines v. Geronimo Borromeo y Marco*[24] we reiterated our oft-repeated doctrine that an intact hymen does not negate a finding that the victim had been raped. The CA correctly labelled as unmeritorious the appellant's contention that his RTC conviction was erroneous because the examining doctor (Dr. Flores) found AAA's hymen to be intact. Our ruling in *People of the Philippines v. Gorgonio Villarama*[25] finds particular application in this case:

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[22] TSN dated May 4, 2000, p. 12.

[23] *Id.* at 27.

[24] G.R. No. 150501, June 3, 2004, 430 SCRA 533.

[25] G.R. No. 139211, February 12, 2003, 397 SCRA 306.

In most cases of rape committed against young girls where total penetration of the victim's organ is improbable due to the small vaginal opening, it has been held that actual penetration of the victim's organ nor rupture of the hymen is not required.

The settled rule is that the mere introduction of the male organ into the *labia majora* of the female pudendum is sufficient to consummate rape. This rule renders inconsequential the appellant's contention that AAA was not raped since the confluent abrasion observed by Dr. Flores on her vagina was caused by a "hard and rough object" – not by something hard and "smooth" like the male penis as the appellant argued. What is significant in this case is that a credible witness – the victim herself – testified that the appellant succeeded in introducing his penis into her vagina:

FISCAL VILLARIN:

Q. How did the accused get on having sexual intercourse with you, how did he do it?

COURT

Q. What did he do which caused you pain?
A. He tried to insert his penis unto me.
Q. On what part of your body did he try to insert his penis?
A. Into my vagina.
Q. You said that you felt pain, where did you feel your pain?
A. At my lavia [*sic*].[26]
Q. You said that the accused tried to insert his penis inside your vagina?
A. Yes, sir.
Q. Did he succeed in putting his penis inside your vagina?
A. Yes, sir.
Q. Are [you] sure of that?
A. Yes, sir.
Q. How many times did the penis of the accused enter your vagina, if you can remember?
A. Only once.[27]

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[26] TSN dated May 4, 2000, p. 15.

[27] *Id.* at 30.

Failure of AAA's father to testify is of no moment.

The appellant insinuates that the rape charge against him is false simply because AAA's father failed to testify in support of his daughter's claim. We do not find this argument meritorious. As the CA correctly ruled, the matter of deciding whom to present as witness for the prosecution is not for the accused or for the trial court to decide, but is a prerogative given to the prosecutor.[28] What is significant is the existence of a credible testimony – the testimony of AAA – sufficient to convict the appellant. Courts are not precluded from rendering judgment based on the testimony of even a single witness.

We, likewise, agree with the CA and the RTC that the defense failed to impute a credible motive for AAA to falsely accuse the appellant of rape. As the RTC observed, had AAA's father actually wanted to get even with the appellant's father, there were ways of attaining that goal other than through the filing of a case that entailed subjecting AAA to shame and humiliation. It is unnatural for a parent to use his daughter as a tool of malice, especially if the consequence is to subject the child to embarrassment and lifelong stigma.[29] It is highly improbable, too, that a girl of tender years, one not yet exposed to the ways of the world, would impute a crime as serious as rape if the crime had not really been committed.[30]

In sum, we find that the prosecution successfully established the commission of rape under Article 266-A(1)(d) of the Revised Penal Code; rape is committed when a man has carnal knowledge of a woman who is under twelve (12) years of age. We are satisfied that the prosecution proved beyond reasonable doubt that in the evening of November 2, 1999, the appellant had carnal knowledge of AAA, who – having been born on January 19, 1990[31] – was only nine (9) years old at that time.

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[28] *People v. Gelin*, G.R. No. 135693, April 1, 2002, 379 SCRA 717.

[29] *People v. Ibarrientos*, 476 Phil. 493, 512 (2004).

[30] *People v. Salazar, supra* note 21.

[31] *Supra* notes 5, 6 and 7.

Furthermore, the appellant's defenses of **denial and alibi** cannot prevail over AAA's positive testimony that the appellant raped her that night. Denial and alibi are the weakest of all defenses because they are easy to concoct and fabricate.[32] To be believed, denial must be supported by a strong evidence of innocence; otherwise, it is regarded as a purely self-serving tale. Alibi, on the other hand, is *rejected when the prosecution sufficiently establishes the identity of the accused*.[33] The facts in this case do not present any exceptional circumstance warranting a deviation from these rules.

We, therefore, affirm the finding of guilt beyond reasonable doubt made by the RTC and the CA.

The Proper Penalty

The RTC and the CA correctly imposed the penalty of *reclusion perpetua* on the appellant. Articles 266-A and 266-B of the Revised Penal Code, which define and penalize rape, 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:*
>
> *x x x* *x x x* *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* *x x x* *x x x*
>
> *Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.*

The Proper Indemnity

We affirm the awards made by the lower courts of **civil indemnity** in the amount of ₱50,000.00 and **moral damages**

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[32] *People v. Ayade*, G.R. No. 188561, January 15, 2010, 610 SCRA 246.

[33] *People v. Trayco*, G.R. No. 171313, August 14, 2009, 596 SCRA 233.

in the amount of ₱50,000.00, which are amounts in accordance with the latest jurisprudence on rape. Civil indemnity is mandatory when rape is found to have been committed.[34] 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.[35]

However, we **modify the awards** made by the lower courts by ordering the appellant to pay AAA **exemplary damages** in the amount of ₱30,000.00. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as a deterrent against elders who abuse and corrupt the youth.[36]

WHEREFORE, premises considered, the March 31, 2006 Decision of the Court of Appeals in *CA-G.R. CR-H.C. No. 00117*, being in accordance with the law and the evidence, is hereby *AFFIRMED* with the *MODIFICATION* that appellant *RUEL VELARDE alias DOLOY BELARDE* is further ORDERED to pay AAA exemplary damages in the amount of ₱30,000.00.

SO ORDERED.

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

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[34] See *People v. Begino*, G.R. No. 181246, March 20, 2009, 582 SCRA 189.

[35] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511.

[36] See *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903.

SECOND DIVISION

[G.R. No. 185454. March 23, 2011]

STAR TWO (SPV-AMC), INC., *petitioner, vs.* **HOWARD KO, MIN MIN SEE KO, JIMMY ONG, and GRACE NG ONG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; FORMAL OFFER OF EVIDENCE IS REQUIRED; EXCEPTION; PRESENT IN CASE AT BAR. — Indeed, courts cannot consider evidence which has not been formally offered because parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified. This rule, however, admits of an exception, provided that the evidence has been identified by testimony duly recorded and that it has been incorporated in the records of the case. In this case, the subject pieces of evidence were presented in support of respondents' motion for reconsideration of the denial of their motion to dismiss. A hearing was set for the reception of their evidence, but petitioner failed to attend the same. The pieces of evidence were thus identified, marked in evidence, and incorporated in the records of the case. Clearly, the trial court correctly admitted and considered the evidence of respondents warranting the dismissal of their case.

2. CIVIL LAW; CONTRACTS; SURETYSHIP; CONSTRUED. — A contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee. The surety agreement is an accessory contract; and the surety becomes directly, primarily, and equally bound with the principal as the original promissor although the former possesses no direct or personal interest over the latter's obligations and does not receive any benefit therefrom.

APPEARANCES OF COUNSEL

Yap Ignalaga and Taparan Law Offices for petitioner.
Pizarras & Associates Law Offices for Howard Ko.
Maricel C. Caluag-Macarag for Min Min See Ko.

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 October 15, 2008 and Resolution[2] dated November 13, 2008 in CA-G.R. SP No. 101417.

The facts of the case, as found by the CA, are as follows:

Jianshe Motorcycle Industries Philippines Corporation (Jianshe) obtained various credit facilities or loan accommodations from Rizal Commercial Banking Corporation (RCBC) from 2003-2004 to finance its importation of motorcycles, motorcycle parts, motorcycle accessories, and other related goods. To secure the goods imported by Jianshe, RCBC required it to execute trust receipts over these goods. Moreover, to secure payment of all existing and future obligations of Jianshe to RCBC, respondents Howard Ko, Jimmy Ong, Min Min See Ko, and Grace Ng Ong executed a Comprehensive Surety Agreement[3] dated September 3, 2002, with a limited liability of ₱50 M.[4]

Despite demand, Jianshe failed to pay its obligations. RCBC thus filed a Complaint[5] for Specific Perfomance with Prayer for a Writ of Preliminary Attachment against Jianshe as principal

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[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Andres B. Reyes, Jr. and Sesinando E. Villon, concurring; *rollo*, pp. 29-55.

[2] *Id.* at 57.

[3] *Id.* at 59-60.

[4] *Id.* at 29-30.

[5] *Id.* at 63-76.

and respondents as sureties, before the Regional Trial Court (RTC) of Makati City on December 27, 2005. The case was raffled to Branch 132 and docketed as Civil Case No. 05-1146.[6]

In an Order[7] dated January 11, 2006, the RTC directed the issuance of a writ of preliminary attachment against all the properties of Jianshe and respondents as may be sufficient to satisfy RCBC's principal claim of ₱25,636,339.40 conditioned upon the filing of the required bond. The corresponding writ of preliminary attachment was thereafter issued.

On February 6, 2006, Howard Ko and Min Min See Ko filed a Motion to Discharge Preliminary Attachment[8] for having been improperly or irregularly issued. RCBC, however, opposed the motion.[9] On March 17, 2006, Howard Ko filed a Motion to Dismiss[10] on the ground that RCBC's claim had already been paid, waived, abandoned, or otherwise extinguished. Min Min See Ko adopted Howard Ko's motion.

On June 15, 2006, the RTC ordered the immediate discharge of the attachment issued against Howard Ko and Min Min See Ko, but denied Howard Ko's Motion to Dismiss.[11]

Unsatisfied, Howard Ko and RCBC filed their respective Motions for Reconsideration. Howard Ko likewise filed a Motion to Set Case for Hearing for Reception of Evidence.[12]

In an Order[13] dated December 13, 2006, the RTC granted Howard Ko's motion and accordingly dismissed the case against respondents, leaving Jianshe as the only defendant. In dismissing the case, the trial court stated that there was sufficient evidence

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[6] *Id.* at 29.

[7] *Id.* at 62.

[8] *Id.* at 103-112.

[9] *Id.* at 113-123.

[10] *Id.* at 137-145.

[11] *Id.* at 211-215.

[12] *Id.* at 248-257.

[13] *Id.* at 279-280.

to prove that Howard Ko paid an amount more than the limit provided under the Comprehensive Surety Agreement.[14]

Aggrieved by the dismissal of the case against respondents, RCBC filed a Motion for Partial Reconsideration.[15] It likewise filed a Manifestation/Substitution of Parties,[16] considering that it had sold, transferred, and assigned all its rights and interests in the present case to petitioner Star Two (SPV-AMC), Inc.

On August 31, 2007, the RTC denied RCBC's motion for reconsideration, but granted the inclusion of petitioner as plaintiff in substitution of RCBC.[17]

Petitioner thus elevated the matter to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.[18] On October 15, 2008, the CA rendered the assailed Decision[19] denying petitioner's petition. The CA also denied its motion for reconsideration on November 13, 2008. Hence, this petition raising the following errors:

THE HONORABLE COURT [OF] APPEALS GRAVELY ERRED IN DISMISSING THE PETITION AND AFFIRMING THE DECISION OF THE TRIAL COURT, CONSIDERING THAT:

1) THE TRIAL COURT ARBITRARILY AND WHIMSICALLY CONSIDERED AND RELIED ON DOCUMENTS WHICH WERE NOT DULY IDENTIFIED BY TESTIMONY OR OFFERED IN EVIDENCE;

2) IT HAS NOT BEEN ESTABLISHED THAT RESPONDENT HOWARD KO, AS SURETY OF JIANSHE, HAS PAID AMOUNTS OVER THE ₱50 MILLION CAP UNDER THE COMPREHENSIVE SURETY AGREEMENT; AND

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[14] *Id.* at 31.

[15] *Id.* at 281-301.

[16] *Id.* at 362-365.

[17] *Id.* at 366.

[18] *Id.* at 367-398.

[19] *Supra* note 1.

3) SUPPOSED PAYMENTS OF HOWARD KO, AS STATED IN THE DECISION OF THE TRIAL COURT, ONLY AMOUNT TO ₱46,539,134.42, WHICH IS STILL BELOW THE ₱50 MILLION CAP UNDER THE COMPREHENSIVE SURETY AGREEMENT.[20]

The petition is without merit.

At the outset, we settle the procedural question raised by petitioner on the admissibility of the documentary evidence presented by respondents in support of the dismissal of the case against them. It is petitioner's postulation that the trial court should not have relied on the documents presented by respondents as they were not formally offered in evidence.

We do not agree.

Indeed, courts cannot consider evidence which has not been formally offered because parties are required to inform the courts of the purpose of introducing their respective exhibits to assist the latter in ruling on their admissibility in case an objection thereto is made. Without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.[21]

This rule, however, admits of an exception, provided that the evidence has been identified by testimony duly recorded and that it has been incorporated in the records of the case.[22]

In this case, the subject pieces of evidence were presented in support of respondents' motion for reconsideration of the denial of their motion to dismiss. A hearing was set for the reception of their evidence, but petitioner failed to attend the same. The pieces of evidence were thus identified, marked in evidence, and incorporated in the records of the case. Clearly,

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[20] *Rollo*, p. 10.

[21] *Heirs of Roque F. Tabuena v. Land Bank of the Philippines*, G.R. No. 180557, September 26, 2008, 566 SCRA 557, 564.

[22] *Id.*; *Ramos v. Dizon*, G.R. No. 137247, August 7, 2006, 498 SCRA 17, 31; *Mato v. CA*, 320 Phil. 344, 350 (1995).

the trial court correctly admitted and considered the evidence of respondents warranting the dismissal of their case.

Now on the substantive aspect.

Respondents acted as sureties under the Comprehensive Surety Agreement to secure the obligations of Jianshe to RCBC. A contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee.[23] The surety agreement is an accessory contract; and the surety becomes directly, primarily, and equally bound with the principal as the original promissor although the former possesses no direct or personal interest over the latter's obligations and does not receive any benefit therefrom.[24]

Pursuant to Article 2054 of the Civil Code that "a guarantor [or surety] may bind himself for less, but not for more than the principal debtor, both as regards the amount and the onerous nature of the conditions," respondents limited their liability to ₱50 M, which is less than Jianshe's liability to RCBC. Howard Ko complied with his obligations and made payments to RCBC through the following modes:

First mode of payment: certificates of time deposit of Howard Ko and Howard Ko and/or Harry Ko which were admitted by RCBC as applied for the payment of Jianshe's obligation.

Second mode of payment: official receipts and trust receipt debit advices which were debited from Howard Ko's current account (1-155-13110-1) and savings account (1-155-30805-9) and applied as payment to Jianshe's obligation.

Third mode of payment: certificates of time deposit of Howard Ko which were withdrawn upon maturity and deposited to Jianshe's RCBC Savings Account No. 1-166-30810-6. Thereafter, the said amounts were debited by RCBC as payment to several trust receipts issued to [Jianshe].

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[23] *Id.* at 369.

[24] *Intra-Strata Assurance Corporation v. Republic*, G.R. No. 156571, July 9, 2008, 557 SCRA 363, 369.

Fourth mode of payment: certificates of time deposit of Harry Ko and Liu Guo Xuan which were admitted as payment by RCBC. The proceeds of these CTDs were borrowed by Howard Ko from Harry Ko and Liu Guo Xuan to be applied as payment for Jianshe's obligations.[25]

These modes of payment were adequately explained by respondents and supported by documentary evidence. We quote with approval the CA's observations in this wise:

The evidence in favor of the [respondents] consisted of no less than RCBC documents showing that said bank debited from their various accounts the amounts which Jianshe owed RCBC under the trust receipts. In the subject petition, the petitioner has not claimed that these evidence were fabricated. It cannot say that, if present at the hearing or, if there would be another hearing, it could prove that the RCBC documents were false. It cannot because those were genuine RCBC documents.

All it can say is that these were payments for "a different credit line" or different "trust receipts" secured by the Comprehensive Surety Agreement which remains unpaid.

Petitioner, however, could not even allege the specific "different credit line" or other trust receipt. In the absence thereof, it could only mean that the payments were for the Jianshe accounts.

Granting *arguendo* that the receipts and trust debit advices were for "a different credit line" or different "trust receipts," it is immaterial as the [respondents], as sureties, have already exceeded their liability cap of ₱50 M.

Petitioner further argues that [respondent] Howard Ko's claim of overpayment is incredible because he would not have paid the alleged amount of ₱89,656,002.67 as surety when his liability as such was only ₱50 M. In this regard, suffice it to state that not all payments were direct as some were debited by RCBC from the accounts of [Howard Ko]. So, he would not have known of the amounts he had paid in favor of Jianshe at the time they were debited by RCBC.[26]

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[25] *Rollo,* pp. 42-43.

[26] *Rollo,* p. 50.

The Court notes that the pieces of evidence presented by respondents were documents, such as official receipts, trust debit advices, and passbooks, issued by no less than petitioner itself. Payments were made by respondents through the active participation of RCBC, primarily by debiting the subject amounts from respondents' accounts with the bank. Admittedly, it was Jianshe, as the principal, which owed RCBC. Nowhere in petitioner's pleadings was it claimed that respondents also owed the bank aside from their obligation as surety to secure the principal obligation of Jianshe. Undoubtedly, the debited amounts from Howard Ko's accounts were made to satisfy his obligation as surety. Petitioner cannot now claim that the payments were made by Jianshe as principal and not by respondents as sureties simply because the receipts were issued in the name of Jianshe. As aptly observed by the CA, the issuance of the receipts in the name of Jianshe was done only to indicate that it was the principal obligor. The issuance of the receipts does not erase the fact that various amounts were debited from the accounts of Howard Ko, and certificates of time deposit in the name of Howard Ko were applied as payment for Jianshe's obligations.

In view of the foregoing, the CA did not err in sustaining the dismissal of the case against respondents as the claim or demand set forth in the complaint has been paid or otherwise extinguished.

WHEREFORE, premises considered, the petition is hereby *DENIED* for lack of merit. The Court of Appeals Decision dated October 15, 2008 and Resolution dated November 13, 2008 in CA-G.R. SP No. 101417 are *AFFIRMED.*

SO ORDERED.

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

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[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Raffle dated September 15, 2010.

THIRD DIVISION

[G.R. No. 189821. March 23, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONIO OTOS *alias* ANTONIO OMOS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; WHERE THE VICTIM IS A CHILD, THE ABSENCE OF MEDICAL EVIDENCE OF PENETRATION DOES NOT NEGATE THE COMMISSION OF RAPE; THE VICTIM'S TESTIMONY ALONE, IF CREDIBLE, IS SUFFICIENT TO CONVICT.— Where the victim is a child, the absence of medical evidence of penetration does not negate the commission of rape. The presence of hymenal lacerations is not a required element in the crime of rape. What is essential is evidence of penetration, however slight, of the *labia minora*, which circumstance was proven beyond doubt by the testimony of AAA. Besides, the prime consideration in the prosecution of rape is the victim's testimony, not necessarily the medical findings; a medical examination of the victim is not indispensable in a prosecution for rape. The victim's testimony alone, if credible, is sufficient to convict. AAA was categorical and straightforward in narrating the sordid details of how the appellant ravished her.

2. ID.; SIMPLE RAPE; PROPER PENALTY; CIVIL LIABILITY OF ACCUSED-APPELLANT.— We find that the CA correctly downgraded the appellant's offense to simple rape due to the prosecution's failure to present AAA's birth certificate or other authentic document (such as a baptismal certificate), and to make a positive and unequivocal manifestation that AAA was indeed five years old at the time of the incident. Accordingly, the appellant can only be sentenced to suffer the penalty of *reclusion perpetua.* In line with prevailing jurisprudence, the award of ₱25,000.00 as exemplary damages must be increased to ₱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 resolve the appeal filed by appellant Antonio Otos[1] from the February 25, 2009 Decision of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 00393.[2]

THE FACTUAL ANTECEDENTS

On October 10, 2000, the appellant was charged[3] in the Regional Trial Court *(RTC)*, Branch 2, Tagum City, Davao del Norte,[4] with multiple rape[5] committed against his five-year old stepdaughter AAA[6] on June 24, 2000. The appellant pleaded not guilty on arraignment. AAA testified on the details of the crime in the trial that followed.

The evidence shows that in the evening of June 14, 2000, the appellant brought AAA to the cornfield in their farm. He

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[1] *Alias* "Antonio Omos."

[2] Decision penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybañez of the Twenty-First Division of the Court of Appeals; *rollo*, pp. 3-17.

[3] The accusatory portion of the Information reads:

That on or about June 24, 2000 and subsequently thereafter, in the Municipality of New Corella, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-name[d] accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], 5 years old, his [stepdaughter], for several times, against her will.

CONTRARY TO LAW. (CA *rollo*, p. 8.)

[4] Docketed as Criminal Case No. 12331.

[5] See REVISED PENAL CODE, Article 335, as amended by par. (2), Article 266-A and Article 266-B of Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, which became effective on October 22, 1997.

[6] 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.

laid the victim down, took off her panty, and inserted his penis into her vagina.[7] AAA felt extreme pain. Thereafter, he went home, threatening AAA not to tell her mother about the incident or he would kill her.[8] AAA testified that after June 14, 2000, the appellant raped her "many" times. AAA suffered stomach ache and felt pain whenever she urinated. When the appellant went away to sell bananas, AAA told her mother, BBB, about the incidents.[9] BBB got mad at the appellant; she and AAA left the house thereafter. The medical examination revealed that AAA had an "inflamed *labia minora* with multiple abrasions" and that she suffered from a urinary tract infection.[10]

The appellant denied the accusations against him,[11] claiming that BBB fabricated the charge out of anger because he had struck her and ejected her from the house.[12]

THE RTC RULING

In its November 29, 2005 Decision,[13] the RTC found the appellant guilty of qualified rape. It gave credence to the candid testimony of AAA, who was only six years old when she testified, and rejected the appellant's argument that there was no medical evidence that his penis entered AAA's vagina. It sentenced the appellant to suffer the penalty of death. It also ordered the appellant to pay AAA ₱100,000.00 as civil indemnity and to pay the costs.

THE CA RULING

On intermediate appellate review, the CA affirmed the RTC's appreciation of AAA's clear, straightforward and spontaneous testimony pointing to the appellant as her rapist. In rejecting

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[7] TSN, December 11, 2001, pp. 4-5.

[8] *Id.* at 5-6.

[9] *Id.* at 6-7.

[10] TSN, February 21, 2003, p. 5.

[11] TSN, February 15, 2005, p. 10.

[12] *Id.* at 14.

[13] CA *rollo*, pp. 8-18.

the appellant's argument that AAA was only suffering from urinary tract infection caused by poor hygiene or fingernail scratches, the appellate court noted that the medical findings of "inflamed *labia minora* with multiple abrasions" were consistent with AAA's allegation of rape.

The CA found that the appellant cannot be sentenced to death because there was no independent evidence to prove that AAA was below 7 years old. It also noted that the relationship of the appellant to AAA as the latter's stepfather was incorrectly alleged in the information; both AAA and the appellant testified that the latter was merely the common-law spouse of BBB. Thus, the CA downgraded the appellant's offense to simple rape and sentenced him to suffer the penalty of *reclusion perpetua*. It ordered the appellant to indemnify AAA ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity, and ₱25,000.00 as exemplary damages in view of the minority of the victim.

From the CA, the case is now with us for our final review.

OUR RULING

We affirm the appellant's conviction.

We see no reason to disturb the findings of the RTC, as affirmed by the CA. Where the victim is a child, the absence of medical evidence of penetration does not negate the commission of rape. The presence of hymenal lacerations is not a required element in the crime of rape.[14] What is essential is evidence of penetration, however slight, of the *labia minora*, which circumstance was proven beyond doubt by the testimony of AAA.[15] Besides, the prime consideration in the prosecution of rape is the victim's testimony, not necessarily the medical findings; a medical examination of the victim is not indispensable in a

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[14] *People v. Dimanawa*, G.R. No. 184600, March 9, 2010; and *People v. Resurreccion*, G.R. No. 185389, July 7, 2009, 592 SCRA 269, 281.

[15] *People v. Gragasin*, G.R. No. 186496, August 25, 2009, 597 SCRA 214, 229; and *People v. Codilan*, G.R. No. 177144, July 23, 2008, 559 SCRA 623, 634.

prosecution for rape. The victim's testimony alone, if credible, is sufficient to convict.[16] AAA was categorical and straightforward in narrating the sordid details of how the appellant ravished her.

We find that the CA correctly downgraded the appellant's offense to simple rape due to the prosecution's failure to present AAA's birth certificate or other authentic document (such as a baptismal certificate), and to make a positive and unequivocal manifestation that AAA was indeed five years old at the time of the incident.[17] Accordingly, the appellant can only be sentenced to suffer the penalty of *reclusion perpetua.* In line with prevailing jurisprudence,[18] the award of ₱25,000.00 as exemplary damages must be increased to ₱30,000.00.

WHEREFORE, the February 25, 2009 decision of the Court of Appeals in CA-G.R. CR-HC No. 00393 is hereby *AFFIRMED* with *MODIFICATION*. Appellant Antonio Otos *alias* Antonio Omos is found guilty beyond reasonable doubt of Simple Rape and sentenced to suffer the penalty of *reclusion perpetua.* He is also ordered to pay AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

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[16] *People v. Cadap*, G.R. No. 190633, July 5, 2010; *People v. Llanas, Jr.*, G.R. No. 190616, June 29, 2010; *People v. Barberos*, G.R. No. 187494, December 23, 2009, 609 SCRA 381, 399; and *People v. Araojo*, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 308-309.

[17] See *People v. Rullepa*, G.R. No. 131516, March 5, 2003, 398 SCRA 567; and *People v. Villarama*, G.R. No. 139211, February 12, 2003, 397 SCRA 306.

[18] *People v. Aguilar*, G.R. No. 185206, August 25, 2010; and *People v. Macapanas*, G.R. No. 187049, May 4, 2010.

THIRD DIVISION

[G.R. No. 190001. March 23, 2011]

GENUINO ICE COMPANY, INC., HECTOR S. GENUINO and EDGAR A. CARRIAGA, *petitioners, vs.* **ERIC Y. LAVA and EDDIE BOY SODELA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; REQUISITES FOR VALIDITY THEREOF.— Under Article 283 of the Labor Code, there are three (3) basic requisites for a valid retrenchment, namely: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (1/2) month pay for every year of service, whichever is higher.

2. REMEDIAL LAW; EVIDENCE; ABSENT ANY ATTENDANT GRAVE ABUSE OF DISCRETION, THE FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND COURT OF APPEALS ARE ENTITLED NOT ONLY TO RESPECT BUT TO FINAL RECOGNITION.— We see no reason to reverse the NLRC and CA findings that no documentary evidence exists in the records to substantiate the claimed business losses; in fact, the petitioners also failed to show its financial conditions prior to and at the time GICI enforced its retrenchment program. In the absence of any attendant grave abuse of discretion, these findings are entitled not only to respect but to our final recognition in this appellate review.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO AN AWARD OF FULL BACKWAGES AND SEPARATION PAY IN LIEU OF REINSTATEMENT.— The CA was also correct in affirming the

NLRC's award of full backwages and separation pay in lieu of reinstatement. In *FF Marine Corporation v. NLRC,* we ruled that an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and to other established employment privileges, and to his full backwages. In the event, reinstatement is no longer feasible, the employer must pay him his separation pay. In the present case, the respondents were illegally dismissed as the employer failed to prove that their dismissal was for a duly authorized cause. The CA was thus correct in awarding them full backwages and separation pay in lieu of reinstatement since the positions the respondents formerly held no longer exist.

4. ID.; ID.; ID.; ID.; COMPUTATION OF BACK WAGES AND SEPARATION PAY.— We must however modify the CA decision to reflect the correct monetary award due to the respondents. The dispositive portion of the CA decision is incomplete as it failed to specify the separation pay to be awarded to the respondents as well as the reckoning point for the computation of the backwages. *FF Marine Corporation* tells us that the separation pay shall be computed at one (1) month pay (for those with one year or less of service), or one-half (1/2) month pay for every year of service (for those with more than a year of service), whichever is higher, a fraction of at least six (6) months being considered one whole year. The backwages shall be computed from the date of termination of service (September 30, 2005) until the finality of this Court's decision.

APPEARANCES OF COUNSEL

Rodolfo P. Orticio for petitioners.
Apolinario Lomabao, Jr. for respondents.

R E S O L U T I O N

BRION, *J.*:

Before us is the petition for review on *certiorari* filed by petitioners Genuino Ice Company, Inc. (*GICI*), Hector S. Genuino and Edgar A. Carriaga (collectively, petitioners) to challenge

the Court of Appeals (*CA*) Decision[1] and Resolution[2] in CA-G.R. SP No. 109429. These CA dispositions, in turn, affirmed the decision[3] and resolution[4] of the National Labor Relations Commission (*NLRC*) in NLRC CA No. 049477-06.

Petitioner GICI hired the respondents Eric Y. Lava and Eddie Boy Sodela *(respondents)* as ice plant machine operators. Sometime in March 2005,[5] due to the continuous decline of demand for ice products, the company was forced to shut down a part of its plant facilities and operations, and to implement a work rotation or reduction of workdays program affecting its seven (7) workers (including the present respondents).

On September 30, 2005, GICI, through its personal manager, issued a memorandum ordering the deletion of the respondents' names from the work schedule. The memorandum had the effect of banning the respondents from entering the company premises. The respondents reacted to this move by filing a complaint for illegal dismissal with the Labor Arbiter *(LA)*.

The petitioners alleged that the respondents were contractual employees who were under the control of VICAR General Contractor & Management Services *(VICAR)*, and L.C. Moreno General Contractor & Management Services *(MORENO)*. They argue that there is no employer-employee relationship between GICI and the respondents so that the latter have no cause of action against the petitioners. Also, the petitioners reason that due to the partial shut-down of the company, GICI was excused from complying with the 30-day notice or clearance requirement under the law.

The LA rejected the petitioner's argument and declared that the respondents adduced convincing evidence that they were the employees of GICI. The LA went on to say that VICAR

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[1] Dated August 24, 2009.

[2] Dated October 22, 2009.

[3] Dated August 14, 2008.

[4] Dated April 28, 2009.

[5] *Rollo,* p. 44.

was engaged in "management services" and merely supplied or processed workers for GICI, in a manner akin to the services of a labor-only contractor.[6] In this sense, the LA believed that GICI's liability in the illegal dismissal is solidary with that of VICAR and MORENO.

Notwithstanding the observation that an arrangement akin to labor-only contracting existed, the LA ruled that the respondents were validly retrenched. The LA reasoned out that due to the continuous decline in the sales output of the ice plant, the temporary shut down had become permanent and GICI had no alternative but to trim-down its manpower requirements.[7] However, the LA also found that GICI failed to comply with the procedural requirements for a valid retrenchment. Hence, he awarded the respondents their separation pay equivalent to one-half (1/2) month salary for every year of service in accordance with Art. 283 of the Labor Code.

On appeal, the NLRC reversed the LA's decision and found that the respondents were illegally dismissed from service.

The petitioners responded to the NLRC's adverse decision through a petition for *certiorari*[8] under Rule 65 before the CA. The CA saw no grave abuse of discretion in the NLRC's decision, observing that the petitioners failed to prove that GICI incurred or was about to incur financial losses leading to the retrenchment it undertook; no documentary evidence was in fact presented to support the retrenchment claim.[9] The CA also found no malice or bad faith on the part of Hector S. Genuino, president of Genuino Ice Company, Inc., to hold him solidarily liable with the corporation for illegal dismissal.

After the denial of their motion for reconsideration, the petitioners came to this Court through the present petition on

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[6] *Id.* at 88.

[7] *Id.* at 89.

[8] Docketed as CA-G.R. SP No. 109429.

[9] *Rollo,* p. 144.

the sole issue of whether there had been a valid retrenchment (and hence, a valid termination of the respondents' service).

THE COURT'S RULING

We dismiss the petition for lack of merit.

Under Article 283 of the Labor Code, there are three (3) basic requisites for a valid retrenchment, namely: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (1/2) month pay for every year of service, whichever is higher.

We see no reason to reverse the NLRC and CA findings that no documentary evidence exists in the records to substantiate the claimed business losses; in fact, the petitioners also failed to show its financial conditions prior to and at the time GICI enforced its retrenchment program. In the absence of any attendant grave abuse of discretion, these findings are entitled not only to respect but to our final recognition in this appellate review.

The CA was also correct in affirming the NLRC's award of full backwages and separation pay in lieu of reinstatement. In *FF Marine Corporation v. NLRC*,[10] we ruled that an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and to other established employment privileges, and to his full backwages. In the event, reinstatement is no longer feasible, the employer must pay him his separation pay.

In the present case, the respondents were illegally dismissed as the employer failed to prove that their dismissal was for a duly authorized cause. The CA was thus correct in awarding them full backwages and separation pay in lieu of reinstatement since the positions the respondents formerly held no longer exist.

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[10] *FF Marine Corporation v. NLRC,* G.R. No. 152039, April 8, 2005, 455 SCRA 155.

We must however modify the CA decision to reflect the correct monetary award due to the respondents. The dispositive portion of the CA decision is incomplete as it failed to specify the separation pay to be awarded to the respondents as well as the reckoning point for the computation of the backwages. *FF Marine Corporation*[11] tells us that the separation pay shall be computed at one (1) month pay (for those with one year or less of service), or one-half (1/2) month pay for every year of service (for those with more than a year of service), whichever is higher, a fraction of at least six (6) months being considered one whole year.[12] The backwages shall be computed from the date of termination of service (September 30, 2005) until the finality of this Court's decision.

WHEREFORE, we hereby *DISMISS* the petition for lack of merit. The August 24, 2009 Decision and the October 22, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 109429 affirming the ruling of the NLRC in NLRC CA No. 049477-06 are hereby *AFFIRMED*, with *MODIFICATION* that Eric Lava shall be awarded full backwages from September 30, 2005 until the finality of this Court's Decision. Separation pay in lieu of reinstatement shall be computed at 1 month pay for every year of service, with years of service reckoned from the respondents' first day of employment up to the finality of this Decision. Costs against the petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Velasco, Jr.,[*] *Bersamin, Villarama, Jr.,*[**] and *Sereno, JJ.,* concur.

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[11] *Id.*

[12] Article 283, Labor Code.

* Additional member per Raffle dated March 7, 2011.

** No Part; *Ponente* of the assailed CA Decision and Resolution.

SECOND DIVISION

[G.R. No. 192416. March 23, 2011]

GRANDTEQ INDUSTRIAL STEEL PRODUCTS, INC., ABELARDO GONZALES,[1] **RONALD A. DE LEON,** [2] **NOEL AGUIRRE, FELIX ARPIA, and NICK EUGENIO,** *petitioners, vs.* **ANNALIZA M. ESTRELLA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITIONS FOR REVIEW; PURELY FACTUAL QUESTIONS ARE NOT PASSED UPON THEREIN; EXCEPTIONS; PRESENT.— At the outset, we stress that these issues involve questions of fact, the determination of which entails an evaluation of the evidence on record. As a general rule, purely factual questions are not passed upon in petitions for review under Rule 45, for this Court does not try facts but merely relies on the expert findings of labor tribunals whose statutory function is to determine the facts. In the present case, however, in view of the conflicting factual findings of the LA and the CA on one hand, and the NLRC on the other, the Court is constrained to resolve the factual question at hand.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; INSUBORDINATION AS A JUST CAUSE FOR DISMISSAL, REQUISITES; NOT PRESENT.— Insubordination, as a just cause for the dismissal of an employee, necessitates the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. The facts of the case do not show the presence of the second requisite. The failure to return the vehicle and the Purchase/Assignment of Car Agreement, from which Grandteq derives its claim of ownership over the car, had no relation at all to the discharge of respondent's duties as a sales engineer.

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[1] Also known as Abelardo Gonzalez in other documents.

[2] Also known as Ronaldo de Leon in other documents.

3. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; THE EMPLOYEE CONCERNED MUST HOLD A POSITION OF TRUST AND CONFIDENCE, WHERE GREATER TRUST IS PLACED BY MANAGEMENT AND FROM WHOM GREATER FIDELITY TO DUTY IS CORRESPONDINGLY EXPECTED.— There is likewise no basis for a finding of legitimate loss of confidence because Grandteq failed to show that Estrella held a position of trust and confidence. Firm is the rule that loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.

4. ID.; ID.; ID.; GROSS NEGLIGENCE; SINGLE OR ISOLATED ACT OF NEGLIGENCE DOES NOT CONSTITUTE A JUST CAUSE FOR THE DISMISSAL OF AN EMPLOYEE.— Gross negligence connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending on the circumstances. The single or isolated act of negligence does not constitute a just cause for the dismissal of an employee. We find no gross and habitual neglect in this case.

5. ID.; ID.; ID.; THE BURDEN RESTS UPON THE EMPLOYER TO SHOW THAT THE DISMISSAL OF AN EMPLOYEE IS FOR JUST CAUSE AND FAILURE TO DISCHARGE THIS ONUS WOULD MEAN THAT THE DISMISSAL IS NOT JUSTIFIED.— We must stress anew that, in termination cases, the burden rests upon the employer to show that the dismissal of an employee is for just cause, and failure to do so would mean that the dismissal is not justified. Failure to discharge that burden would mean that the dismissal is not justified and, therefore, illegal. Grandteq miserably failed to discharge this onus, and Estrella's termination from employment was, thus, illegal.

6. ID.; ID.; ID.; ABSENT MALICE OR BAD FAITH, THE LIABILITY OF THE CORPORATE DIRECTORS AND OFFICERS FOR THE EMPLOYEE'S ILLEGAL DISMISSAL IS ONLY JOINT, NOT SOLIDARY.— There is solidary liability when the obligation expressly so states, when the law so provides, or *when the nature of the obligation so requires*. In *MAM Realty*

> *Development Corporation v. NLRC,* the solidary liability of corporate officers in labor disputes was discussed in this wise: A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases: 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; x x x In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the **termination of employment of employees** done with **malice** or in **bad faith**. From the decisions of the LA, the NLRC, and the CA, there is no indication that Estrella's dismissal was effected with malice or bad faith on the part of Grandteq's officers. Their liability for Estrella's illegal dismissal, the consequential monetary award arising from such dismissal and the other money claims awarded in the LA's decision, as correctly affirmed by the CA, could thus only be joint, not solidary. This pronouncement does not extend to Estrella's claims for commissions, allowances, and incentives, as the same are still subject to the LA's scrutiny.

APPEARANCES OF COUNSEL

Law Firm of Axel V. Gonzalez & Associates for petitioners.
Capoquian & Nueva Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision[3] and the Resolution[4] of the Court of Appeals (CA), respectively dated November 26, 2009 and May 17, 2010.

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[3] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring; *rollo*, pp. 39-56.

[4] *Id.* at 57.

The Facts

Petitioner Grandteq Industrial Steel Products, Inc. (Grandteq), a domestic corporation engaged in the sale and distribution of welding electrodes, alloy steels, aluminum and copper alloys,[5] hired respondent Annaliza Estrella (Estrella) on November 15, 2001, as a sales engineer.[6]

Abelardo M. Gonzales (Gonzales), Ronald A. de Leon (De Leon), Noel Aguirre (Aguirre), Felix Arpia (Arpia), and Nick Eugenio (Eugenio) are officers of Grandteq.[7]

Sometime in January 2004, Grandteq and Estrella entered into a Purchase/Assignment of Car Agreement,[8] whereby the former undertook to purchase a car for Estrella, who would in turn refund the purchase price to Grandteq in 100 monthly installments. The agreement likewise stated that the "company shall retain the ownership of the car until the car loan is fully paid." To complement the terms of the agreement, Estrella executed a Promissory Note.[9]

When Estrella defaulted in her payments, Grandteq instructed her on September 15, 2004 to leave the car in the office premises.[10] Estrella failed to abide by the company's directive;[11] hence, on September 18, 2004, Grandteq sent her another memorandum requiring her to explain her "insubordination."[12]

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[5] *Supra* note 3, at 40.

[6] *Rollo*, p. 311.

[7] *Id.* at 13.

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

[9] Executed by Estrella on January 26, 2004, but notarized only on September 8, 2004; *id.* at 63.

[10] Grandteq's instruction for Estrella to leave the car was relayed to the company's security guard, Ramil P. Raga, as specified in the incident report submitted to Grandteq Administration Office; *id.* at 65.

[11] Ramil P. Raga's incident report; *id.*

[12] *Id.* at 67.

In her reply to the memorandum, Estrella asserted that she had already paid the ₱50,000.00 downpayment for the vehicle, and that Grandteq had no valid cause to demand its surrender.[13]

Estrella also had claims against the company. On September 17, 2004, she filed a complaint for recovery of sales commissions, allowances, and other benefits before the Labor Arbiter (LA).[14] The complaint alleged that Grandteq refused to release her sales commissions and incentives.[15] She submitted a computation of such claims to the LA on October 21, 2004.[16]

Meanwhile, on September 20, 2004, Estrella filed an application for leave of absence, and subsequently, submitted a medical certificate recommending that she rest for three (3) weeks. Grandteq denied her application; nonetheless, she went on leave of absence effective September 22, 2004 until October 14, 2004.[17]

On October 1, 2004, Estrella tried to withdraw her salary for the period September 15 to 30, 2004 from an Automated Teller Machine. To her dismay, she discovered that her salary was not remitted by Grandteq.[18] Thus, on October 4, 2004, she amended her complaint to include nonpayment of salary. She likewise imputed illegal deduction of expanded withholding tax against Grandteq's officers.[19]

On October 15, 2004, Estrella went to the office of Grandteq to report for work, but the security guard refused her entry, allegedly upon the behest of Grandteq's vice-president, De Leon. [20] Aggrieved, respondent again amended her complaint

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[13] *Id.* at 319-320.

[14] *Id.* at 66.

[15] Estrella's position paper and affidavit; *id.* at 300-310.

[16] *Id.* at 131-135.

[17] *Id.* at 322-323.

[18] *Supra* note 15, at 309.

[19] *Rollo,* p. 70.

[20] *Supra* note 15, at 310.

to include illegal dismissal as one of her causes of action. She also demanded for the payment of moral damages and attorney's fees.[21]

Traversing the complaint, Grandteq averred that Estrella was validly dismissed because she abandoned her job when she did not report for work for three weeks despite the disapproval of her leave application; that she committed insubordination when she failed to obey an official order directing her to return a company vehicle; that she violated the confidence and trust reposed in her by the company when she negotiated in her personal capacity with a client, Philex Mining Corporation, at the time when she was allegedly sick; and that she failed to attend the administrative hearing initiated by the company on October 29, 2004; thus, Grandteq deemed her to have waived her right to be heard. Estrella was furnished with a Notice of Termination[22] on November 12, 2004, indicating that she was being dismissed for gross and habitual neglect of duty and fraud or willful breach of trust. Grandteq denied any outstanding sales commissions or incentives due Estrella.[23]

The LA[24] ruled in favor of Estrella and held that Grandteq had no justifiable cause to terminate her employment. Abandonment could not be inferred from her absence sans any overt act showing that she did not want to work anymore. Besides, she went on sick leave with a prior notice to Grandteq. The immediate filing of a complaint for illegal dismissal also negated a finding of abandonment.

Lastly, the LA decreed that the notice of termination served to Estrella on November 12, 2004 was evidently a mere afterthought to cast a semblance of validity to her termination. As shown in the notice, as early as September 22, 2004, Grandteq

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[21] *Rollo,* p. 71.

[22] *Id.* at 337-338.

[23] As culled from Grandteq's position paper and reply to Estrella's position paper; *id.* at 324-331, 360-369.

[24] Labor Arbiter Enrique Flores, Jr.

already decided to terminate her services even before she could present her side and refute the charges against her.

Estrella's money claims were granted, but no specific computation was made as to her claim for sales commissions and incentives. The decretal portion of the LA's decision[25] reads:

> WHEREFORE, the foregoing considered, judgment is hereby rendered declaring [respondent] Annaliza M. Estrella to have been illegally dismissed. [Petitioners] are ordered to reinstate [respondent] to her former position without loss of seniority rights and other benefits and to her full backwages from the time her compensation was withheld up to the time of her actual reinstatement. Likewise[, petitioner] Grandteq Industrial Steel Products[,] Inc. is ordered to pay the monetary awards pursuant to the computation of the Computation Unit of this Commission forming part of the records of this case, as follows:
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> | | | | |
> |---|---|---|---|
> | Basic Wage | ₱ 6,000.00 | | |
> | Allowance | 5,000.00 | | |
> | | ₱ 11,000.00 | | |
> | Backwages: 9/22/04 – 8/30/06 | | | |
> | ₱11,000 x 23.30 mos. | | 256,300.00 | |
> | 13th Month Pay | | | |
> | ½ of ₱256,300 | | 21,358.33 | |
> | SILP: ₱11,000/26 x 5/12 x 23.30.mos. | | 4,107.37 | |
> | | | | 281,765.71 |
> | Moral Damages | | 10,000.00 | |
> | Exemplary Damages | | 10,000.00 | 20,000.00 |
> | | | | 301,765.71 |
> | | | Atty.'s Fees | 28,176.57 |
> | | | TOTAL | ~~₱~~329,942.28 |
>
> Other claims are dismissed for lack of merit.
>
> SO ORDERED.[26]

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[25] *Rollo*, pp. 110-118.

[26] *Id.* at 117-118.

Both parties appealed to the National Labor Relations Commission (NLRC). Grandteq insisted that Estrella's dismissal was based on valid grounds and was implemented with due process.[27]

Estrella, on the other hand, claimed that her unpaid sales commissions, incentives, and salary for the period September 15 to 30, 2004 should be indicated in the dispositive portion of the LA's decision. She further prayed that Grandteq officers Gonzales, De Leon, Aguirre, Arpia, and Eugenio be declared solidarily liable with the company.[28]

The NLRC found that Grandteq had valid grounds to dismiss Estrella since her allegation of illegal termination was not sufficiently substantiated by the security guard's mere refusal to allow her entry into Grandteq's premises. Estrella's act of going on leave without Grandteq's approval constituted gross and habitual neglect of duty. The NLRC decreed that Grandteq merely failed to comply with procedural due process. Hence, the LA's decision was modified as follows:

> WHEREFORE, premises considered, the appeals are PARTLY GRANTED and the Decision dated July 31, 2006 is MODIFIED finding that respondents has (sic) valid ground to terminate complainant but for failure to comply with the standards of due process, respondents shall indemnify complainant in the amount of ₱20,000.00 and ordering that the records of this case be remanded to the office of origin for the disposition of complainant's money claims. The award of damages and attorney's fees were not raised on appeal, hence, STANDS.
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> SO ORDERED.[29]

Grandteq sought recourse with the CA through a petition for *certiorari*. On November 26, 2009, the CA reinstated the LA's Decision and ordered the case remanded to the LA for

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[27] *Id.* at 136-173.

[28] *Id.* at 119-135.

[29] *Id.* at 106.

the resolution of Estrella's claims for commissions and allowances, *viz.*:

> ACCORDINGLY, the assailed June 11, 2008 Resolution is SET ASIDE. The Labor Arbiter's July 31, 2006 Decision is REINSTATED with the directive that it must further hear and decide on petitioner's claims for sales commission, allowances and other benefits, car incentive, S.A. (Salesman Advance) commission, and other incentives" as specified in her second amended complaint.
>
> SO ORDERED.[30]

Petitioners interposed the present recourse when the CA denied[31] their motion for reconsideration.[32] They proffer this sole argument:

> THE HONORABLE COURT OF APPEALS HAD DECIDED A QUESTION OF SUBSTANCE IN PATENT DISREGARD OF THE PROVISIONS OF THE LABOR CODE, THE PHILIPPINE CONSTITUTION, THE RULES OF COURT, AND PERTINENT DECISIONS OF THIS HONORABLE SUPREME COURT.[33]

We deny the petition.

The petition hinges on the question of whether the acts imputed to Estrella constitute gross and habitual neglect of duty and loss of trust and confidence so as to provide just cause for her dismissal.

At the outset, we stress that these issues involve questions of fact, the determination of which entails an evaluation of the evidence on record. As a general rule, purely factual questions are not passed upon in petitions for review under Rule 45, for this Court does not try facts but merely relies on the expert findings of labor tribunals whose statutory function is to determine the facts. In the present case, however, in view of the conflicting

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[30] *Supra* note 3, at 55.

[31] *Supra* note 4.

[32] *Rollo*, pp. 472-480.

[33] *Id.* at 26.

factual findings of the LA and the CA on one hand, and the NLRC on the other, the Court is constrained to resolve the factual question at hand.[34]

A judicious review of the records discloses that Grandteq failed to prove that Estrella was justifiably dismissed due to lack of trust and confidence and gross and habitual neglect of duty.

Grandteq attributes loss of trust and confidence to the following acts: (1) insubordination when Estrella disobeyed a company directive ordering her to return a company vehicle; and (2) transacting, in her personal capacity, with a client of Grandteq.

Insubordination, as a just cause for the dismissal of an employee, necessitates the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[35] The facts of the case do not show the presence of the second requisite. The failure to return the vehicle and the Purchase/Assignment of Car Agreement, from which Grandteq derives its claim of ownership over the car, had no relation at all to the discharge of respondent's duties as a sales engineer.

There is likewise no basis for a finding of legitimate loss of confidence because Grandteq failed to show that Estrella held a position of trust and confidence. Firm is the rule that loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of trust and confidence, where greater trust is placed by management and from whom greater fidelity to duty is

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[34] *Gulf Air v. NLRC*, G.R. No. 159687, April 24, 2009, 586 SCRA 469, 477, citing *School of the Holy Spirit of Quezon City v. Taguiam*, G.R. No. 165565, July 14, 2008, 558 SCRA 223, 229; and *Ballao v. CA*, G.R. No. 162342, October 11, 2006, 504 SCRA 227, 234.

[35] *Gilles v. CA*, G.R. No. 149273, June 5, 2009, 588 SCRA 298, 313.

correspondingly expected.[36] The betrayal of this trust is the essence of the offense for which an employee is penalized.[37]

The job description of Estrella dated February 19, 2004, signed by her and by Grandteq's Vice President for Sales, Aguirre, and approved by De Leon, Vice-President for Administration, and Gonzales, President, confirms these findings:

- Should report to office 8:00 a.m. regularly from Monday to Saturday.
- Submit itinerary/report of client visits.
- Will receive allowance of ₱5,000.00 monthly.
- 100Km radius, excess would be reimburse[d] to the office. (Gasoline Allowance)
- Allowed North visit at least one week/month allocation of ₱800.00. (This covers board, transportation and meal allowance)
- Failure to report in office will be deducted to (sic) salary.[38]

Grandteq also imputes gross and habitual neglect of duty when Estrella was absent from work for three (3) weeks without an approved application for leave.

Gross negligence connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending on the circumstances. The single or isolated act of negligence does not constitute a just cause for the dismissal of an employee.[39]

We find no gross and habitual neglect in this case, and we quote with approval the following disquisition of the CA:

Grandteq does not dispute receiving Estrella's Medical Certificate and worse, proffers no explanation why it did not act on Estrella's application for sick leave. And even if, *arguendo*, such absences were established, still, they would merit at best mere suspension from

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[36] *Caingat v. NLRC*, 493 Phil. 299, 308 (2005).

[37] *Id.*

[38] *Rollo*, p. 262.

[39] *Genuino Ice Company, Inc. v. Magpantay*, G.R. No. 147790, June 27, 2006, 493 SCRA 195, 205-206.

service. The penalty of dismissal would be too harsh, considering that apparently, management had no complaint as regards Estrella's quality of work.

Moreso that it is settled that an employee's excusable and unavoidable absences does (sic) not amount to an abandonment of his employment. Abandonment, as a just and valid ground for termination, means the deliberate, unjustified refusal of an employee to resume his employment. For abandonment to be a valid ground for dismissal, two (2) elements must be proved: the intention of an employee to abandon, coupled with an overt act from which it may be inferred that the employee has no more intention to resume his work. The burden of proof is on the employer to show a clear and deliberate intent on the part of the employee to discontinue employment.

Here, these elements were not established. Estrella's actions after her absences negate an intent to abandon her job. Estrella's application for sick leave, the Medical Certificate she secured, and the letter from her lawyer that she was going on sick leave and more importantly, her going back to the company premises on October 15, 2004 – all indicate her intention to resume work after the lapse of the period of her leave of absence. It would be the height of inequity and injustice to declare Estrella to have abandoned her job on the mere pretext that her sick leave application was not approved. Especially so that prior to her dismissal, she had no record of infraction of company rules for which she could have been sanctioned by either warning, reprimand or suspension. Besides, her filing of an illegal dismissal case clearly contradicts Grandteq's allegation that she abandoned her job.[40]

We must stress anew that, in termination cases, the burden rests upon the employer to show that the dismissal of an employee is for just cause, and failure to do so would mean that the dismissal is not justified.[41]Failure to discharge that burden would

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[40] *Supra* note 3, at 52-53.

[41] *Lima Land, Inc., Leandro Javier, Sylvia Duque, and Premy Ann Beloy v. Marlyn Cuevas*, G.R. No. 169523, June 16, 2010, citing *Philippine Transmarine Carriers, Inc. v. Carilla*, G.R. No. 157975, June 26, 2007, 525 SCRA 586, 594.

mean that the dismissal is not justified and, therefore, illegal.[42] Grandteq miserably failed to discharge this onus, and Estrella's termination from employment was, thus, illegal.

Anent Estrella's claim for sales commissions and incentives, we agree with the uniform ruling of the NLRC and the CA that the matter needs the further assessment of the LA, thus:

> A review of the records shows that Estrella's money claims referred to unpaid sales commissions, allowances and other incentives. And while the Labor Arbiter held:
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> > "As regards the monetary claims, this office is in accord with the complainant that respondents have failed to establish by sufficient with evidence (sic) that complainant is not entitled thereto. This is based on the principle that each party must prove his affirmatives (sic) allegations. On the other hand, complainant has adduced evidence of her entitlement thereto. (Annex 'B' is 'B-10')."
>
> The court notes, however, that he failed to assess and weigh the parties' arguments on the matter. In fact, the Labor Arbiter's decision did not touch upon or rule on Grandteq's arguments and evidence against Estrella's claims. As a result, the NLRC and this Court have admittedly no basis in affirming his findings.
>
> Verily, the resolution of Estrella's entitlement to her commissions and allowances requires conscientious evaluation and assessment of the evidence adduced by the parties, which is best undertaken by the Labor Arbiter. It thus is just proper that said money claims be remanded to the Labor Arbiter for proper evaluation of the evidence of both parties.[43]

Lastly, we deem it imperative to resolve the question of whether Grandteq's officers, who are co-petitioners herein, are solidarily liable with the company.

There is solidary liability when the obligation expressly so states, when the law so provides, or *when the nature of the*

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[42] *Great Southern Maritime Services Corporation v. Acuña*, G.R. No. 140189, February 28, 2005, 452 SCRA 422, 437.

[43] *Supra* note 3, at 54-55.

obligation so requires.[44] In *MAM Realty Development Corporation v. NLRC*,[45] the solidary liability of corporate officers in labor disputes was discussed in this wise:

> A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:
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> 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;
>
> x x x x x x x x x
>
> In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the **termination of employment of employees** done with **malice** or in **bad faith**.

From the decisions of the LA, the NLRC, and the CA, there is no indication that Estrella's dismissal was effected with malice or bad faith on the part of Grandteq's officers. Their liability for Estrella's illegal dismissal, the consequential monetary award arising from such dismissal and the other money claims awarded in the LA's decision, as correctly affirmed by the CA, could thus only be joint, not solidary. This pronouncement does not extend to Estrella's claims for commissions, allowances, and incentives, as the same are still subject to the LA's scrutiny.

WHEREFORE, foregoing considered, the petition is hereby *DENIED*, and the November 26, 2009 Decision and the May 17, 2010 Resolution of the Court of Appeals are *AFFIRMED*.

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[44] *Querubin L. Alba and Rizalinda D. de Guzman v. Robert L. Yupangco*, G.R. No. 188233, June 29, 2010.

[45] 314 Phil. 838, 844-845 (1995), as cited in *Querubin L. Alba and Rizalinda D. de Guzman v. Robert L. Yupangco*; *id.*

SO ORDERED.

Carpio (Chairperson), Brion,[*] *Peralta,* and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 192789. March 23, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NGANO SUGAN, NGA BEN LATAM, FRANCING, GAGA LATAM, SALIGO KUYAN and KAMISON AKOY,** *accused,* **GAGA LATAM, SALIGO KUYAN and KAMISON AKOY,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL COMPLEX CRIME; ROBBERY WITH HOMICIDE; ELEMENTS, ESTABLISHED.— There is robbery with homicide when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery. In the present case, no doubt exists, based on the appellants' and their companions' actions that their overriding intention was to rob Fortunato's house. The following facts are established

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[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 975 dated March 21, 2011.

and undisputed: the armed men entered Fortunato's house and ordered its occupants to drop to the ground; they asked for the location of the money and other valuables; they took cash amounting to ₱10,000.00, personal belongings worth ₱5,000.00, and an air gun valued at ₱2,800.00.

2. ID.; ID.; ID.; CONSPIRACY IN THE COMMISSION OF ROBBERY WITH HOMICIDE, PRESENT.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused – before, during and after the commission of the crime – which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence of the offense; it is sufficient that at the time of its commission, the malefactors had the same purpose and were united in its execution. In the present case, the appellants and their companions clearly acted in conspiracy in committing the special complex crime charged. To recall, Gaga, Saligo, Ngano, Nga Ben and *alias* Francing entered Fortunato's house, while Kamison and Cosme acted as lookouts. While his companions were robbing the house, Ngano brought Nestor outside and shot him. Reggie rushed to the scene, but Kamison and Cosme prevented him from entering the house by pointing a knife and a gun at him, respectively. Thereafter, all the seven (7) armed men fled together. The foregoing circumstances prove beyond reasonable doubt that the appellants acted in concert to attain a common purpose. The evidence does not show that any of the appellants sought to avert the killing of Nestor. In *People of the Philippines v. Nonoy Ebet*, we ruled that once conspiracy is shown, the act of one is the act of all. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.

3. ID.; ID.; ID.; DEFENSES OF ALIBI AND DENIAL IN THE COMMISSION OF ROBBERY WITH HOMICIDE, NOT SHOWN BY CLEAR AND CONVINCING EVIDENCE.— As the lower courts did, we see no merit in the appellants' defenses of denial and alibi. Denial is a negative, self-serving evidence that cannot prevail over the positive and straightforward identification made by Fortunato, Thelma and

Reggie. Alibi, too, is generally viewed with suspicion because of its inherent weakness and unreliability. In the present case, the defense failed to demonstrate by clear and convincing evidence that the appellants were so far away from the scene of the crime that it was physically impossible for them to have been at the crime scene at the time of its commission.

4. ID.; ID.; ID.; THERE IS NO CRIME OF ROBBERY WITH HOMICIDE COMMITTED BY A BAND; THE ELEMENT OF BAND SHOULD BE CONSIDERED AS AN ORDINARY AGGRAVATING CIRCUMSTANCE.— We, however, point out that the lower courts found the appellants guilty of *robbery with homicide committed by a band*. This is an erroneous denomination of the crime committed, as there is no crime of robbery with homicide committed by a band. If robbery with homicide is committed by a band, the indictable offense would still be denominated as robbery with homicide under Article 294(1) of the Revised Penal Code. The element of band would be appreciated as an ordinary aggravating circumstance.

5. ID.; ID.; ID.; PROPER PENALTY.— Under Article 294(1) of the Revised Penal Code, the crime of robbery with homicide carries the penalty of *reclusion perpetua* to death. Considering the presence of the aggravating circumstance of commission by a band, the proper imposable penalty would have been death, conformably with Article 63, paragraph 1 of the Penal Code. In view, however, of the enactment on June 24, 2006 of Republic Act No. 9346 which prohibits the imposition of the death penalty in the Philippines, the lower courts correctly imposed on the appellants the penalty of *reclusion perpetua*.

6. ID.; ID.; ID.; CIVIL INDEMNITY.— We award ₱75,000.00 as moral damages to the victim's heirs to conform with recent jurisprudence. We further award ₱25,000.00 as temperate damages, in lieu of the proven burial expenses of a lesser amount. The existence of one aggravating circumstance also merits the grant of exemplary damages under Article 2230 of the New Civil Code. Pursuant to prevailing jurisprudence, we award ₱30,000.00 as exemplary damages to the victim's heirs.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the appeal from the April 27, 2010 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 00675-MIN. The CA affirmed the decision[2] of the Regional Trial Court (*RTC*), Branch 26, Surallah, South Cotabato, finding appellants Gaga Latam, Saligo Kuyan and Kamison Akoy guilty beyond reasonable doubt of robbery with homicide committed by a band,[3] and sentencing them to suffer the penalty of *reclusion perpetua*.

At around 6:45 p.m. of February 8, 1998, Gaga, Saligo, Ngano Sugan, Nga Ben Latam and one *alias* Francing, all armed with guns, entered Fortunato Delos Reyes' residence in Purok Roxas 1, Lamsugod, Surallah, South Cotabato, and declared a hold up. Kamison and Cosme Latam stayed outside and acted as lookouts.

Once inside, the armed men ordered Fortunato, his wife Thelma Delos Reyes, and their son Nestor Delos Reyes, to drop to the floor. The armed men inquired from them where the money and other valuables were hidden; thereafter, they took cash amounting to ₱10,000.00, personal belongings worth ₱5,000.00, and an air gun valued at ₱2,800.00. Ngano then brought Nestor outside the house, and shot him.[4]

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[1] Penned by Associate Justice Rodrigo F. Lim, Jr., and concurred in by Associate Justice Leoncia R. Dimagiba and Associate Justice Angelita A. Gacutan; *rollo*, pp. 3-18.

[2] Penned by Judge Roberto L. Ayco; CA *rollo*, pp. 31-47.

[3] Revised Penal Code, Article 294, par. 1:

ART. 294. *Robbery with violence against or intimidation of persons – Penalties.* – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

[4] TSN, October 9, 2001, pp. 3-7; and TSN, October 30, 2001, pp. 6-11.

Reggie Delos Reyes, another son of Fortunato and Thelma, ran to his parents' house when he heard the gunshot. When he arrived, Kamison and Cosme pointed a knife and a gun at him, respectively, and told him not to enter the house. Reggie then heard Nestor shout that he had been hit. Thereafter, all the seven (7) armed men left. Reggie rushed Nestor to the hospital, but the latter died due to multiple gunshot wounds.[5]

The prosecution charged the appellants and their companions with the special complex crime of robbery with homicide before the RTC.[6] Gaga, Saligo and Kamison all pleaded not guilty to the charge upon arraignment. Ngano, Nga Ben and *alias* Francing remain at large. Cosme died on July 23, 2000 while under detention.

The RTC, in its Decision of September 25, 2008, found the appellants guilty beyond reasonable doubt of robbery with homicide committed by a band, and sentenced them to suffer the penalty of *reclusion perpetua*. It also ordered them to pay the victim's heirs the amounts of ₱75,000.00 and ₱24,000.00 as civil indemnity and burial expenses, respectively; and ₱17,800.00 representing the value of the cash and other stolen items.

On appeal, the CA affirmed the RTC decision *in toto*. The CA held that Fortunato and Thelma positively identified the appellants as among the persons who robbed their house; Fortunato, in fact, saw Ngano shoot Nestor. Reggie corroborated their testimonies on material points.

The CA disregarded the appellants' defense of denial due to lack of corroboration. It, likewise, did not believe their alibi because they failed to prove that it was physically impossible for them to be at the crime scene.

We **deny** the appeal, but **modify** the designation of the offense and the amounts of the awarded indemnities.

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[5] TSN, September 30, 2003, pp. 10-16.

[6] Records, p. 1.

There is robbery with homicide when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[7]

In the present case, no doubt exists, based on the appellants' and their companions' actions that their overriding intention was to rob Fortunato's house. The following facts are established and undisputed: the armed men entered Fortunato's house and ordered its occupants to drop to the ground; they asked for the location of the money and other valuables; they took cash amounting to ₱10,000.00, personal belongings worth ₱5,000.00, and an air gun valued at ₱2,800.00.

While it was undisputed that only Ngano shot Nestor, the lower courts correctly found the appellants liable for robbery with homicide. Case law establishes that whenever homicide has been committed by reason of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of robbery with homicide although they did not take part in the homicide, unless it appears that they sought to prevent the killing.[8]

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused – before, during and after the commission of the crime – which indubitably point to and are indicative of a joint purpose,

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[7] See *People v. Dela Cruz*, G.R. No. 168173, 575 SCRA 412, 436.

[8] See *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 631.

concert of action and community of interest. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence of the offense; it is sufficient that at the time of its commission, the malefactors had the same purpose and were united in its execution.[9]

In the present case, the appellants and their companions clearly acted in conspiracy in committing the special complex crime charged. To recall, Gaga, Saligo, Ngano, Nga Ben and *alias* Francing entered Fortunato's house, while Kamison and Cosme acted as lookouts. While his companions were robbing the house, Ngano brought Nestor outside and shot him. Reggie rushed to the scene, but Kamison and Cosme prevented him from entering the house by pointing a knife and a gun at him, respectively. Thereafter, all the seven (7) armed men fled together.

The foregoing circumstances prove beyond reasonable doubt that the appellants acted in concert to attain a common purpose. The evidence does not show that any of the appellants sought to avert the killing of Nestor. In *People of the Philippines v. Nonoy Ebet*,[10] we ruled that once conspiracy is shown, the act of one is the act of all. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.

As the lower courts did, we see no merit in the appellants' defenses of denial and alibi. Denial is a negative, self-serving evidence that cannot prevail over the positive and straightforward identification made by Fortunato, Thelma and Reggie. Alibi, too, is generally viewed with suspicion because of its inherent weakness and unreliability. In the present case, the defense failed to demonstrate by clear and convincing evidence that the appellants were so far away from the scene of the crime that it was physically impossible for them to have been at the crime scene at the time of its commission.[11]

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[9] *People v. Musa*, G.R. No. 170472, July 3, 2009, 591 SCRA 619, 642.

[10] G.R. No. 181635, November 15, 2010.

[11] *Supra* note 9; see also *People v. Legaspi*, G.R. No. 117802, April 27, 2000, 331 SCRA 95, 113.

We, however, point out that the lower courts found the appellants guilty of *robbery with homicide committed by a band*. This is an erroneous denomination of the crime committed, as there is no crime of robbery with homicide committed by a band. If robbery with homicide is committed by a band, the indictable offense would still be denominated as robbery with homicide under Article 294(1) of the Revised Penal Code. The element of band would be appreciated as an ordinary aggravating circumstance.[12]

Under Article 294(1) of the Revised Penal Code, the crime of robbery with homicide carries the penalty of *reclusion perpetua* to death. Considering the presence of the aggravating circumstance of commission by a band, the proper imposable penalty would have been death, conformably with Article 63, paragraph 1 of the Penal Code. In view, however, of the enactment on June 24, 2006 of Republic Act No. 9346 which prohibits the imposition of the death penalty in the Philippines, the lower courts correctly imposed on the appellants the penalty of *reclusion perpetua*.

We award ₱75,000.00 as moral damages to the victim's heirs to conform with recent jurisprudence.[13] We further award ₱25,000.00 as temperate damages, in lieu of the proven burial expenses of a lesser amount.[14]

The existence of one aggravating circumstance also merits the grant of exemplary damages under Article 2230 of the New Civil Code. Pursuant to prevailing jurisprudence, we award ₱30,000.00 as exemplary damages to the victim's heirs.[15]

WHEREFORE, in light of all the foregoing, we *AFFIRM* the April 27, 2010 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00675-MIN, with the following *MODIFICATIONS*:

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[12] See *People v. Reyes*, G.R. No. 120642, July 2, 1999, 309 SCRA 622, 637.

[13] *People v. Baron*, G.R. No. 185209, June 28, 2010; see also *People v. Villanueva, Jr.*, G.R. No. 187152, July 22, 2009, 593 SCRA 523, 548.

[14] See *People v. De Leon*, G.R. No. 179943, June 26, 2009, 591 SCRA 178, 203.

[15] *People v. Baron*, *supra* note 13.

(1) the appellants are found guilty beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE;

(2) the appellants are ORDERED to PAY, jointly and severally, the heirs of Nestor ₱75,000.00 and ₱30,000.00 as moral damages and exemplary damages, respectively; and

(3) the appellants are ORDERED to PAY, jointly and severally, the heirs of Nestor ₱25,000.00 as temperate damages, in lieu of actual damages of a lesser amount.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192877. March 23, 2011]

SPOUSES HERMES P. OCHOA and ARACELI D. OCHOA, *petitioners, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYLLABUS

CIVIL LAW; ACT NO. 3135; EXTRAJUDICIAL FORECLOSURE SALE OF A REAL ESTATE MORTGAGE SHALL BE MADE ONLY IN THE PLACE WHERE THE PROPERTY IS LOCATED.— The extrajudicial foreclosure sale of a real estate mortgage is governed by Act No. 3135, as amended by Act No. 4118, otherwise known as "*An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real-Estate Mortgages.*" Section[s] 2 thereof clearly states x x x Sec. 2. Said sale *cannot be made legally outside of the province in which the property sold is situated;* and *in case the place within said province in which the sale is to be made is the*

subject of stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated. The case at bar involves petitioners' mortgaged real property located in Parañaque City over which respondent bank was granted a special power to foreclose extra-judicially. Thus, by express provision of Section 2, the sale can only be made in Parañaque City.

APPEARANCES OF COUNSEL

Real Brotarlo & Real Law Offices for petitioners.
Lim Vigilia Alcala Dumlao & Orencia for respondent.

R E S O L U T I O N

NACHURA, *J.*:

For resolution is petitioners' motion for reconsideration[1] of our January 17, 2011 Resolution[2] denying their petition for review on *certiorari*[3] for failing to sufficiently show any reversible error in the assailed judgment[4] of the Court of Appeals (CA).

Petitioners insist that it was error for the CA to rule that the stipulated exclusive venue of Makati City is binding only on petitioners' complaint for *Annulment of Foreclosure, Sale, and Damages* filed before the Regional Trial Court of Parañaque City, but not on respondent bank's *Petition for Extrajudicial Foreclosure of Mortgage,* which was filed with the same court.

We disagree.

The extrajudicial foreclosure sale of a real estate mortgage is governed by Act No. 3135, as amended by Act No. 4118, otherwise known as "*An Act to Regulate the Sale of Property*

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[1] *Rollo,* pp. 406-422.

[2] *Id.* at 404-405.

[3] *Id.* at 10-32.

[4] Dated February 16, 2010; *id.* at 39-53.

Under Special Powers Inserted In or Annexed to Real-Estate Mortgages." Sections 1 and 2 thereof clearly state:

Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, *the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.*

Sec. 2. Said sale *cannot be made legally outside of the province in which the property sold is situated;* and *in case the place within said province in which the sale is to be made is the subject of stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.*[5]

The case at bar involves petitioners' mortgaged real property located in Parañaque City over which respondent bank was granted a special power to foreclose extra-judicially. Thus, by express provision of Section 2, the sale can only be made in Parañaque City.

The exclusive venue of Makati City, as stipulated by the parties[6] and sanctioned by Section 4, Rule 4 of the Rules of Court,[7] cannot be made to apply to the *Petition for Extrajudicial*

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[5] Italics supplied.

[6] Paragraph 16 of the parties' Mortgage, which states:

16. The MORTGAGOR(S) and MORTGAGEE hereby agree that the necessary action for the foreclosure of this mortgage may be instituted by the MORTGAGEE at its option, in the Regional Trial Court in Makati, the MORTGAGOR(S) hereby waiving all right which he (it/they) may have to require that such action be instituted by the MORTGAGEE in the Regional Trial Court of the Province where the mortgaged properties are situated. The same exclusive venue (RTC Makati) shall apply for any and all other actions arising from, related with, or otherwise connected with this mortgage, whether filed by any one or all of the MORTGAGOR(S)/DEBTOR(S).

[7] Sec. 4. *When Rule not applicable.* — This Rule shall not apply –

(a) In those cases where a specific rule or law provides otherwise; or

(b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.

Foreclosure filed by respondent bank because the provisions of Rule 4 pertain to venue of actions, which an extrajudicial foreclosure is not.

Pertinent are the following disquisitions in *Supena v. De la Rosa*:[8]

> Section 1, Rule 2 [of the Rules of Court] defines an *action* in this wise:
>
> > "Action means *an ordinary suit in a court of justice*, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong."
>
> *Hagans v. Wislizenus* does not depart from this definition when it states that "[A]n action is a formal demand of one's legal rights in a court of justice in the manner prescribed by the court or by the law. x x x." It is clear that the determinative or operative fact which converts a claim into an "action or suit" is the filing of the same with a "court of justice." Filed elsewhere, as with some other body or office not a court of justice, the claim may not be categorized under either term. Unlike an action, an extrajudicial foreclosure of real estate mortgage is initiated by filing a petition not with any court of justice but with the office of the sheriff of the province where the sale is to be made. By no stretch of the imagination can the office of the sheriff come under the category of a court of justice. And as aptly observed by the complainant, if ever the executive judge comes into the picture, it is only because he exercises administrative supervision over the sheriff. But this administrative supervision, however, does not change the fact that extrajudicial foreclosures are not judicial proceedings, actions or suits.[9]

These pronouncements were confirmed on August 7, 2001 through A.M. No. 99-10-05-0, entitled "*Procedure in Extra-Judicial Foreclosure of Mortgage*," the significant portions of which provide:

> **In line with the responsibility of an Executive Judge** under Administrative Order No. 6, date[d] June 30, 1975, **for the**

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[8] 334 Phil. 671 (1997).

[9] *Id.* at 677-678. (Citations omitted.)

management of courts within his administrative area, included in which is the task of supervising directly the work of the Clerk of Court, who is also the *Ex-Officio* Sheriff, and his staff, and the issuance of commissions to notaries public and enforcement of their duties under the law, the following procedures are hereby prescribed in extra-judicial foreclosure of mortgages:

> 1. All applications for extrajudicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the *Ex-Officio* Sheriff.

Verily then, with respect to the venue of extrajudicial foreclosure sales, Act No. 3135, as amended, applies, it being a special law dealing particularly with extrajudicial foreclosure sales of real estate mortgages, and not the general provisions of the Rules of Court on Venue of Actions.

Consequently, the stipulated exclusive venue of Makati City is relevant only to **actions** arising from or related to the mortgage, such as petitioners' complaint for *Annulment of Foreclosure, Sale, and Damages.*

The other arguments raised in the motion are a mere reiteration of those already raised in the petition for review. As declared in this Court's Resolution on January 17, 2011, the same failed to show any sufficient ground to warrant the exercise of our appellate jurisdiction.

WHEREFORE, premises considered, the motion for reconsideration is hereby *DENIED.*

SO ORDERED.

Carpio (Chairperson), Brion,[*] *Peralta,* and *Abad, JJ.,* concur.

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[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 975 dated March 21, 2011.

FIRST DIVISION

[G.R. No. 193664. March 23, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINGO BANAN *y* LUMIDO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONCLUSIVENESS OF THE TRIAL COURT'S ASSESSMENT; APPLICATION.— It is a time-honored doctrine that the trial court's assessment of the credibility of witnesses is "entitled to great weight and is even conclusive and binding, if it is not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence," the reason being the trial judge enjoys the peculiar advantage of observing firsthand the deportment of the witnesses while testifying, and is, therefore, in a better position to form accurate impressions and conclusions. In this case, the testimony of the private complainant was very clear on the events that transpired and the person who raped her. x x x [T]he trial court even noted that the victim was crying while answering questions about the details of her rape. We find it proper to reiterate that "when a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that the crime was committed."

2. CRIMINAL LAW; RAPE; PROVEN IN CASE AT BAR.— Under Article 266-A of the Revised Penal Code, rape may be committed under different circumstances, as follows: 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat or intimidation; b) When the offended party is deprived of reason or is otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; **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 The one relevant to this case is when a man has carnal knowledge of a woman who is under twelve (12) years of age. Such has been proved in the instant case.

3. ID.; ID.; LONE TESTIMONY OF THE VICTIM-WITNESS IS SUFFICIENT TO SUSTAIN CONVICTION.— It is well-settled in rape cases that "the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction." This is especially true in rape cases where, oftentimes, only two (2) persons are involved—the offender and the offended party. In the instant case, the records clearly show AAA's candor and spontaneity in testifying on the events that transpired. As We held in *People v. Caratay*, when a witness' testimony is straightforward, candid, and "unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit." More importantly, no woman, especially one who is young and immature, "would concoct a story of defloration, allow an examination of her private parts and thereafter allow herself to be perverted in a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished."

4. ID.; ID.; CIVIL INDEMNITY.— With respect to the award of damages, in line with our ruling in *People v. Sanchez*, the following amounts are to be imposed when the imposable penalty is *reclusion perpetua*: PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. In addition, interest at the rate of six percent (6%) should likewise be added.

5. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS, PRESENT.— [T]he crime of acts of lasciviousness has been proved by the prosecution. The elements of this crime under Article 336 of the RPC are: (1) the offender commits any act of lasciviousness or lewdness; (2) it is done under any of the following circumstances: (a) by using force or intimidation or (b) when the offended party is deprived of reason or otherwise unconscious or (c) when the offended party is under 12 years of age; and (3) the offended party is another person of either sex. All elements are present in this case as testified to by the private complainant[.] x x x The above testimony clearly shows all of the elements of the crime of acts of lasciviousness. *First*, accused-appellant intentionally performed lascivious or lewd acts on AAA when he kissed her and touched her vagina. *Second*, AAA was less than twelve (12) years old at the time of the incident. Also, accused-appellant employed force and intimidation on her after pulling her inside the room. Again,

in cases of acts of lasciviousness, just like in cases of rape, "the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused."

6. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI CANNOT STAND AGAINST THE OVERWHELMING TESTIMONIAL EVIDENCE.— Against all this evidence, accused-appellant's alibi cannot stand. In order for alibi to prosper, accused-appellant must prove two things: *first*, that he was present at another place at the time of the perpetration of the crime; and *second*, that it was physically impossible for him to be at the scene of the crime. Physical impossibility is defined as "the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places." Alibi fails "where, owing to the short distance as well as the facility of access between the two places involved, there is least chance for the accused to be present at the crime scene." In the instant case, accused-appellant himself, during his cross-examination, revealed that his place of work, where he claimed to be the entire time, is only 15 minutes away. Thus, it was not physically impossible for him to be present at the place of the incident. Moreover, the testimony of his wife exposed the untruthfulness in his defense when she contradicted his testimony and said that he indeed went home on July 12, 2005. His alibi must, therefore, fail. More importantly, the defense of alibi cannot prevail over the positive declaration of the private complainant, who clearly identified accused-appellant as the person who raped her. No evidence was ever put forth to subscribe any ill motive on the part of the private complainant against accused-appellant. Hence, her testimony is entitled to full faith and credit.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the March 31, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 03732 entitled *People of the Philippines v. Domingo Banan y Lumido*, which affirmed the November 24, 2008 Judgment[2] of the Regional Trial Court (RTC), Branch 4 in Tuguegarao City. The RTC found accused Domingo Banan *y* Lumido guilty of statutory rape and acts of lasciviousness.

The Facts

The charges against Banan stemmed from the following Informations:

CRIMINAL CASE NO. 10980
(Statutory Rape)

That on or about July 09, 2005, in the Municipality of [PPP],[3] Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, DOMINGO BANAN, with lewd design, did, then and there, willfully, unlawfully, and feloniously have sexual

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[1] *Rollo*, pp. 2-15. Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla.

[2] CA *rollo*, pp. 14-19. Penned by Judge Lyliha L. Abella-Aquino.

[3] Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 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.

intercourse with the aforesaid offended party, [AAA] a minor under 12 years of age against her will.

Contrary to law.[4]

CRIMINAL CASE NO. 10995
(Acts of Lasciviousness)

That on or about July 18, 2005 in the Municipality of [PPP], Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused, DOMINGO BANAN, with lewd design and by use of force and intimidation, did, then and there, willfully, unlawfully and feloniously embrace, kiss the lips and caress the vagina of the aforesaid offended party, [AAA] a minor under 12 years of age against her will, thereby degrading, debasing and demeaning the intrinsic worth and dignity of the complainant as a human being prejudicial to her physical, [psychological] and intellectual development.

Contrary to law.[5]

On January 26, 2006, Banan was arraigned, and he pleaded "not guilty" to the charges.[6] After pre-trial, trial on the merits ensued.

During trial, the prosecution presented as its sole witness the private complainant, AAA. On the other hand, the defense presented Banan and his wife, Florentina, as its witnesses.

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

AAA, born on March 30, 1994 as certified by her birth certificate,[7] is the daughter of BBB and CCC. AAA has two brothers, DDD and EEE.

Sometime in 2005, BBB, AAA's mother, worked as a laundrywoman in another place in Tuguegarao City. As a result, she left AAA, who was eleven (11) years old at that time, and

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[4] Records, Vol. 1, p. 1.

[5] Records, Vol. 2, p. 1.

[6] Records, Vol. 1, p. 25; records, Vol. 2, p. 16.

[7] Exhibit "F" (AAA's Certificate of Live Birth), Records, Vol. 1, p. 5; Records, Vol. 2, pp. 14 and 89.

AAA's two brothers in the care of her friend, Florentina Calagui, in PPP, Cagayan. Florentina had two houses that were adjacent to each other.[8] While AAA and her brothers stayed in one, the other was occupied by Florentina and her husband, accused Banan.[9]

On July 9, 2005, Banan asked permission from his wife, Florentina, to keep AAA and her brothers company in the other house. While AAA and her brothers were sleeping, Banan poked a knife at the neck of AAA.[10] He then removed the pants and underwear of AAA and kissed her.[11] Afterwards, he went on top of her and inserted his penis into her vagina.[12] She was not able to shout because Banan covered her mouth with his hand, but she was able to kick him.[13] She felt pain in her vagina thereafter.[14]

On July 12, 2005, Banan again decided to go to the house where AAA and her brothers were staying. However, Florentina cautioned him from doing so, telling him not to disturb them anymore.[15] As a result, Banan got angry and pushed Florentina.[16] Still, he proceeded to the other house and went up the stairs where AAA and her brother, DDD, were resting. Again, he poked a knife at AAA but it was parried by DDD, who got hit with the knife below the eye.[17] Because of this commotion, Banan was not able to push through with his intent to molest the complainant for the second time.

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[8] TSN, August 7, 2007, p. 3.

[9] *Id.* at 4.

[10] TSN, September 19, 2007, pp. 3-4.

[11] *Id.* at 4.

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

[13] *Id.* at 5-6.

[14] *Id.* at 6.

[15] TSN, November 15, 2007, p. 4.

[16] *Id.*

[17] TSN, September 19, 2007, pp. 4-5.

On July 18, 2005, at around 1:00 p.m., AAA was about to go to school with her friends when Florentina's mother, Ining Calagui, called her and told her that Banan was going to give her allowance in his house.[18] At first, AAA was reluctant to go to Banan but upon the advice of one of her friends, she went to his house. When AAA got there, Banan pulled her into the room of the house he shared with Florentina and suddenly kissed her lips and held her vagina.[19] He was armed with a long bolo tucked in his waist. However, nothing happened because AAA's friends barged in and were able to help her.[20]

AAA did not report these incidents immediately because she was afraid that Banan would kill her entire family.

Nevertheless, AAA later related the events to her aunt, FFF, who brought her to the police station. On August 1, 2005, she gave her statement before Police Officer Jane Dalumay of the PPP Police Station. Likewise, she was examined by Dr. Mila Lingan-Simangan, Municipal Health Officer of PPP, Cagayan. Her findings are as follows:

> **Pelvic Examination:**
> Normal looking external genitalia
> Healed hymenal laceration at 6 & 7 o'clock position
> Vagina admits tip of index finger easily
> Adnexae unremarkable.[21]

Subsequently, the testimony of Dr. Lingan-Simangan was dispensed with upon agreement by both parties. A similar stipulation was likewise made with respect to the testimonies of AAA's mother and brother.[22]

On the other hand, Banan interposed the lone defense of alibi. He alleged that he was employed as a caretaker of fighting

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[18] *Id.* at 6-7.

[19] *Id.* at 7-8.

[20] *Id.* at 7-9.

[21] Records, Vol. 1, p. 11.

[22] *Id.* at 88, Order dated April 10, 2008.

cocks by a certain Ric Gammad in Tuguegarao City.[23] He testified that he did not go home from July 9, 2005 to July 19, 2005.[24] On cross-examination, he revealed that the travel time from his place of work to his house is only 15 minutes.[25]

Florentina, Banan's wife, corroborated his alibi.[26] But upon cross-examination, she testified that Banan came home on July 12, 2005 to commemorate the death of her father and that they also quarreled.[27]

Ruling of the Trial Court

After trial, the RTC found Banan guilty. The dispositive portion of its Judgment reads:

> ACCORDINGLY, this Court finds accused DOMINGO BANAN *y* LUMIDO, GUILTY BEYOND REASONABLE DOUBT of Rape in Criminal Case No. 10980 defined and penalized under Article 266-A, No. 1 in relation to Article 266 B No. 1 of Republic Act No. 8353 amending Article 335 of the Revised Penal Code, and imposes upon him the penalty of *RECLUSION PERPETUA*. He is likewise liable to pay AAA, the amount of Fifty Thousand (₱50,000.00) Pesos as indemnity and Fifty Thousand (₱50,000.00) Pesos as moral damages. Accused is equally found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness in Criminal Case No. 10995 and he shall suffer the indeterminate penalty of x x x ONE (1) MONTH and ONE (1) DAY OF *ARRESTO MAYOR* as minimum to SIX (6) MONTHS and ONE (1) DAY of *PRISION CORRECCIONAL* as maximum.
>
> No pronouncement as to costs.[28]

Ruling of the Appellate Court

On March 31, 2010, the CA affirmed the Judgment of the trial court. The dispositive portion of the Judgment reads:

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[23] TSN, July 30, 2008, p. 2.

[24] *Id.* at 3.

[25] *Id.* at 4.

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

[27] *Id.* at 5-6.

[28] CA *rollo*, p. 19.

WHEREFORE, the appealed Decision of the Regional Trial Court of Tuguegarao City, Branch 4, dated 24 November, 2008, is AFFIRMED with the MODIFICATION that, in Criminal Case No. 10995, appellant is sentenced to one (1) month and one (1) day of *arresto mayor* to two (2) years, four (4) months and one (1) day of *prision correccional* medium and is ORDERED to pay AAA Twenty Thousand (₱20,000) as civil indemnity and Thirty Thousand (₱30,000) as moral damages.

SO ORDERED.[29]

The Issue

Banan alleges the following lone issue in his *Brief*:[30]

The court *a quo* gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crimes of rape and acts of lasciviousness.

The Court's Ruling

The appeal has no merit.

In his *Brief*, accused-appellant argues that the prosecution failed to prove his guilt beyond reasonable doubt. First, he contends that there were inconsistencies in the testimony of the complainant, particularly the date of the incident, that affected its veracity and credibility. Second, he maintains that there was no credible and admissible evidence that he had sexual congress with the private complainant, because the physician who conducted the medical examination did not testify in court. And lastly, he disputes private complainant's identification of him as her rapist considering the circumstances at the time of the incident. He points to her testimony where she stated that the room was very dark and that she could not see anything, nor could she recognize any person who would go upstairs to their room.

We are not convinced.

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[29] *Rollo*, pp. 14-15.

[30] CA *rollo*, pp. 65-81.

It is a time-honored doctrine that the trial court's assessment of the credibility of witnesses is "entitled to great weight and is even conclusive and binding, if it is not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence,"[31] the reason being the trial judge enjoys the peculiar advantage of observing firsthand the deportment of the witnesses while testifying, and is, therefore, in a better position to form accurate impressions and conclusions.[32]

In this case, the testimony of the private complainant was very clear on the events that transpired and the person who raped her. We quote the pertinent portions of her testimony:

Q Why do you remember July 9, 2005?
A Because that was the day Domingo Banan did something wrong to me.

Q What did Domingo Banan do to you?
A He touched (*hinipuan*) my leg, sir.

Q Where did that happen?
A At their house, sir.

Q Around what time was that?
A Night time, sir.

Q Now, what were you doing when Domingo Banan did something wrong to you?
A I was sleeping with my two brothers because Domingo told Floring Calagui that she will stay there first because she does not have any companion.

Q Can you please name your brothers who slept with you that night?
A [DDD] and the old man, sir.

Q Where did you sleep witness?
A In front of the stairs.

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[31] *People v. Garchitorena*, G.R. No. 131357, April 12, 2000, 330 SCRA 613, 622.

[32] *People v. Ahmad*, G.R. No. 148048, January 15, 2004, 419 SCRA 677, 685; *People v. Tuppal*, G.R. Nos. 137982-85, January 13, 2003, 395 SCRA 72, 79.

x x x x x x x x x

Q So while you were sleeping, what happened?
A Domingo Banan went up at the second floor of the house and instructed me that if I will not follow his order he will kill me.

Q After that what did Domingo Banan do if there was any?
A He was holding a knife, sir.

Q What did he do with the knife?

x x x x x x x x x

A Domingo Banan pointed the knife at my neck, sir.

Q While pointing the knife at your neck, what did he do?
A When Domingo Banan pointed the knife at my neck, my brother [DDD] parried it and it was my brother who was hit.

COURT: Why, where was your brother at that time?
A My brother was just beside me, your honor.

Q Now, what part of the body of your brother was hit?
A Below his eye.

PROSECUTOR: Now after that, what did Domingo Banan do?
A Domingo Banan covered my mouth, sir.

Q What else did he do to you?
A He removed my pants, sir.

x x x x x x x x x

Q What else did Domingo Banan take off?

x x x x x x x x x

A He also removed my underwear, sir.

Q After removing your short pants and underwear, what else did Domingo Banan do to you?
A He inserted his penis, sir.

Q Where did he insert his penis?
A He inserted his penis into my vagina, sir.

COURT Was your brother present at that time?
A Yes, your honor.

Q What did your brother do?
A My brother was also sleeping at that time.

Q Was he not awaken when he was hit with the knife at his eye?
A He woke up, your honor.

Q So, he saw what happened to you?
A Domingo Banan covered his eyes.

Q With what did Domingo Banan [use] to cover the eyes of your brother?
A He got a cloth and tied it at his eyes?

Q Now, how old was your brother?
A Nine (9) years old, sir.

Q Now, how old are you?
A Eleven (11) years old.

COURT Make it of record that the witness is crying while testifying.

PROSECUTOR Now, when the penis of Domingo Banan was inserted into your vagina, what did Domingo Banan do if there was any?
A He kissed me, sir.

Q Where did he kiss you?
A At my mouth, sir.

Q Other than kissing you, what else did Domingo Banan do?
A He covered my mouth, sir.

x x x x x x x x x

Q What was your position when Domingo Banan inserted his penis into your vagina?
A I was kicking him but I could not stop him, sir.

Q Aside from kicking him, what else did you do?
A I kicked his stomach.

Q What did he do when you were able to kick his stomach?
A He held my shoulders, sir.

Q And what else happened?
A It was already morning and he [fell] asleep.

Q So, he slept also in the place where you and your brother were sleeping?
A Yes sir, but Domingo Banan left the place where I was sleeping.

Q While Domingo Banan was inserting his penis into your vagina, what did you feel witness?
A I felt pain, sir.[33]

Under Article 266-A of the Revised Penal Code, rape may be committed under different circumstances, as follows:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;
b) When the offended party is deprived of reason or is otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority;
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 (Emphasis supplied.)

The one relevant to this case is when a man has carnal knowledge of a woman who is under twelve (12) years of age. Such has been proved in the instant case.

Contrary to accused-appellant's contentions, the date of the rape is not important. It is not even an element of the crime of rape. In *People v. Bunagan*, We held that "the exact date of the sexual assault is not an essential element of the crime of rape; what should control is the fact of the commission of the rape or that there is proof of the penetration of the female organ."[34] In fact, if a minor inconsistency existed, such as the date, it "strengthens rather than diminishes the credibility of complainant as it erases suspicion of a contrived

[33] TSN, September 19, 2007, pp. 3-6.

[34] G.R. No. 177161, June 30, 2008, 556 SCRA 808, 813.

testimony."[35] Again, the date of the crime is not an essential element of the crime of rape; it is merely a minor inconsistency which cannot affect the credibility of the testimony of the victim.

What is more, the trial court even noted that the victim was crying while answering questions about the details of her rape.[36] We find it proper to reiterate that "when a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that the crime was committed."[37]

Likewise, the non-presentation of the doctor who conducted the medical examination is of no concern. The records readily reveal that the testimony of Dr. Lingan-Simangan was dispensed with upon agreement by both parties.[38]

It is well-settled in rape cases that "the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction."[39] This is especially true in rape cases where, oftentimes, only two (2) persons are involved—the offender and the offended party.

In the instant case, the records clearly show AAA's candor and spontaneity in testifying on the events that transpired. As We held in *People v. Caratay*, when a witness' testimony is straightforward, candid, and "unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit."[40] More importantly, no woman, especially one who is young and immature, "would concoct a story of defloration, allow an examination of her private parts and thereafter allow herself to be perverted in a public trial if she

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[35] *People v. Hernandez*, G.R. Nos. 134449-50, October 25, 2001, 368 SCRA 247, 255.

[36] TSN, September 19, 2007, p. 5.

[37] *People v. Atop*, G.R. Nos. 124303-05, February 10, 1998, 286 SCRA 157, 173.

[38] *Supra* note 22.

[39] *People v. Malana*, G.R. No. 185716, September 29, 2010.

[40] G.R. Nos. 119418 & 119436-37, October 5, 1999, 316 SCRA 251, 257.

was not motivated solely by the desire to have the culprit apprehended and punished."[41]

In *People v. Blazo*, this Court held that "[l]acerations of the hymen, while considered as the most telling and irrefutable physical evidence of the penile invasion, are not always necessary to establish the commission of rape, where other evidence is available to show its consummation."[42] Thus, a medical examination or medical certification is only corroborative and not indispensable to the prosecution of a rape case.

Also, the crime of acts of lasciviousness has been proved by the prosecution. The elements of this crime under Article 336 of the RPC are: (1) the offender commits any act of lasciviousness or lewdness; (2) it is done under any of the following circumstances: (a) by using force or intimidation or (b) when the offended party is deprived of reason or otherwise unconscious or (c) when the offended party is under 12 years of age; and (3) the offended party is another person of either sex.[43] All elements are present in this case as testified to by the private complainant, thus:

Q Now, how about July 18, 2005. Do you still remember that day?
A Yes, sir.

Q Why do you remember that day?
A Domingo Banan told me that that would be the day that he is going to touch me.

Q Who told you that?
A Domingo Banan, sir.

Q Where did he tell you that?
A Inside the house, sir.

Q Around what time?

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[41] *People v. Estrada*, G.R. No. 178318, January 15, 2010, 610 SCRA 222, 232.

[42] G.R. No. 127111, February 19, 2001, 352 SCRA 94, 103.

[43] *Flordeliz v. People*, G.R. No. 186441, March 3, 2010.

A Afternoon, sir.

Q Why were you in the house of Domingo Banan at that time?
A Because the mother of auntie Floring called for me, sir.

x x x x x x x x x

Q While inside their house what did Domingo Banan do to you?

x x x x x x x x x

A He held my arm and pulled me inside the room, sir.

COURT Whose room?
A His room and auntie Floring.

Q And when he brought you inside the room, what did he do?
A My friends saw me and they whipped my uncle.

Q Who is that uncle of yours that you are referring to?
A Domingo Banan, sir.

x x x x x x x x x

Q After holding your arms what did Domingo Banan do to you inside the room?
A He kissed me, sir.

Q What else did he do to you?
A He held my vagina, sir.

x x x x x x x x x

Q You said a while ago that Domingo Banan kissed and held your vagina while you were inside their room, is that correct?
A Yes, sir.

Q And you also said a while ago that Jadelyn and Jennalyn whipped Domingo Banan, is that correct?
A Yes, sir.

Q Now, what was Domingo Banan doing when he was whipped by Jadelyn and Jennalyn?

x x x x x x x x x

A Because he kissed me.

Q Now, what part of your body did he kiss?

A My mouth and my lips.

Q When he was whipped by Jadelyn and Jennalyn, what did Domingo Banan do?
A He did not let go of my arm, sir.

Q What did you do also?
A I was whipping him, sir.

Q And were you able to free yourself from Domingo Banan?
A Yes, sir.

Q Where did you proceed after that?
A At the place of my auntie [FFF].[44]

The above testimony clearly shows all of the elements of the crime of acts of lasciviousness. *First*, accused-appellant intentionally performed lascivious or lewd acts on AAA when he kissed her and touched her vagina. *Second*, AAA was less than twelve (12) years old at the time of the incident. Also, accused-appellant employed force and intimidation on her after pulling her inside the room. Again, in cases of acts of lasciviousness, just like in cases of rape, "the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused."[45]

Against all this evidence, accused-appellant's alibi cannot stand. In order for alibi to prosper, accused-appellant must prove two things: *first*, that he was present at another place at the time of the perpetration of the crime; and *second*, that it was physically impossible for him to be at the scene of the crime.[46] Physical impossibility is defined as "the distance between the place where the accused was when the crime transpired and

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[44] TSN, September 19, 2007, pp. 6-9.

[45] *People v. Bon*, G.R. No. 149199, January 28, 2003, 396 SCRA 506, 515.

[46] *People v. Saban*, G.R. No. 110559, November 24, 1999, 319 SCRA 36, 46; *People v. Reduca*, G.R. Nos. 126094-95, January 21, 1999, 301 SCRA 516, 534.

the place where it was committed, as well as the facility of access between the two places."[47] Alibi fails "where, owing to the short distance as well as the facility of access between the two places involved, there is least chance for the accused to be present at the crime scene."[48]

In the instant case, accused-appellant himself, during his cross-examination, revealed that his place of work, where he claimed to be the entire time, is only 15 minutes away. Thus, it was not physically impossible for him to be present at the place of the incident. Moreover, the testimony of his wife exposed the untruthfulness in his defense when she contradicted his testimony and said that he indeed went home on July 12, 2005. His alibi must, therefore, fail.

More importantly, the defense of alibi cannot prevail over the positive declaration of the private complainant, who clearly identified accused-appellant as the person who raped her. No evidence was ever put forth to subscribe any ill motive on the part of the private complainant against accused-appellant. Hence, her testimony is entitled to full faith and credit.

With respect to the award of damages, in line with our ruling in *People v. Sanchez*,[49] the following amounts are to be imposed when the imposable penalty is *reclusion perpetua*: PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. In addition, interest at the rate of six percent (6%) should likewise be added.[50]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. C.R. No. 03732 finding accused-appellant Domingo Banan *y* Lumido guilty of the crimes charged is *AFFIRMED*

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[47] *People v. De Labajan*, G.R. Nos. 129968-69, October 27, 1999, 317 SCRA 566, 575.

[48] *People v. Achas*, G.R. No. 185712, August 4, 2009.

[49] G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[50] See *People v. Tabongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727.

Case No. 10980 and to the civil indemnity and moral damages awarded by the CA in Criminal Case No. 10995. The interest shall run from finality of this Decision until said damages in the two criminal cases are fully paid by accused-appellant to the victim, AAA.

SO ORDERED.

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

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— Punishable by life imprisonment and fine of ₱100,000.00 as prescribed under Article 39 (a) of the Labor Code. *(Id.)*

RES JUDICATA

Principle of —To apply the doctrine, the following essential requisites should be satisfied: (a) finality of the former judgment; (b) the court which rendered the judgment had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter and causes of action. (BPI *vs*. Coquia, Jr., G.R. No. 167518, March 23, 2011) p. 568

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