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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. 10-10-4-SC. June 7, 2011]

RE: LETTER OF THE UP LAW FACULTY ENTITLED RESTORING INTEGRITY: A STATEMENT BY THE FACULTY OF THE UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW ON THE ALLEGATIONS OF PLAGIARISM AND MISREPRESENTATION IN THE SUPREME COURT

SYLLABUS

REMEDIAL LAW; PROVISIONAL REMEDIES; INDIRECT CONTEMPT; CONTUMACIOUS SPEECH AND CONDUCT DIRECTED AGAINST THE COURTS; IF COMMITTED BY A LAWYER, MAY ALSO BE AN ETHICAL VIOLATION UNDER THE CODE OF PROFESSIONAL RESPONSIBILITY.— It is true that contumacious speech and conduct directed against the courts done by any person, whether or not a member of the Bar, may be considered as indirect contempt under Rule 71, Section 3 of the Rules of Court, to wit: x x x A charge of indirect contempt, if proven in due proceedings, carry with it penal sanctions such as imprisonment or a fine or both. The very same contumacious speech or conduct directed against a court or judicial officer, if committed by a member of the Bar, may likewise subject the offender to disciplinary proceedings under the Code of Professional Responsibility, which prescribes that lawyers observe and promote due respect for the courts. In such

> disciplinary cases, the sanctions are not penal but administrative such as, disbarment, suspension, reprimand or admonition. x x x [W]hat established jurisprudence tells us is that the same incident of contumacious speech and/or behavior directed against the Court on the part of a lawyer may be punishable **either** as contempt or an ethical violation, **or both** in the discretion of the Court.

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R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

For disposition of the Court are the following:

(a) the Motion for Reconsideration[1] dated April 1, 2011 filed by respondent University of the Philippines (UP) law professors Tristan A. Catindig and Carina C. Laforteza; and

(b) the Manifestation[2] dated April 1, 2011 filed by respondents Dean Marvic M.V.F. Leonen and Prof. Theodore O. Te.

In support of their Motion for Reconsideration, Professors Catindig and Laforteza relied on the following grounds:

GROUNDS

A. THIS PROCEEDING, WHILE OSTENSIBLY DOCKETED AS AN ADMINISTRATIVE MATTER, IS PREMISED ON A FINDING OF INDIRECT CONTEMPT. ACCORDINGLY, WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN FINDING THAT THE RESPONDENTS BREACHED THEIR ETHICAL OBLIGATIONS WITHOUT OBSERVANCE OF THE DUE PROCESS SAFEGUARDS GUARANTEED IN AN INDIRECT CONTEMPT PROCEEDING.

B. WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT (1) THE PLAGIARISM AND MISREPRESENTATION ISSUES IN THE *VINUYA* CASE AND IN A.M. NO. 10-7-17-SC HAVE NO RELATION TO THE *RESTORING INTEGRITY STATEMENT* AND THE SHOW CAUSE RESOLUTION,

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[1] *Rollo,* pp. 622-654.

[2] *Id.* at 655-668.

AND THEREFORE (2) THE RESPONDENTS ARE NOT ENTITLED TO ACCESS AND ADDRESS THE EVIDENCE PRESENTED IN A.M. NO. 10-7-17-SC, TO PRESENT THEIR OWN EVIDENCE IN RESPECT OF THE PLAGIARISM AND MISREPRESENTATION ISSUES, AND TO SUPPORT THEIR RESPONSE TO THE SHOW CAUSE RESOLUTION WITH SUCH EVIDENCE.

C. WITH DUE RESPECT, THE HONORABLE COURT ERRED IN FINDING THAT THE RESPONDENTS ARE IN BREACH OF THEIR ETHICAL OBLIGATIONS FOR HAVING ISSUED THE *RESTORING INTEGRITY STATEMENT*.[3]

In their Motion for Reconsideration, respondents pray that (a) the Court's Decision dated March 8, 2011 be reconsidered and set aside and the respondents' Compliance dated November 18, 2010 be deemed satisfactory, and (b) the Court expunge the reference in A.M. No. 10-7-17-SC to the respondents (*i.e.*, "joined by some faculty members of the University of the Philippines school of law") effectively finding them guilty of making false charges against Associate Justice Mariano C. del Castillo (Justice Del Castillo). In the alternative, they pray that they be afforded their full rights to due process and provided the full opportunity to present evidence on the matters subject of the Show Cause Resolution dated October 19, 2010.[4]

Anent the first ground, Professors Catindig and Laforteza insist that, notwithstanding the docketing of this matter as an administrative case, there was purportedly a ***finding*** that respondents were guilty of indirect contempt in view of (1) the mention made in the Show Cause Resolution dated October 19, 2010 of *In re Kelly*,[5] a case involving a contempt charge; and (2) the references to respondents' "contumacious language" or "contumacious speech and conduct" and to several authorities which dealt with contempt proceedings in the Decision dated March 8, 2011.

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[3] *Id.* at 623-624.

[4] *Id.* at 646.

[5] 35 Phil. 944 (1916).

The shallowness of such argument is all too easily revealed. It is true that contumacious speech and conduct directed against the courts done by any person, whether or not a member of the Bar, may be considered as indirect contempt under Rule 71, Section 3 of the Rules of Court, to wit:

> 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:
>
> x x x x x x x x x
>
> (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice.

A charge of indirect contempt, if proven in due proceedings, carry with it penal sanctions such as imprisonment or a fine or both.[6]

The very same contumacious speech or conduct directed against a court or judicial officer, if committed by a member of the Bar, may likewise subject the offender to disciplinary proceedings under the Code of Professional Responsibility, which prescribes that lawyers observe and promote due respect for the courts.[7] In such disciplinary cases, the sanctions are not penal but administrative such as, disbarment, suspension, reprimand or admonition.

Contrary to Professors Catindig and Laforteza's theory, what established jurisprudence tells us is that the same incident of contumacious speech and/or behavior directed against the Court on the part of a lawyer may be punishable **either** as contempt or an ethical violation, **or both** in the discretion of the Court.

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[6] Rules of Court, Rule 71, Section 7.

[7] See, for example, Canon 1, Rule 1.02, and Canon 11, Rule 11.03.

In *Salcedo v. Hernandez*,[8] for the same act of filing in court a pleading with intemperate and offensive statements, the concerned lawyer was found guilty of contempt **and** liable administratively. For this reason, two separate penalties were imposed upon him, a fine (for the contempt charge) and reprimand (for his failure to observe his lawyerly duty to give due respect to the Court).

The full case title[9] of *In re: Atty. Vicente Raul Almacen*[10] and the sanction imposed indubitably show that the proceeding involved therein was **disciplinary**. Notwithstanding the fact that the Court in *Almacen* adverted to a few principles and authorities involving contempt proceedings aside from jurisprudence on ethical responsibilities of lawyers, Atty. Almacen was only meted out an administrative sanction (indefinite suspension from the practice of law) and no penal sanction was imposed upon him. Indeed, in *Almacen*, the Court explicitly stated that whether or not respondent lawyer could be held liable for contempt for his utterances and actuations was immaterial as the sole issue in his disciplinary case concerns his professional identity, his sworn duty as a lawyer and his fitness as an officer of the Court.[11]

Conversely, *In re Vicente Sotto*[12] was purely a contempt proceeding. Nonetheless, the Court in that case saw fit to remind Atty. Sotto that:

> As a member of the bar and an officer of the courts Atty. Vicente Sotto, like any other, is in duty bound to uphold the dignity and authority of this Court, to which he owes fidelity according to the oath he has taken as such attorney, and not to promote distrust in the administration

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[8] 61 Phil. 724 (1935).

[9] *In the Matter of Proceedings for Disciplinary Action against Atty. Vicente Raul Almacen in G.R. No. L-27654, Antonio H. Calero v. Virginia Y. Yaptinchay.*

[10] G.R. No. L-27654, February 18, 1970, 31 SCRA 562.

[11] *Id.* at 597.

[12] 82 Phil. 595 (1949).

of justice. Respect to the courts guarantees the stability of other institutions, which without such guaranty would be resting on a very shaky foundation.[13]

Atty. Sotto was expressly found liable only for contempt and accordingly fined the amount of ₱1,000.00 payable within 15 days from promulgation of judgment. The unmistakable reference to Atty. Sotto's failure to observe his ethical duties as a lawyer did not convert the action against him into a disciplinary proceeding. In fact, part of the disposition of the case was to require Atty. Sotto to show cause, within the same period given for the payment of the fine, why he should not be disbarred for his contemptuous statements against the Court published in a newspaper.

Similar to *Salcedo, Zaldivar v. Sandiganbayan*[14] involved both contempt and disciplinary proceedings for the lawyer's act of making public statements to the media that were offensive and disrespectful of the Court and its members relating to matters that were *sub judice*. This was evident in the May 2, 1988 Resolution of the Court which required respondent lawyer to "explain in writing within ten (10) days from notice hereof, why he should not be punished for contempt of court and/or subjected to administrative sanctions."[15] In *Zaldivar*, however, although the Court found that respondent's act constituted both contempt and gross misconduct as a member of the Bar, he was only administratively sanctioned with an indefinite suspension from the practice of law.

The lesson imparted by the foregoing authorities is that, when the Court initiates contempt proceedings and/or disciplinary proceedings against lawyers for intemperate and discourteous language and behavior directed at the courts, the evil sought to be prevented is the same – the degradation of the courts and the loss of trust in the administration of justice. For this reason,

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[13] *Id.* at 602.

[14] 248 Phil. 542 (1988).

[15] *Id.* at 551.

it is not unusual for the Court to cite authorities on bar discipline (involving the duty to give due respect to the courts) in contempt cases against lawyers and *vice versa*.

Thus, when the Court chooses to institute an administrative case against a respondent lawyer, the mere citation or discussion in the orders or decision in the administrative case of jurisprudence involving contempt proceedings does not transform the action from a disciplinary proceeding to one for contempt. Respondents' contrary position in their motion for reconsideration is bereft of any rational merit. Had this Court opted to cite respondents for contempt of court, which is punishable by imprisonment or fine, this Court would have initiated contempt proceedings in accordance with the Rules of Court. Clearly, the Court did not opt to do so. We cannot see why respondents would stubbornly cling to the notion that they were being cited for indirect contempt under the Show Cause Resolution when there is no basis for such belief other than their own apparent misreading of the same.

With respect to the second ground offered for reconsideration of the Decision dated March 8, 2011, respondents continue to insist on their theory, previously expounded in their Compliance, that the evidence and proceedings in A.M. No. 10-7-17-SC was relevant to their own administrative case and thus, it was necessary for them to be granted access to the evidence and records of that case in order to prove their own defenses in the present case. The Decision already debunked at length the theory that if respondents are able to prove the bases for their "well founded" concerns regarding the plagiarism charge against Justice Del Castillo, then they would be exonerated of the administrative charges against them. It bears repeating here that what respondents have been required to explain was their contumacious, intemperate and irresponsible language and/or conduct in the issuance of the *Restoring Integrity Statement*, which most certainly cannot be justified by a belief, well-founded or not, that Justice Del Castillo and/or his legal researcher committed plagiarism.

To dispel respondents' misconception once and for all, it should be stressed that this Court did not call the attention of respondents for having an opinion contrary to that of the Court in the plagiarism case against Justice Del Castillo. Notably, even their co-respondent Prof. Raul T. Vasquez stood fast on his opinion regarding the plagiarism issue. Still, he was able to simply relate to this Court how he came to sign the *Restoring Integrity Statement* and candidly conceded that he may have failed to assess the effect of the language of the Statement. This straightforward and honest explanation was found satisfactory despite the lack of reference to the evidence in A.M. No. 10-7-17-SC or the holding of any formal trial-type evidentiary hearing, which respondents know fully well was not mandatory in administrative proceedings. This circumstance belied respondents' justification for seeking access to the evidence and records of A.M. No. 10-7-17-SC and their assertion that they have in any way been denied their due process rights. For the same reason that A.M. 10-7-17-SC and the present case are independent of each other, a passing mention of respondent law professors in the Resolution dated February 8, 2011 in A.M. 10-7-17-SC is not proof that this Court has found respondents guilty of falsely accusing Justice Del Castillo of plagiarism nor is it any prejudgment of the present case. For if so, no one would be exonerated or none of the compliances would be found satisfactory in this administrative case. Again, the case of Prof. Vasquez confirms that this Court duly considered respondents' submissions in this case before coming to a decision.

To buttress their third ground for reconsideration, respondents mainly contend that the Court erred in taking the "emphatic language" in the Statement in isolation from the other statements evidencing the good intentions of respondents and calling for constructive action. Again, these arguments have been substantially addressed in the Decision dated March 8, 2011 and there is no need to belabor these points here. Suffice it to say that respondents' avowed noble motives have been given due weight and factored in the determination of the action taken with respect to submissions of respondents.

In all, the Court finds that respondent Professors Catindig and Laforteza have offered no substantial arguments to warrant a reconsideration of the Decision dated March 8, 2011 nor to justify the grant of the reliefs prayed for in their motion.

As for the Manifestation dated April 1, 2011, Dean Leonen and Professor Te alleged that "they support the Motion for Reconsideration which was filed by Respondents Professors Tristan Catindig and Caren Laforteza on April 1, 2011." The rest of the assertions therein are mere restatements of arguments previously proffered in respondents' compliances and have been extensively taken up in the Decision dated March 8, 2011.

Since the Manifestation, apart from being an expression of support for Professors Catindig and Laforteza's motion for reconsideration, did not raise any new matter nor pray for any affirmative relief, the Court resolves to merely note the same.

WHEREFORE, premises considered, the Court hereby *RESOLVES* to (a) *DENY* the Motion for Reconsideration dated April 1, 2011 filed by respondent Professors Tristan A. Catindig and Carina C. Laforteza; and (b) *NOTE* the Manifestation dated April 1, 2011 filed by Dean Marvic M.V.F. Leonen and Professor Theodore O. Te.

SO ORDERED.

Corona, C.J., Velasco, Jr., Nachura, Brion, Peralta, Bersamin, Abad, Perez, and *Mendoza, JJ.,* concur.

Villarama, Jr., J., Maintains his separate opinion.

Carpio, J., Maintains his dissent.

Carpio Morales, J., Her dissent remains.

Sereno, J., Maintains her dissent.

Del Castillo, J., took no part.

EN BANC

[A.M. No. RTJ-07-2087. June 7, 2011]
(Formerly OCA I.P.I. No. 07-2621-RTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE MA. ELLEN M. AGUILAR, Regional Trial Court, Branch 70, Burgos, Pangasinan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; DISHONESTY; OMISSION IN THE PERSONAL DATA SHEET (PDS) OF ADMINISTRATIVE CASE UPON ASSUMPTION OF OFFICE IS A GRAVE OFFENSE THAT WARRANTS DISMISSAL FROM SERVICE.— The accomplishment of the PDS is a requirement under the Civil Service Rules and Regulations for employment in the government. Since truthful completion of PDS is a requirement for employment in the Judiciary, the importance of answering the same with candor need not be gainsaid. With respect to Judge Aguilar's supposed omission in her PDS submitted with her judgeship application, we are guided by the ruling in *Plopinio v. Zabala-Cariño*, wherein we clarified that a person shall be considered formally charged in administrative cases only upon a finding of the existence of a *prima facie* case by the disciplining authority, in case of a complaint filed by a private person. However, Judge Aguilar's failure to disclose OMB-L-A-03-0718-G in her PDS filed upon her assumption of office when she already had notice of the adverse decision therein constitutes dishonesty, considered a grave offense under the Administrative Code of 1987, as well as the Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules), with the corresponding penalty of dismissal from service even for the first offense.

2. ID. ID.; CIVIL SERVICE RULES; IN THE DETERMINATION OF PENALTIES TO BE IMPOSED IN ADMINISTRATIVE CASES, ATTENDING CIRCUMSTANCES SHALL BE CONSIDERED.— Rule IV, Section 53 of the Civil Service Rules provides that in the determination of the penalties to be imposed, extenuating, mitigating, aggravating or alternative

circumstances attendant to the commission of the offense shall be considered. Among the circumstances that may be allowed to modify the penalty are (1) length of service in the government, (2) good faith, and (3) other analogous circumstances. In several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty. For equitable and humanitarian reasons, the Court reduced the administrative penalties imposed in the following cases: x x x

3. ID.; ID.; ID.; CHARGES AGAINST JUDGES; PENALTIES FOR JUDGE FOUND GUILTY OF SERIOUS CHARGE.— Under Section 11, Rule 140 of the Rules of Court, a judge found guilty of a serious charge, such as dishonesty, may be subjected to any of the following penalties: Sec. 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

APPEARANCES OF COUNSEL

Law Firm of Diaz Del Rosario & Associates for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This case stemmed from (1) the undated letter[1] of Ramon Ona-Ligaya (Ligaya) of Olongapo City, addressed to then Chief Justice Artemio V. Panganiban, and the Judicial and Bar Council (JBC), expressing disappointment over the appointment of Ma. Ellen Aguilar (Aguilar) as judge of the Regional Trial Court (RTC) of Burgos, Pangasinan, since she had been charged with several criminal offenses involving moral turpitude; and (2) the Indorsement letter[2] dated December 4, 2006 of the Office of the City Legal Officer of Olongapo City, referring to the Office of the Court Administrator (OCA) for appropriate action the decision of the Deputy Ombudsman for Luzon in OMB-L-A-03-0718-G,[3] which imposed upon Atty. Aguilar, formerly City Legal Officer of Olongapo City, a fine equivalent to one month salary.

For the antecedent factual background of the charges, we refer to the report of Associate Justice Teresita Dy-Liacco Flores (Dy-Liacco Flores) of the Court of Appeals, who was later tasked by the Court to investigate the present administrative matter against Judge Aguilar. Investigating Justice Dy-Liacco Flores found that:

> Sometime on July 2, 1998, while [Atty. Aguilar] was still the Legal Officer of Olongapo City, mortgagor Lourdes Sison and mortgagee Angelina Cuevas came to her office together, asking her to notarize a prepared real estate mortgage contract. The document showed that it was a security for a loan of ₱120,000.00. [Atty. Aguilar] acceded. Later, Sison and Cuevas returned with a different document. It was obviously the same real estate mortgage contract between the parties but the amount of the loan was now raised to ₱140,000.00. The parties explained that this is the real agreement between them. [Atty.

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[1] *Rollo*, p. 17.

[2] *Id.* at 1.

[3] *Id.* at 4-8.

Aguilar] notarized it in replacement of the previous document, deeming the first cancelled. Hence, the second document carried the same entries like document number, book number and the like as the first document. Either by oversight or inattentiveness, the secretary of Atty. Aguilar put the two documents together.

Sometime in 2002, Arnel Sison, the son of mortgagor Lourdes Sison, discovered the existence of the two documents with different amounts but one notarial document number. Furious, he went to see then Atty. Aguilar. She explained to him the circumstances under which both documents were notarized. Unappeased, Arnel Sison filed complaints for Falsification of Public Document, Perjury and Estafa against Atty. Aguilar and Angelina Cuevas before (1) the Office of the Regional State Prosecutor of Bataan **AND** (2) the Office of the Ombudsman.[4]

The complaint for Falsification of Public Document, Perjury and Estafa against Atty. Aguilar and Angelina Cuevas was filed by Arnel Sison before the Regional State Prosecutor, and was docketed as I.S. Nos. 03-S-2282 to 03-S-2284. After preliminary investigation, Angelito V. Lumabas, Acting City Prosecutor of Olongapo City, issued a Resolution[5] dated March 2, 2004, dismissing the complaint for lack of probable cause.

Meanwhile, proceedings on Arnel Sison's complaint for Dishonesty and Misconduct against Atty. Aguilar, filed before the Ombudsman and docketed as OMB-L-A-03-0718-G, continued. Atty. Aguilar filed her counter-affidavit therein on October 2, 2003.

Following her retirement as City Legal Officer of Olongapo City effective December 13, 2003, Atty. Aguilar, through a letter[6] dated September 3, 2004, addressed to the JBC Chairman, applied for the position of judge, preferably at the RTC Branch 71, of Iba, Zambales. In support of her application, Atty. Aguilar accomplished and submitted a Personal Data Sheet (PDS), which

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[4] *Id.* at 255.

[5] *Id.* at 45-53.

[6] *Id.* at 18.

consisted of four pages. Question No. 23 of the PDS asked: "*Is there any pending civil, criminal or administrative (including disbarment) case or complaint filed against you pending before any court, prosecution office, any other office, agency or instrumentality of the government, or the Integrated Bar of the Philippines*?"[7] In answer to said question, Atty. Aguilar wrote "None."[8] The PDS was notarized in September 2004.

Atty. Aguilar was appointed as RTC Judge of Burgos, Pangasinan, on October 15, 2005.

After her appointment to the Judiciary, the Deputy Ombudsman for Luzon rendered a Decision[9] in OMB-L-A-03-0718-G on November 29, 2005, finding no liability on Atty. Aguilar's part for dishonesty but only for misconduct, as follows:

> After a careful evaluation of the facts and evidence adduced by both parties, the undersigned finds [Atty. Aguilar] guilty of misconduct. Records disclose that two (2) deeds of Real Estate Mortgage were notarized on July 2, 1998, by Atty. Aguilar. However, based on the certification dated July 3, 2003 issued by the Office of the Clerk of Court of the Regional Trial Court of Olongapo City, it appears that [Atty. Aguilar] was commissioned as notary public in the year 1999 up to the present. Evidently, [Atty. Aguilar] was not yet commissioned as notary public when she notarized the aforesaid documents. As to the claim of [Atty. Aguilar] that she is a notary public *ex-officio*, as such she may perform her functions only in the notarization of documents connected with the exercise of her official functions. She may not, as notary public *ex-officio*, undertake the preparation and acknowledgement of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of her functions as City Legal Officer.[10]

For her misconduct, the Deputy Ombudsman for Luzon imposed upon Atty. Aguilar the penalty of one month suspension.

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[7] *Id.* at 20.

[8] *Id.*

[9] *Id.* at 4-8.

[10] *Id.* at 7.

Atty. Aguilar filed a motion for reconsideration, arguing that she could no longer be held administratively liable as she had already retired from her position as Legal Officer of Olongapo City as of December 13, 2003. The Deputy Ombudsman for Luzon, in an Order[11] dated January 31, 2006,[12] denied Atty. Aguilar's motion for reconsideration, but modified the penalty imposed upon her from one month suspension from service to a fine of one month pay. The City Mayor and the Office of the City Legal Officer of Olongapo City were furnished with copies of the Decision dated November 29, 2005 and Order dated January 31, 2006 of the Deputy Ombudsman for Luzon in OMB-L-A-03-0718-G, for immediate implementation.

Atty. Aguilar assumed her judicial position on February 8, 2006. She accomplished another PDS for submission to the Supreme Court on March 6, 2006. In the more recent PDS, the following questions were asked:

37. a. Have you ever been formally charged?

    b. Have you ever been guilty of any administrative offense?

38. Have you ever been convicted of any crime or violation of any law, decree, ordinance or regulation by any court or tribunal?[13]

Judge Aguilar answered "No"[14] to all the aforequoted questions.

On March 6, 2006, the Office of the Chief Justice (OCJ) received Ligaya's undated letter, bringing to the attention of said office two criminal cases still pending against Judge Aguilar, particularly: (1) Criminal Case No. 523-04, for Estafa thru Falsification, pending before the RTC of Olongapo City, Branch 74; and (2) Criminal Case No. 844-04, for Falsification, pending

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[11] *Id.* at 11.

[12] Erroneously dated as January 31, 1006.

[13] *Rollo*, p. 29 (back page).

[14] *Id.*

before the Municipal Trial Court in Cities of Olongapo City. Ligaya sought the recall of Judge Aguilar's appointment. Then Chief Justice Panganiban endorsed Ligaya's letter to the JBC.[15]

Given Atty. Aguilar's retirement as City Legal Officer of Olongapo City and her subsequent appointment as RTC judge, the Office of the City Legal Officer of Olongapo City believed that it no longer had the authority to implement the Deputy Ombudsman for Luzon's Decision dated November 29, 2005 and Order dated January 31, 2006 in OMB-L-A-03-0718-G against now Judge Aguilar. Consequently, in its 1st Indorsement dated December 4, 2006, the Office of the City Legal Officer forwarded said decision and order of the Deputy Ombudsman for Luzon against Judge Aguilar to the OCA for pertinent action.

Atty. Wilhelmina D. Geronga (Geronga), OCA Chief of Staff, directed Judge Aguilar to comment on why she failed to disclose in her PDS the pendency of OMB-L-A-03-0718-G. Attached to the OCA directive was a copy of the Order dated January 31, 2006 of the Deputy Ombudsman for Luzon in OMB-L-A-03-0718-G, denying Judge Aguilar's motion for reconsideration of the Decision dated November 29, 2005.

In her Comment, Judge Aguilar avers that she only learned that her motion for reconsideration of the Decision dated November 29, 2005 in OMB-L-A-03-0718-G was denied by the Deputy Ombudsman for Luzon in an Order dated January 31, 2006, when she was furnished a copy of said order by the OCA on June 1, 2007. Judge Aguilar would have wanted to challenge the decision and order of the Deputy Ombudsman for Luzon before the Court of Appeals, but she desisted because of her desire to have closure on the matter. Instead, Judge Aguilar already paid the fine, equivalent to one month salary, imposed upon her in OMB-L-A-03-0718-G on June 5, 2007.

Judge Aguilar further explains in her Comment that when she notarized the real estate mortgage contracts between Lourdes Sison and Angelina Cuevas, she was merely performing her

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[15] *Id.* at 9.

duty to give free legal services to the people of Olongapo City who have no resources to avail themselves of the services of lawyers; and maintains that she did not charge or receive any consideration from the parties for the notarization.

Finally, Judge Aguilar apologizes for the inaccuracies in her PDS and promises to be more circumspect and accurate in her future submissions.

On July 11, 2007, Atty. Geronga issued a Memorandum[16] to then Court Administrator Christopher Lock recommending that the complaint against Judge Aguilar be docketed as a regular administrative matter and that Judge Aguilar be required to manifest whether she wanted to submit the case for resolution based on the pleadings or to have the matter formally investigated.

As Atty. Geronga recommended, Court Administrator Lock directed Judge Aguilar to manifest whether she wanted to submit the case for resolution based on the pleadings or to have the matter formally investigated.[17] In her letter[18] dated August 7, 2007, Judge Aguilar informed the OCA that she opted for a formal investigation of the charges against her.

On September 24, 2007, Court Administrator Lock recommended to the Court that the case against Judge Aguilar be re-docketed as a regular administrative matter and to refer the case to a consultant for investigation, report, and recommendation.[19]

The Court, in a Resolution[20] dated October 17, 2007, re-docketed the case as a regular administrative matter.

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[16] *Id.* at 78-83.

[17] *Id.* at 84.

[18] *Id.* at 136.

[19] *Id.* at 132.

[20] *Id.* at 133.

Upon the recommendation[21] of succeeding Court Administrator Zenaida N. Elepaño, the administrative matter was referred to the Court of Appeals on March 4, 2008, to be raffled among the Associate Justices for investigation, report, and recommendation. It was raffled to Investigating Justice Dy-Liacco Flores on June 2, 2008.

During the preliminary conference on September 4, 2008, Investigating Justice Dy-Liacco Flores encouraged the parties to focus on the core issues. She suggested that OMB-L-A-03-0718-G, which addressed Judge Aguilar's wrongful notarization of the deeds of Real Estate Mortgage between Lourdes Sison and Angelina Cuevas, should already be deemed closed since Judge Aguilar had already paid the fine imposed therein; and that the present investigation be limited to the purportedly inaccurate entries made by Judge Aguilar in her PDS.

After consideration of the documents and testimonies of the parties, Investigating Justice Dy-Liacco Flores submitted her report, pertinent portions of which read:

> The undersigned Investigator finds [Judge Aguilar] guilty of dishonesty.
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> x x x x x x x x x
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> [Judge Aguilar] explained that she thought her retirement as Legal Officer of Olongapo City on December 13, 2003 rendered *functus officio* the administrative case filed by Arnel Sison against her and the unusual penalties attendant to the administrative charges such as removal, suspension or censure had been mooted by her retirement. She claims that even if such belief is wrong, it is not entirely baseless.
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> [Judge Aguilar's] explanation fails to persuade. When she made said entry, she was not an ordinary layman ignorant of the intricacies of the law but an experienced lawyer who had served as City Legal Officer for more than sixteen (16) years. Also, [Judge Aguilar] always graduated at the top of her class in law school and in her liberal arts degree at a prestigious university. Thus, she is deemed to know the import of a simple question: "Is there any pending civil, criminal or

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[21] *Id.* at 140.

administrative (including disbarment) case or complaint filed against you pending before any Court, prosecution office, or any other office, agency or instrumentality of the government or the Republic of the Philippines or the Integrated Bar of the Philippines?"

The simplicity of the question would have dawned on her right away that her belief about the effect of her resignation is irrelevant to the question. At any rate, in the case of *Pagano vs. Nazarro, et al.*, the Supreme Court stated thus:

> (T)he precipitate resignation of a government employee charged with an offense punishable by dismissal from service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable.
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> A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic despite petitioner's [Judge Aguilar] separation from service. Even if the most severe of administrative sanctions - that of separation from service — may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.

[Judge Aguilar's] plea of good faith is controverted by the fact that the misrepresentation is so palpable that it could not have been missed or overlooked by a brilliant mind like that of [Judge Aguilar]. As a City Legal Officer for a long time, she must have known that a truthful revelation of the pendency of her administrative case could derail her application to the bench. Her desire to avoid the risk explains that misrepresentation.[22]

Ultimately, Investigating Justice Dy-Liacco Flores recommended as follows:

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[22] *Id.* at 246-247.

In view of the foregoing, the undersigned Investigator recommends the penalty of dismissal from service with forfeiture of all benefits except earned leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations.[23]

The Court referred the foregoing report and recommendation of Investigating Justice Dy-Liacco Flores to the OCA for evaluation, report, and recommendation.

On May 6, 2009, the OCA, through then Court Administrator, now Associate Justice of this Court, Jose P. Perez, submitted its report, concurring with the findings of Investigating Justice Dy-Liacco Flores and recommending thus:

In view of the foregoing, it is respectfully submitted for the consideration of the Honorable Court the recommendations that Judge Ma. Ellen M. Aguilar, Regional Trial Court, Branch 70, Burgos, Pangasinan, be DISMISSED from the service with forfeiture of all benefits except earned leave credits, with prejudice to re-employment to any public office, including government-owned or controlled corporations.[24]

The Court agrees with the reports of the OCA and Investigating Justice Dy-Liacco Flores adjudging Judge Aguilar guilty of dishonesty in filling out her PDS, but modifies the recommended penalty of dismissal to suspension of six (6) months given the attendant circumstances.

Judge Aguilar admitted that in two of her PDS – one accomplished in **September 2004**, attached to her application for judgeship position, and the other accomplished on **March 6, 2006**, upon her assumption as RTC Judge of Burgos, Pangasinan – Judge Aguilar answered that she had no pending administrative case against her; and that she had not been formally charged nor found guilty of any administrative charge. All the while, Arnel Sison's administrative complaint against

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[23] *Id.* at 251.

[24] *Id.* at 344.

Judge Aguilar, OMB-L-A-03-0718-G, was pending before the Deputy Ombudsman for Luzon. The Deputy Ombudsman for Luzon, in a Decision dated **November 29, 2005** in OMB-L-A-03-0718-G, found Judge Aguilar guilty of misconduct and imposed upon her the penalty of one month suspension; and in an Order dated **January 31, 2006**, denied Judge Aguilar's motion for reconsideration, but modified the penalty imposed by converting it to a fine equivalent to one month salary.

The accomplishment of the PDS is a requirement under the Civil Service Rules and Regulations for employment in the government. Since truthful completion of PDS is a requirement for employment in the Judiciary, the importance of answering the same with candor need not be gainsaid.[25]

With respect to Judge Aguilar's supposed omission in her PDS submitted with her judgeship application, we are guided by the ruling in *Plopinio v. Zabala-Cariño*,[26] wherein we clarified that a person shall be considered formally charged in administrative cases only upon a finding of the existence of a *prima facie* case by the disciplining authority, in case of a complaint filed by a private person. However, Judge Aguilar's failure to disclose OMB-L-A-03-0718-G in her PDS filed upon her assumption of office when she already had notice of the adverse decision therein constitutes dishonesty, considered a grave offense under the Administrative Code of 1987, as well as the Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules), with the corresponding penalty of dismissal from service even for the first offense.

Nonetheless, Rule IV, Section 53 of the Civil Service Rules also provides that in the determination of the penalties to be imposed, extenuating, mitigating, aggravating or alternative circumstances attendant to the commission of the offense shall be considered. Among the circumstances that may be allowed

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[25] *Inting v. Tanodbayan*, 186 Phil. 343, 348 (1980); *Belosillo v. Rivera*, 395 Phil. 180, 191 (2000).

[26] A.M. No. P-08-2458, March 22, 2010, 616 SCRA 269, 278.

to modify the penalty are (1) length of service in the government, (2) good faith, and (3) other analogous circumstances.

In several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty. For equitable and humanitarian reasons, the Court reduced the administrative penalties imposed in the following cases:

The Court had the occasion to rule in *Office of the Court Administrator v. Flores*,[27] wherein the respondent legal researcher was charged with dishonesty for her failure to disclose her suspension and dismissal from her previous employment in her PDS, that:

> This Court has in the past punished similar infractions pertaining to making untruthful statements in the PDS with the severe penalty of dismissal such as failing to state previous employment and the fact of separation for cause therefrom, falsely declaring passing the career service professional examination when in fact one did not, and neglecting to declare the pendency of a criminal case.
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> x x x x x x x x x
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> While dishonesty is considered a grave offense punishable by dismissal even at the first instance, **jurisprudence is replete with cases where the Court lowered the penalty of dismissal to suspension taking into account the presence of mitigating circumstances** such as length of service in the government and being a first time offender.
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> Since respondent has been in the service for fourteen (14) years and since this is her **first offense during employment in the judiciary,** the Court deems it **proper to impose the penalty of**

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[27] A.M. No. P-07-2366, April 16, 2009, 585 SCRA 82.

suspension for six (6) months without pay.[28] (Emphases supplied. Citations omitted.)

Similar considerations were applied in other cases involving administrative charges of dishonesty. In *Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Larizza Paguio-Bacani, Branch Clerk of Court II, Municipal Trial Court of Meycauayan, Bulacan*,[29] respondent Paguio-Bacani's act of falsifying her Daily Time Records (DTRs) amounted to dishonesty, which under the Civil Service Rules carried the penalty of dismissal from the service even for a first offense. Even though dishonesty through falsification of DTRs is punishable by dismissal, such an extreme penalty was not imposed on the errant employee where there exist mitigating circumstances which could alleviate her culpability. Paguio-Bacani had been Branch Clerk of Court for about ten years and this was the first administrative complaint against her. Thus, Paguio-Bacani was suspended from the service for one year without pay, with a warning that a repetition of the same or similar act will be dealt with more severely.

Respondent Valentin, in *Concerned Employee v. Roberto Valentin, Clerk II, Records Division, Office of the Court Administrator*,[30] was found guilty of dishonesty for claiming to have rendered overtime service for 12 days, receiving overtime allowance for the same, when he could not have actually been at the office since he served as an umpire at table tennis matches held on the same dates. Instead of the penalty of dismissal, Valentin was suspended from the service for six months without pay, with a warning that a repetition of the same or similar act will be dealt with more severely. Valentin had been in the government service for almost eight years and had performed his assigned tasks satisfactorily. These two circumstances were considered mitigating and, therefore, decreased the imposable penalty upon Valentin.

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[28] *Id.* at 90-92.

[29] A.M. No. P-06-2217, July 30, 2009, 594 SCRA 242.

[30] 498 Phil. 347 (2005).

Respondents Ting and Esmerio, in *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*,[31] were likewise found guilty of dishonesty in deliberately failing to use the Chronolog Time Recorder Machine to register their actual time of arrival in the office and making it appear in their Daily Report of Attendance and Tardiness that they had always arrived on time. The Court, for humanitarian considerations, in addition to various mitigating circumstances in Ting's and Esmerio's favor, imposed the penalty of six months suspension, instead of the most severe penalty of dismissal from service. The following circumstances convinced the Court to extend mercy and indulgence to Ting and Esmerio: (1) their long years of service in the judiciary, ranging from 21 to 38 years; (2) their acknowledgement of their infractions and feelings of remorse; (3) the importance and complexity of the nature of their duties; (4) their "very satisfactory" performance rating; and (5) their family circumstances.

In *Reyes-Domingo v. Morales*,[32] respondent Morales, the branch Clerk of Court of the Metropolitan Trial Court of Manila, Branch 17, was found guilty of dishonesty in not reflecting his absences on the 10th and 13th of May 1996 in his DTR, when he was at Katarungan Village interfering with the construction of the Sports Complex therein, and at the Department of Environment and Natural Resources-National Capital Region pursuing his personal business. The OCA recommended Morales's dismissal from the service reasoning that his falsification of his DTRs amounted to dishonesty. However, the Court merely imposed a fine of ₱5,000.00 on Morales, given that this was his first offense, and his absences could not yet be classified as frequent or habitual.

In *Floria v. Sunga*,[33] Floria, Executive Assistant IV at the Archives Section, Court of Appeals, was found liable for

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[31] 502 Phil. 264 (2005).

[32] 396 Phil. 150 (2000).

[33] 420 Phil. 637 (2001).

immorality, since she had an illicit relation with Badilla, a married man; and for the administrative offense of dishonesty, because she falsified her children's birth certificates by stating therein that she and Badilla were married on May 22, 1972. The Court tempered justice with mercy by imposing on Floria a fine of ₱10,000.00, in light of the following circumstances: the administrative offense of immorality charged against Floria took place many years ago; it was the first time that Floria was being held administratively liable in her 29 years of employment at the Court of Appeals; and Floria's children were innocent victims, and dismissing or suspending their mother from the service would be a heavy toll on them, a punishment they did not deserve.

The Court, in *Concerned Taxpayer v. Norberto Doblada, Jr.*,[34] found that the inaccuracies and inconsistencies in the Statement of Assets and Liabilities of Doblada, the Sheriff at the Regional Trial Court of Pasig City, Branch 155, were tantamount to dishonesty, which under Civil Service rules and regulations is punishable with dismissal even for the first offense. However, the Court reduced the penalty to six months suspension without pay, bearing in mind attendant equitable and humanitarian considerations therein, to wit: Doblada had spent 34 years of his life in government service and that he was about to retire; this was the first time that Doblada was found administratively liable; Doblada and his wife were suffering from various illnesses that required constant medication; and that Doblada and his wife were relying on Doblada's retirement benefits to augment their finances and to meet their medical bills and expenses.

In *De Guzman, Jr. v. Mendoza*,[35] Antonio Mendoza, Sheriff IV of the Makati City Regional Trial Court, Branch 58, was charged with conniving with another in causing the issuance of an *alias* writ of execution and profiting from the rentals collected from the subject property. Mendoza was subsequently

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[34] 507 Phil. 222 (2005).

[35] 493 Phil. 690 (2005).

found guilty of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service; but instead of imposing the penalty of dismissal, the Court meted out the penalty of suspension for one year without pay, it appearing that it was Mendoza's first offense.

Drawing on the same compassion displayed by the Court in the foregoing catena of cases, the Court should take into consideration the following mitigating circumstances existent in the case at bar:

a) The criminal complaint for falsification, perjury and estafa against Judge Aguilar was dismissed by the Office of the Provincial Prosecutor for lack of probable cause. The administrative case against Judge Aguilar was already decided by the Office of the Deputy Ombudsman for Luzon, suspending Judge Aguilar for one month (later modified to a fine equivalent to one month salary by reason of her voluntary retirement from office) for misconduct but not for dishonesty. Both the dismissed criminal complaint and decided administrative case against Judge Aguilar concern her notarization of private documents that bore no relation to the performance of her functions as City Legal Officer;

b) Judge Aguilar appeared to have believed that she was authorized to notarize said private documents as part of her duties as City Legal Officer, and she neither charged any fee nor received any consideration therefor;

c) Setting aside for the moment her previous administrative case, Judge Aguilar had otherwise strong credentials for her appointment as a judge;[36]

d) Judge Aguilar has rendered more than 20 years of government service;

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[36] Apart from fulfilling the requisite years of legal practice, Judge Aguilar graduated *magna cum laude* both in her undergraduate course and from law school at the University of Santo Tomas.

e) This is Judge Aguilar's first and only administrative charge in the Judiciary for which she was found guilty; and

f) Judge Aguilar readily acknowledged her offense, apologized, and promised to be more circumspect and accurate in her future submissions.

Judge Aguilar's case should be distinguished from our previous rulings in *Office of the Court Administrator v. Judge Estacion, Jr.*,[37] *Gutierrez v. Belan*[38] and *Re: Non-Disclosure before the Judicial and Bar Council of the Administrative Case Filed Against Judge Jaime V. Quitain*[39] (the last two cited in the report of Investigating Justice Dy-Liacco Flores). In *Estacion,* the respondent judge failed to disclose his pending criminal cases for homicide and attempted homicide when he applied to the Judiciary; while in *Belan,* the respondent judge failed to previously disclose a pending criminal case for reckless imprudence resulting in serious physical injuries. In *Quitain,* the previous administrative case which the respondent judge failed to disclose upon his application for judgeship was one for grave misconduct for which he was **dismissed** from the service with forfeiture of benefits prior to his application to the Judiciary. The seriousness of the case or cases which respondent judges failed to disclose in their PDS or applications for judgeship, and the absence of mitigating circumstances, sufficiently differentiate *Estacion*, *Belan*, and *Quitain*, from the one at bar.

Under Section 11, Rule 140 of the Rules of Court, a judge found guilty of a serious charge, such as dishonesty, may be subjected to any of the following penalties:

Sec. 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

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[37] 260 Phil. 1 (1990).

[38] 355 Phil. 428 (1998).

[39] JBC No. 013, August 22, 2007, 530 SCRA 729.

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Accordingly, the Court finds it appropriate to impose a suspension of six months without pay in light of the above discussed extenuating circumstances.

WHEREFORE, Judge Ma. Ellen M. Aguilar is hereby found guilty of dishonesty and is **SUSPENDED** from the service for six (6) months without pay, with a warning that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

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

Perez, J., took no part.

EN BANC

[G.R. No. 165279. June 7, 2011]

DR. RUBI LI, *petitioner, vs.* **SPOUSES REYNALDO and LINA SOLIMAN, as parents/heirs of deceased Angelica Soliman,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; MEDICAL MALPRACTICE; LAWSUIT OF THIS NATURE, ELUCIDATED.— The type of lawsuit which has been called medical malpractice or, more appropriately, medical negligence, is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm. In order to successfully pursue such a claim, a patient must prove that a health care provider, in most cases a physician, either failed to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent provider would not have done; and that that failure or action caused injury to the patient. This Court has recognized that medical negligence cases are best proved by opinions of expert witnesses belonging in the same general neighborhood and in the same general line of practice as defendant physician or surgeon. The deference of courts to the expert opinion of qualified physicians stems from the former's realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating, hence the indispensability of expert testimonies.

2. ID.; ID.; ID.; DOCTRINE OF "INFORMED CONSENT" WITHIN THE CONTEXT OF PHYSICIAN-PATIENT RELATIONSHIPS, ELUCIDATED.— The doctrine of *informed consent* within the context of physician-patient relationships goes far back into English common law. As early as 1767, doctors were charged with the tort of "battery" (*i.e.*, an unauthorized physical contact with a patient) if they had not gained the consent of their patients prior to performing a surgery or procedure. In the United States, the seminal case was *Schoendorff v. Society of New York Hospital* which involved unwanted treatment performed by a doctor. Justice Benjamin Cardozo's oft-quoted opinion upheld the basic right of a patient to give consent to any medical procedure or treatment: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages." From a purely ethical norm, informed consent evolved into a general principle of law that a physician has a duty to disclose what a reasonably

prudent physician in the medical community in the exercise of reasonable care would disclose to his patient as to whatever grave risks of injury might be incurred from a proposed course of treatment, so that a patient, exercising ordinary care for his own welfare, and faced with a choice of undergoing the proposed treatment, or alternative treatment, or none at all, may intelligently exercise his judgment by reasonably balancing the probable risks against the probable benefits.

3. ID.; ID. ID.; ID.; ELEMENTS TO PROVE IN MALPRACTICE ACTION BASED UPON THE DOCTRINE OF INFORMED CONSENT.— There are four essential elements a plaintiff must prove in a malpractice action based upon the doctrine of informed consent: "(1) the physician had a duty to disclose material risks; (2) he failed to disclose or inadequately disclosed those risks; (3) as a direct and proximate result of the failure to disclose, the patient consented to treatment she otherwise would not have consented to; and (4) plaintiff was injured by the proposed treatment." The gravamen in an informed consent case requires the plaintiff to "point to significant undisclosed information relating to the treatment which would have altered her decision to undergo it."

4. ID.; ID.; ID.; ID.; INADEQUATE DISCLOSURE OF MATERIAL RISKS IN THE PROPOSED TREATMENT; NOT APPRECIATED IN CASE AT BAR.— Examining the evidence on record, we hold that there was adequate disclosure of material risks inherent in the chemotherapy procedure performed with the consent of Angelica's parents. Respondents could not have been unaware in the course of initial treatment and amputation of Angelica's lower extremity, that her immune system was already weak on account of the malignant tumor in her knee. When petitioner informed the respondents beforehand of the side effects of chemotherapy which includes lowered counts of white and red blood cells, decrease in blood platelets, possible kidney or heart damage and skin darkening, there is reasonable expectation on the part of the doctor that the respondents understood very well that the severity of these side effects will not be the same for all patients undergoing the procedure. x x x On the other hand, it is difficult to give credence to respondents' claim that petitioner told them of 95% chance of recovery for their daughter, as it was unlikely for doctors like petitioner who were dealing with grave conditions such as cancer to have falsely

assured patients of chemotherapy's success rate. Besides, informed consent laws in other countries generally require only a reasonable explanation of potential harms, so specific disclosures such as statistical data, may not be legally necessary. x x x Further, in a medical malpractice action based on lack of informed consent, "the plaintiff must prove both the duty and the breach of that duty through expert testimony. Such expert testimony must show the customary standard of care of physicians in the same practice as that of the defendant doctor. x x x In the absence of expert testimony in this regard, the Court feels hesitant in defining the scope of mandatory disclosure in cases of malpractice based on lack of informed consent, much less set a standard of disclosure that, even in foreign jurisdictions, has been noted to be an evolving one.

ABAD, *J., concurring opinion*:

CIVIL LAW; DAMAGES; FAILURE OF PHYSICIAN TO SUFFICIENTLY INFORM CANCER PATIENT OF THE COMPLICATIONS FOR CHEMOTHERAPY; NOT APPRECIATED AS THE FACT IS, PATIENT TOOK THE CHANCE WITH THE TREATMENT WHICH HAD EXTENDED THE LIVES OF SOME.— Plaintiffs Reynaldo and Lina Soliman claim damages against defendant Dr. Rubi Li for her failure to sufficiently inform them before hand of the risks of complications, pains, and quick death that their sick daughter, Angelica, faced when placed under chemotherapy. As the majority points out, the Solimans had the burden of proving the following to be entitled to damages: 1) that Dr. Li had a duty to disclose the material risks of placing Angelica under chemotherapy; 2) that the doctor failed to disclose or inadequately disclosed those risks; 3) that as a direct and proximate result of the failure to disclose, the Solimans consented to have Angelica undergo such therapy that they otherwise would not have consented to; and 4) that Angelica suffered injury on account of the chemotherapy. x x x At the heart of the Solimans' claim for damages is the proposition that they would not have agreed to submit their daughter to chemotherapy had they known that the side effects she faced were more than just hair loss, vomiting, and weakness. They would not have agreed if they had known that she would suffer greater distress and soon die. But the Solimans are arguing from hindsight. The fact is that

they were willing to assume huge risks on the chance that their daughter could cheat death. They did not mind that their young daughter's left leg would be amputated from above the knee for a 50% chance of preventing the spread of the cancer. There is probably no person on this planet whose family members, relatives, or close friends have not been touched by cancer. Every one knows of the travails and agonies of chemotherapy, yet it is rare indeed for a cancer patient or his relatives not to take a chance with this treatment, which had proved successful in extending the lives of some. Unfortunately for the Solimans, their daughter did not number among the successful cases. x x x The Solimans accepted the risks that chemotherapy offered with full knowledge of its effects on their daughter. It is not fair that they should blame Dr. Li for Angelica's suffering and death brought about by a disease that she did not wish upon her. Indeed, it was not Dr. Li, according to Reynaldo, who convinced him to agree to submit his daughter to chemotherapy but Dr. Tamayo. The latter explained to him the need for her daughter to undergo chemotherapy to increase the chance of containing her cancer. This consultation took place even before the Solimans met Dr. Li.

BRION, *J.*, *separate opinion*:

1. CIVIL LAW; DAMAGES; MEDICAL NEGLIGENCE; LACK OF INFORMED CONSENT LITIGATION; EXPERT MEDICAL TESTIMONY IS CRUCIAL.— As in any ordinary medical negligence action based on Article 2176 of the Civil Code, the burden to prove the necessary elements – *i.e.*, duty, breach, injury and proximate causation – rests with the plaintiff. In a lack of informed consent litigation, the plaintiff must prove by preponderance of evidence the following requisites: (1) **the physician had a duty to disclose material risks;** (2) he failed to disclose or inadequately disclosed those risks; (3) as a direct and proximate result of the failure to disclose, the patient consented to treatment she otherwise would not have consented to; and (4) **plaintiff was injured by the proposed treatment.** Of crucial significance in establishing the elements involved in medical negligence cases is expert medical testimony since the facts and issues to be resolved by the Court in these cases are matters peculiarly within the knowledge of experts in the medical field.

2. ID.; ID.; ID.; ID.; DUTY TO DISCLOSE MATERIAL RISKS; REASONABLE PATIENT STANDARD WHICH FOCUSES ON THE INFORMATION NEEDS OF AN AVERAGE REASONABLE PATIENT, OPTED IN CASE AT BAR.— After considering the American experience in informed consent cases, I opt to use the reasonable patient standard which focuses "on the informational needs of an average reasonable patient, rather than on professionally-established norms." In the doctor-patient relationship, it is the patient who is subjected to medical intervention and who gets well or suffers as a result of this intervention. It is thus for the patient to decide what type of medical intervention he would accept or reject; it is his or her health and life that are on the line. To arrive at a reasonable decision, the patient must have sufficient advice and information; this is the reason he or she consults a doctor, while the role of the doctor is to provide the medical advice and services the patient asks for or chooses after informed consideration. In this kind of relationship, the doctor carries the obligation to determine and disclose all the risks and probabilities that will assist the patient in arriving at a decision on whether to accept the doctor's advice or recommended intervention. While the disclosure need not be an encyclopedic statement bearing on the patient's illness or condition, the doctor must disclose enough information to reasonably allow the patient to decide. In an informed consent litigation, American experiences documented through the decided cases, as well as our own common empirical knowledge and limited line of cases on medical negligence, tell us that at least the testimony on the determination of the *attendant risks and the probabilities* of the proposed treatment or procedure is a matter for a medical expert, not for a layperson, to provide. This is generally the first of the two-step process that this case *Smith v. Shannon*, speaks of in describing the reasonable patient standard and its application.

3. ID.; ID.; ID.; ID.; ID.; ADEQUACY OF THE DISCLOSURE BASED ON THE MATERIALITY OF THE DISCLOSED INFORMATION TO THE PATIENT'S DECISION MAKING.— The second step relates to testimony on the determination of the adequacy of the disclosure based on the materiality of the disclosed information to the patient's decision-making. In this regard, *Canterbury v. Spence* again offers some help when it states: Once the circumstances give rise to a duty on the physician's part to inform his patient, the next inquiry

is the scope of the disclosure the physician is legally obliged to make. The courts have frequently confronted this problem but no uniform standard defining the adequacy of the divulgence emerges from the decisions. **Some have said "full" disclosure, a norm we are unwilling to adopt literally. It seems obviously prohibitive and unrealistic to expect physicians to discuss with their patients every risk of proposed treatment — no matter how small or remote - and generally unnecessary from the patient's viewpoint as well.** Indeed, the cases speaking in terms of "full" disclosure appear to envision something less than total disclosure, leaving unanswered the question of just how much. To my mind, the scope that this ruling describes, while not given with mathematical precision, is still a good rule to keep in mind in balancing the interests of the physician and the patient; the disclosure is not total by reason of practicality, but must be adequate to be a reasonable basis for an informed decision. For this aspect of the process, non-expert testimony may be used on non-technical detail so that the testimony may dwell on "a physician's failure to disclose risk information, the patient's lack of knowledge of the risk, and adverse consequences following the treatment."

4. **ID.; ID.; ID.; ID.; ID.; EXPERT TESTIMONY REQUIRED IN CASE AT BAR TO DETERMINE THE RISKS OF CHEMOTHERAPY THAT ATTENDING PHYSICIAN SHOULD HAVE CONSIDERED AND DISCLOSED.—** In the present case, expert testimony is required in determining the *risks and or side effects of chemotherapy that the attending physician should have considered and disclosed* as these are clearly beyond the knowledge of a layperson to testify on. In other words, to prevail in their claim of lack of informed consent, the respondents must present expert supporting testimony to establish the scope of what should be disclosed and the significant risks attendant to chemotherapy that the petitioner should have considered and disclosed; the determination of the scope of disclosure, and the risks and their probability are matters a medical expert must determine and testify on since these are beyond the knowledge of laypersons.

5. **ID.; ID.; ID.; ID.; ID.; ADEQUACY OF DISCLOSURE RISKS; SUFFICIENCY OF DISCLOSURE CAN BE MADE ONLY AFTER A DETERMINATION AND ASSESSMENT OF RISKS THAT HAVE BEEN MADE.—** The *ponencia* concludes

that "there was adequate disclosure of material risks of the [chemotherapy administered] with the consent of Angelica's parents" in view of the fact that the petitioner informed the respondents of the side effects of chemotherapy, such as low white and red blood cell and platelet count, kidney or heart damage and skin darkening. I cannot agree with this conclusion because it was made without the requisite premises. As heretofore discussed, sufficiency of disclosure can be made only after a determination and assessment of risks have been made. As discussed above, no evidence exists showing that these premises have been properly laid and proven. Hence, for lack of basis, no conclusion can be made on whether sufficient disclosure followed. In other words, the disclosure cannot be said to be sufficient in the absence of evidence of what, in the first place, should be disclosed. x x x [I]n the case of the professional disclosure standard, determination of adequacy requires expert medical testimony on the standard medical practice that prevails in the community. Thus, it has been held that "[e]xpert testimony is required in an informed consent case to establish what the practice is in the general community with respect to disclosure of risks that the defendant physician allegedly failed to disclose."

6. ID.; ID.; ID.; ID.; ID.; LACK OF INFORMED CONSENT; THAT THE TREATMENT PROXIMATELY CAUSED INJURY AS A RESULT OF THE UNDISCLOSED RISK; NOT ESTABLISHED IN CASE AT BAR.— Traditionally, plaintiffs alleging lack of informed consent must show two types of causation: 1) adequate disclosure would have caused the plaintiff to decline the treatment, and **2) the treatment proximately caused injury to the plaintiff**. The second causation requirement is critical since a medical procedure performed without informed consent does not, in itself, proximately cause an actionable injury to a plaintiff; a plaintiff must show that he or she has suffered some injury as a result of the undisclosed risk to present a complete cause of action. x x x In the present case, respondent Lina Soliman's lay testimony at best only satisfied the first type of causation – that adequate disclosure by the petitioner of all the side effects of chemotherapy would have caused them to decline treatment. The respondents in this case must still show by competent expert testimony that the chemotherapy administered by the petitioner proximately caused Angelica's death. x x x [I]n the absence of competent evidence that the chemotherapy proximately caused Angelica's

death, **what stands in the record in this case is the petitioner's uncontroverted and competent expert testimony that Angelica died of sepsis brought about by the progression of her *osteosarcoma* – an aggressive and deadly type of bone cancer.**

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

1. CIVIL LAW; DAMAGES; MEDICAL MALPRACTICE; DOCTRINE OF "INFORMED CONSENT," ELUCIDATED.— The doctrine of informed consent requires doctors, before administering treatment to their patients, to disclose adequately the material risks and side effects of the proposed treatment. The duty to obtain the patient's informed consent is distinct from the doctor's duty to skillfully diagnose and treat the patient. Four requisites must be proven in cases involving the doctrine of informed consent. The plaintiff must show that (1) the doctor had a duty to disclose the associated risks and side effects of a proposed treatment; (2) the doctor failed to disclose or inadequately disclosed the associated risks and side effects of the proposed treatment; (3) the plaintiff consented to the proposed treatment because of the doctor's failure to disclose or because of the inadequate disclosure of the associated risks and side effects of the proposed treatment; and (4) the plaintiff was injured as a result of the treatment.

2. ID.; ID.; ID.; ID.; STANDARDS USED TO DETERMINE WHAT CONSTITUTES ADEQUATE DISCLOSURE OF ASSOCIATED RISKS AND SIDE EFFECTS OF A PROPOSED TREATMENT; PHYSICIAN STANDARD AND PATIENT STANDARD MATERIALITY, DISCUSSED.— There are two standards by which courts determine what constitutes adequate disclosure of associated risks and side effects of a proposed treatment: the physician standard, and the patient standard of materiality. Under the physician standard, a doctor is obligated to disclose that information which a reasonable doctor in the same field of expertise would have disclosed to his or her patient. In *Shabinaw v. Brown*, the Supreme Court of Idaho held that: x x x **The requisite pertinent facts to be disclosed to the patient are those which would be given by a like physician of good standing in the same community**. Under the patient standard of materiality, a doctor is obligated to disclose that information which a reasonable patient would

deem material in deciding whether to proceed with a proposed treatment. In *Johnson by Adler v. Kokemoor*, the Supreme Court of Wisconsin held that: x x x **The information that must be disclosed is that information which would be "material" to a patient's decision.**

3. ID.; ID.; ID.; ID.; ID.; EXPERT WITNESS, REQUIRED.— In order to determine what the associated risks and side effects of a proposed treatment are, testimony by an expert witness is necessary because these are beyond the common knowledge of ordinary people. In *Canterbury*, the Court held that, "There are obviously important roles for medical testimony in [nondisclosure] cases, and some roles which only medical evidence can fill. Experts are ordinarily indispensable to identify and elucidate for the fact-finder the risks of therapy." The Court also held that, "medical facts are for medical experts."

APPEARANCES OF COUNSEL

Santos Santos & Santos Law Offices for petitioner.
Musico Law Office for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Challenged in this petition for review on *certiorari* is the Decision[1] dated June 15, 2004 as well as the Resolution[2] dated September 1, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 58013 which modified the Decision[3] dated September 5, 1997 of the Regional Trial Court of Legazpi City, Branch 8 in Civil Case No. 8904.

The factual antecedents:

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[1] *Rollo*, pp. 33-63. Penned by Associate Justice Mariano C. Del Castillo (now a Member of this Court) and concurred in by Associate Justices Roberto A. Barrios and Magdangal M. De Leon.

[2] *Id.* at 65.

[3] *Id.* at 119-162. Penned by Judge Salvador D. Silerio.

On July 7, 1993, respondents' 11-year old daughter, Angelica Soliman, underwent a biopsy of the mass located in her lower extremity at the St. Luke's Medical Center (SLMC). Results showed that Angelica was suffering from *osteosarcoma*, osteoblastic type,[4] a high-grade (highly malignant) cancer of the bone which usually afflicts teenage children. Following this diagnosis and as primary intervention, Angelica's right leg was amputated by Dr. Jaime Tamayo in order to remove the tumor. As adjuvant treatment to eliminate any remaining cancer cells, and hence minimize the chances of recurrence and prevent the disease from spreading to other parts of the patient's body (*metastasis*), chemotherapy was suggested by Dr. Tamayo. Dr. Tamayo referred Angelica to another doctor at SLMC, herein petitioner Dr. Rubi Li, a medical oncologist.

On August 18, 1993, Angelica was admitted to SLMC. However, she died on September 1, 1993, just eleven (11) days after the (intravenous) administration of the first cycle of the chemotherapy regimen. Because SLMC refused to release a death certificate without full payment of their hospital bill, respondents brought the cadaver of Angelica to the Philippine National Police (PNP) Crime Laboratory at Camp Crame for post-mortem examination. The Medico-Legal Report issued by said institution indicated the cause of death as "Hypovolemic shock secondary to multiple organ hemorrhages and Disseminated Intravascular Coagulation."[5]

On the other hand, the Certificate of Death[6] issued by SLMC stated the cause of death as follows:

Immediate cause	: a.	Osteosarcoma, Status Post AKA
Antecedent cause	: b.	(above knee amputation)
Underlying cause	: c.	Status Post Chemotherapy

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[4] Records, p. 174.

[5] *Id.* at 175.

[6] *Id.* at 254.

On February 21, 1994, respondents filed a damage suit[7] against petitioner, Dr. Leo Marbella, Mr. Jose Ledesma, a certain Dr. Arriete and SLMC. Respondents charged them with negligence and disregard of Angelica's safety, health and welfare by their careless administration of the chemotherapy drugs, their failure to observe the essential precautions in detecting early the symptoms of fatal blood platelet decrease and stopping early on the chemotherapy, which bleeding led to hypovolemic shock that caused Angelica's untimely demise. Further, it was specifically averred that petitioner assured the respondents that Angelica would recover in view of 95% chance of healing with chemotherapy ("*Magiging normal na ang anak nyo basta machemo. 95% ang healing"*) and when asked regarding the side effects, petitioner mentioned only slight vomiting, hair loss and weakness ("*Magsusuka ng kaunti. Malulugas ang buhok. Manghihina"*). Respondents thus claimed that they would not have given their consent to chemotherapy had petitioner not falsely assured them of its side effects.

In her answer,[8] petitioner denied having been negligent in administering the chemotherapy drugs to Angelica and asserted that she had fully explained to respondents how the chemotherapy will affect not only the cancer cells but also the patient's normal body parts, including the lowering of white and red blood cells and platelets. She claimed that what happened to Angelica can be attributed to malignant tumor cells possibly left behind after surgery. Few as they may be, these have the capacity to compete for nutrients such that the body becomes so weak structurally (*cachexia*) and functionally in the form of lower resistance of the body to combat infection. Such infection becomes uncontrollable and triggers a chain of events (*sepsis* or *septicemia*) that may lead to bleeding in the form of Disseminated Intravascular Coagulation (DIC), as what the autopsy report showed in the case of Angelica.

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[7] *Rollo,* pp. 80-89.

[8] *Id.* at 95-108.

Since the medical records of Angelica were not produced in court, the trial and appellate courts had to rely on testimonial evidence, principally the declarations of petitioner and respondents themselves. The following chronology of events was gathered:

On July 23, 1993, petitioner saw the respondents at the hospital after Angelica's surgery and discussed with them Angelica's condition. Petitioner told respondents that Angelica should be given two to three weeks to recover from the operation before starting chemotherapy. Respondents were apprehensive due to financial constraints as Reynaldo earns only from ₱70,000.00 to ₱150,000.00 a year from his jewelry and watch repairing business.[9] Petitioner, however, assured them not to worry about her professional fee and told them to just save up for the medicines to be used.

Petitioner claimed that she explained to respondents that even when a tumor is removed, there are still small lesions undetectable to the naked eye, and that adjuvant chemotherapy is needed to clean out the small lesions in order to lessen the chance of the cancer to recur. She did not give the respondents any assurance that chemotherapy will cure Angelica's cancer. During these consultations with respondents, she explained the following side effects of chemotherapy treatment to respondents: (1) falling hair; (2) nausea and vomiting; (3) loss of appetite; (4) low count of white blood cells [WBC], red blood cells [RBC] and platelets; (5) possible sterility due to the effects on Angelica's ovary; (6) damage to the heart and kidneys; and (7) darkening of the skin especially when exposed to sunlight. She actually talked with respondents four times, once at the hospital after the surgery, twice at her clinic and the fourth time when Angelica's mother called her through long distance.[10] This was disputed by respondents who countered that petitioner gave them assurance that there is 95% chance of healing for Angelica if she undergoes chemotherapy and that the only side effects

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[9] TSN, January 26, 1995, p. 3.

[10] TSN, October 6, 1995, pp. 18-26, 60; TSN, January 27, 1997, pp. 4-5.

were nausea, vomiting and hair loss.[11] Those were the only side-effects of chemotherapy treatment mentioned by petitioner.[12]

On July 27, 1993, SLMC discharged Angelica, with instruction from petitioner that she be readmitted after two or three weeks for the chemotherapy.

On August 18, 1993, respondents brought Angelica to SLMC for chemotherapy, bringing with them the results of the laboratory tests requested by petitioner: Angelica's chest x-ray, ultrasound of the liver, creatinine and complete liver function tests.[13] Petitioner proceeded with the chemotherapy by first administering hydration fluids to Angelica.[14]

The following day, August 19, petitioner began administering three chemotherapy drugs – Cisplatin,[15] Doxorubicin[16] and Cosmegen[17] – intravenously. Petitioner was supposedly assisted by her trainees Dr. Leo Marbella[18] and Dr. Grace Arriete.[19] In

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[11] *Rollo,* p. 35.

[12] *Id.* at 35 and 81.

[13] TSN, October 6, 1995, pp. 39-40; *rollo,* p. 123.

[14] *Id.* at 40.

[15] Cisplatin is in a class of drugs known as platinum-containing compounds. It slows or stops the growth of cancer cells inside the body. Source: http://www.nlm.nih.gov/medlineplus/druginfo/meds/a684036.html. (Site visited on August 21, 2010.)

[16] Doxorubicin is an anti-cancer (antineoplastic or cytotoxic) chemotherapy drug. It is classified as an "anthracycline antibiotic." Source: http://www.chemocare.com/bio/doxorubicin.asp (Site visited on August 21, 2010.)

[17] Cosmegen is the trade name for Dactinomycin, an anti-cancer (antineoplastic or cytotoxic) chemotherapy drug classified as an "alkylating agent." Source: http://www.chemocare.com/bio/cosmegen.asp (Site visited on August 21, 2010.)

[18] TSN, January 27, 1997, p. 9.

[19] *Rollo,* p. 124.

his testimony, Dr. Marbella denied having any participation in administering the said chemotherapy drugs.[20]

On the second day of chemotherapy, August 20, respondents noticed reddish discoloration on Angelica's face.[21] They asked petitioner about it, but she merely quipped, "*Wala yan. Epekto ng gamot*."[22] Petitioner recalled noticing the skin rashes on the nose and cheek area of Angelica. At that moment, she entertained the possibility that Angelica also had systemic lupus and consulted Dr. Victoria Abesamis on the matter.[23]

On the third day of chemotherapy, August 21, Angelica had difficulty breathing and was thus provided with oxygen inhalation apparatus. This time, the reddish discoloration on Angelica's face had extended to her neck, but petitioner dismissed it again as merely the effect of medicines.[24] Petitioner testified that she did not see any discoloration on Angelica's face, nor did she notice any difficulty in the child's breathing. She claimed that Angelica merely complained of nausea and was given ice chips.[25]

On August 22, 1993, at around ten o'clock in the morning, upon seeing that their child could not anymore bear the pain, respondents pleaded with petitioner to stop the chemotherapy. Petitioner supposedly replied: "*Dapat 15 Cosmegen pa iyan. Okay, let's observe. If pwede na, bigyan uli ng chemo.*" At this point, respondents asked petitioner's permission to bring their child home. Later in the evening, Angelica passed black stool and reddish urine.[26] Petitioner countered that there was

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[20] TSN, April 22, 1996, pp. 11-12.

[21] *Rollo*, p. 35.

[22] *Id.* at 120.

[23] TSN, October 6, 1995, pp. 27-28.

[24] TSN, September 19, 1994, p. 18.

[25] Par. 11 of Answer, *rollo*, p. 100.

[26] TSN, September 19, 1994, p. 19; paragraph 16 of Complaint, *rollo*, p. 82.

no record of blackening of stools but only an episode of loose bowel movement (LBM). Petitioner also testified that what Angelica complained of was carpo-pedal spasm, not convulsion or epileptic attack, as respondents call it (petitioner described it in the vernacular as *"naninigas ang kamay at paa"*). She then requested for a serum calcium determination and stopped the chemotherapy. When Angelica was given calcium gluconate, the spasm and numbness subsided.[27]

The following day, August 23, petitioner yielded to respondents' request to take Angelica home. But prior to discharging Angelica, petitioner requested for a repeat serum calcium determination and explained to respondents that the chemotherapy will be temporarily stopped while she observes Angelica's muscle twitching and serum calcium level. Take-home medicines were also prescribed for Angelica, with instructions to respondents that the serum calcium test will have to be repeated after seven days. Petitioner told respondents that she will see Angelica again after two weeks, but respondents can see her anytime if any immediate problem arises.[28]

However, Angelica remained in confinement because while still in the premises of SLMC, her "convulsions" returned and she also had LBM. Angelica was given oxygen and administration of calcium continued.[29]

The next day, August 24, respondents claimed that Angelica still suffered from convulsions. They also noticed that she had a fever and had difficulty breathing.[30] Petitioner insisted it was carpo-pedal spasm, not convulsions. She verified that at around 4:50 that afternoon, Angelica developed difficulty in breathing and had fever. She then requested for an electrocardiogram analysis, and infused calcium gluconate on the patient at a "stat

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[27] TSN, October 6, 1995, pp. 28-30; paragraphs 12, 13 & 14 of Answer, *rollo,* pp. 100-101.

[28] *Rollo,* p. 101.

[29] TSN, September 19, 1994, p. 22.

[30] *Rollo,* p. 36.

dose." She further ordered that Angelica be given Bactrim,[31] a synthetic antibacterial combination drug,[32] to combat any infection on the child's body.[33]

By August 26, Angelica was bleeding through the mouth. Respondents also saw blood on her anus and urine. When Lina asked petitioner what was happening to her daughter, petitioner replied, "*Bagsak ang platelets ng anak mo*." Four units of platelet concentrates were then transfused to Angelica. Petitioner prescribed Solucortef. Considering that Angelica's fever was high and her white blood cell count was low, petitioner prescribed Leucomax. About four to eight bags of blood, consisting of packed red blood cells, fresh whole blood, or platelet concentrate, were transfused to Angelica. For two days (August 27 to 28), Angelica continued bleeding, but petitioner claimed it was lesser in amount and in frequency. Petitioner also denied that there were gadgets attached to Angelica at that time.[34]

On August 29, Angelica developed ulcers in her mouth, which petitioner said were blood clots that should not be removed. Respondents claimed that Angelica passed about half a liter of blood through her anus at around seven o'clock that evening, which petitioner likewise denied.

On August 30, Angelica continued bleeding. She was restless as endotracheal and nasogastric tubes were inserted into her weakened body. An aspiration of the nasogastric tube inserted to Angelica also revealed a bloody content. Angelica was given more platelet concentrate and fresh whole blood, which petitioner claimed improved her condition. Petitioner told Angelica not to remove the endotracheal tube because this may induce further

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[31] *Id.* at 125-126.

[32] http://www.rxlist.com/bactrim-drug.htm (Site visited September 2, 2010.)

[33] Paragraph 14 of Answer, *rollo,* pp. 101-102.

[34] Paragraphs 19-20 of Complaint, *rollo,* pp. 83; paragraphs 15-17 of Answer, pp. 102-103.

bleeding.[35] She was also transferred to the intensive care unit to avoid infection.

The next day, respondents claimed that Angelica became hysterical, vomited blood and her body turned black. Part of Angelica's skin was also noted to be shredding by just rubbing cotton on it. Angelica was so restless she removed those gadgets attached to her, saying "*Ayaw ko na*"; there were tears in her eyes and she kept turning her head. Observing her daughter to be at the point of death, Lina asked for a doctor but the latter could not answer her anymore.[36] At this time, the attending physician was Dr. Marbella who was shaking his head saying that Angelica's platelets were down and respondents should pray for their daughter. Reynaldo claimed that he was introduced to a pediatrician who took over his daughter's case, Dr. Abesamis who also told him to pray for his daughter. Angelica continued to have difficulty in her breathing and blood was being suctioned from her stomach. A nurse was posted inside Angelica's room to assist her breathing and at one point they had to revive Angelica by pumping her chest. Thereafter, Reynaldo claimed that Angelica already experienced difficulty in urinating and her bowel consisted of blood-like fluid. Angelica requested for an electric fan as she was in pain. Hospital staff attempted to take blood samples from Angelica but were unsuccessful because they could not even locate her vein. Angelica asked for a fruit but when it was given to her, she only smelled it. At this time, Reynaldo claimed he could not find either petitioner or Dr. Marbella. That night, Angelica became hysterical and started removing those gadgets attached to her. At three o'clock in the morning of September 1, a priest came and they prayed before Angelica expired. Petitioner finally came back and supposedly told respondents that there was "malfunction" or bogged-down machine.[37]

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[35] Paragraph 17 of Answer, *rollo*, p. 103.

[36] Paragraph 23 of Complaint, *rollo*, p. 83; TSN, September 19, 1994, pp. 24-25.

[37] TSN, December 15, 1994, pp. 13-21.

By petitioner's own account, Angelica was merely irritable that day (August 31). Petitioner noted though that Angelica's skin was indeed sloughing off.[38] She stressed that at 9:30 in the evening, Angelica pulled out her endotracheal tube.[39] On September 1, exactly two weeks after being admitted at SLMC for chemotherapy, Angelica died.[40] The cause of death, according to petitioner, was septicemia, or overwhelming infection, which caused Angelica's other organs to fail.[41] Petitioner attributed this to the patient's poor defense mechanism brought about by the cancer itself.[42]

While he was seeking the release of Angelica's cadaver from SLMC, Reynaldo claimed that petitioner acted arrogantly and called him names. He was asked to sign a promissory note as he did not have cash to pay the hospital bill.[43]

Respondents also presented as witnesses Dr. Jesusa Nieves-Vergara, Medico-Legal Officer of the PNP-Crime Laboratory who conducted the autopsy on Angelica's cadaver, and Dr. Melinda Vergara Balmaceda who is a Medical Specialist employed at the Department of Health (DOH) Operations and Management Services.

Testifying on the findings stated in her medico-legal report, Dr. Vergara noted the following: (1) there were fluids recovered from the abdominal cavity, which is not normal, and was due to hemorrhagic shock secondary to bleeding; (2) there was hemorrhage at the left side of the heart; (3) bleeding at the upper portion of and areas adjacent to, the esophagus; (4) lungs were heavy with bleeding at the back and lower portion, due to accumulation of fluids; (4) yellowish discoloration of the

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[38] Paragraph 17 of Answer, *rollo*, p. 103.

[39] *Id.*

[40] *Rollo*, p. 37.

[41] TSN, October 6, 1995, p. 33.

[42] *Id.*

[43] TSN, December 15, 1994, p. 22.

liver; (5) kidneys showed appearance of facial shock on account of hemorrhages; and (6) reddishness on external surface of the spleen. All these were the end result of "hypovolemic shock secondary to multiple organ hemorrhages and disseminated intravascular coagulation." Dr. Vergara opined that this can be attributed to the chemical agents in the drugs given to the victim, which caused platelet reduction resulting to bleeding sufficient to cause the victim's death. The time lapse for the production of DIC in the case of Angelica (from the time of diagnosis of sarcoma) was too short, considering the survival rate of about 3 years. The witness conceded that the victim will also die of osteosarcoma even with amputation or chemotherapy, but in this case Angelica's death was not caused by osteosarcoma. Dr. Vergara admitted that she is not a pathologist but her statements were based on the opinion of an oncologist whom she had interviewed. This oncologist supposedly said that if the victim already had DIC prior to the chemotherapy, the hospital staff could have detected it.[44]

On her part, Dr. Balmaceda declared that it is the physician's duty to inform and explain to the patient or his relatives every known side effect of the procedure or therapeutic agents to be administered, before securing the consent of the patient or his relatives to such procedure or therapy. The physician thus bases his assurance to the patient on his personal assessment of the patient's condition and his knowledge of the general effects of the agents or procedure that will be allowed on the patient. Dr. Balmaceda stressed that the patient or relatives must be informed of all known side effects based on studies and observations, even if such will aggravate the patient's condition.[45]

Dr. Jaime Tamayo, the orthopaedic surgeon who operated on Angelica's lower extremity, testified for the defendants. He explained that in case of malignant tumors, there is no guarantee that the ablation or removal of the amputated part

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[44] TSN, December 14, 1994, pp. 15-38.

[45] TSN, April 28, 1995, pp. 23-25.

will completely cure the cancer. Thus, surgery is not enough. The mortality rate of osteosarcoma at the time of modern chemotherapy and early diagnosis still remains at 80% to 90%. Usually, deaths occur from metastasis, or spread of the cancer to other vital organs like the liver, causing systemic complications. The modes of therapy available are the removal of the primary source of the cancerous growth and then the residual cancer cells or metastasis should be treated with chemotherapy. Dr. Tamayo further explained that patients with osteosarcoma have poor defense mechanism due to the cancer cells in the blood stream. In the case of Angelica, he had previously explained to her parents that after the surgical procedure, chemotherapy is imperative so that metastasis of these cancer cells will hopefully be addressed. He referred the patient to petitioner because he felt that petitioner is a competent oncologist. Considering that this type of cancer is very aggressive and will metastasize early, it will cause the demise of the patient should there be no early intervention **(in this case, the patient developed sepsis which caused her death)**. Cancer cells in the blood cannot be seen by the naked eye nor detected through bone scan. On cross-examination, Dr. Tamayo stated that of the more than 50 child patients who had osteogenic sarcoma he had handled, he thought that probably all of them died within six months from amputation because he did not see them anymore after follow-up; it is either they died or had seen another doctor.[46]

In dismissing the complaint, the trial court held that petitioner was not liable for damages as she observed the best known procedures and employed her highest skill and knowledge in the administration of chemotherapy drugs on Angelica but despite all efforts said patient died. It cited the testimony of Dr. Tamayo who testified that he considered petitioner one of the most proficient in the treatment of cancer and that the patient in this case was afflicted with a very aggressive type of cancer necessitating chemotherapy as adjuvant treatment. Using the

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[46] TSN, May 26, 1996, pp. 5, 8-13, 23.

standard of negligence laid down in *Picart v. Smith*,[47] the trial court declared that petitioner has taken the necessary precaution against the adverse effect of chemotherapy on the patient, adding that a wrong decision is not by itself negligence. Respondents were ordered to pay their unpaid hospital bill in the amount of ₱139,064.43.[48]

Respondents appealed to the CA which, while concurring with the trial court's finding that there was no negligence committed by the petitioner in the administration of chemotherapy treatment to Angelica, found that petitioner as her attending physician failed to fully explain to the respondents all the known side effects of chemotherapy. The appellate court stressed that since the respondents have been told of only three side effects of chemotherapy, they readily consented thereto. Had petitioner made known to respondents those other side effects which gravely affected their child — such as carpo-pedal spasm, sepsis, decrease in the blood platelet count, bleeding, infections and eventual death — respondents could have decided differently or adopted a different course of action which could have delayed or prevented the early death of their child.

The CA thus declared:

> Plaintiffs-appellants' child was suffering from a malignant disease. The attending physician recommended that she undergo chemotherapy treatment after surgery in order to increase her chances of survival. Appellants consented to the chemotherapy treatment because they believed in Dr. Rubi Li's representation that the deceased would have a strong chance of survival after chemotherapy and also because of the representation of appellee Dr. Rubi Li that there were only three possible side-effects of the treatment. However, all sorts of painful side-effects resulted from the treatment including the premature death of Angelica. **The appellants were clearly and totally unaware of these other side-effects which manifested only during the chemotherapy treatment. This was shown by the fact that every**

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[47] 37 Phil. 809 (1918).

[48] *Rollo,* pp. 160-162.

time a problem would take place regarding Angelica's condition (like an unexpected side-effect manifesting itself), they would immediately seek explanation from Dr. Rubi Li. Surely, those unexpected side-effects culminating in the loss of a love[d] one caused the appellants so much trouble, pain and suffering.

On this point therefore, [w]e find defendant-appellee Dr. Rubi Li negligent which would entitle plaintiffs-appellants to their claim for damages.

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WHEREFORE, the instant appeal is hereby GRANTED. Accordingly, the assailed decision is hereby modified to the extent that defendant-appellee Dr. Rubi Li is ordered to pay the plaintiffs-appellants the following amounts:

1. Actual damages of ₱139,064.43, plus ₱9,828.00 for funeral expenses;
2. Moral damages of ₱200,000.00;
3. Exemplary damages of ₱50,000.00;
4. Attorney's fee of ₱30,000.00.

SO ORDERED.[49] (Emphasis supplied.)

Petitioner filed a motion for partial reconsideration which the appellate court denied.

Hence, this petition.

Petitioner assails the CA in finding her guilty of negligence in not explaining to the respondents all the possible side effects of the chemotherapy on their child, and in holding her liable for actual, moral and exemplary damages and attorney's fees. Petitioner emphasized that she was not negligent in the pre-chemotherapy procedures and in the administration of chemotherapy treatment to Angelica.

On her supposed non-disclosure of all possible side effects of chemotherapy, including death, petitioner argues that it was

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[49] *Id.* at 58-59, 62-63.

foolhardy to imagine her to be all-knowing/omnipotent. While the theoretical side effects of chemotherapy were explained by her to the respondents, as these should be known to a competent doctor, petitioner cannot possibly predict how a particular patient's genetic make-up, state of mind, general health and body constitution would respond to the treatment. These are obviously dependent on too many known, unknown and immeasurable variables, thus requiring that Angelica be, as she was, constantly and closely monitored during the treatment. Petitioner asserts that she did everything within her professional competence to attend to the medical needs of Angelica.

Citing numerous trainings, distinctions and achievements in her field and her current position as co-director for clinical affairs of the Medical Oncology, Department of Medicine of SLMC, petitioner contends that in the absence of any clear showing or proof, she cannot be charged with negligence in not informing the respondents all the side effects of chemotherapy or in the pre-treatment procedures done on Angelica.

As to the cause of death, petitioner insists that Angelica did not die of platelet depletion but of sepsis which is a complication of the cancer itself. Sepsis itself leads to bleeding and death. She explains that the response rate to chemotherapy of patients with osteosarcoma is high, so much so that survival rate is favorable to the patient. Petitioner then points to some probable consequences if Angelica had not undergone chemotherapy. Thus, without chemotherapy, other medicines and supportive treatment, the patient might have died the next day because of massive infection, or the cancer cells might have spread to the brain and brought the patient into a coma, or into the lungs that the patient could have been hooked to a respirator, or into her kidneys that she would have to undergo dialysis. Indeed, respondents could have spent as much because of these complications. The patient would have been deprived of the chance to survive the ailment, of any hope for life and her "quality of life" surely compromised. Since she had not been shown to be at fault, petitioner maintains that the CA

erred in holding her liable for the damages suffered by the respondents.[50]

The issue to be resolved is whether the petitioner can be held liable for failure to fully disclose serious side effects to the parents of the child patient who died while undergoing chemotherapy, despite the absence of finding that petitioner was negligent in administering the said treatment.

The petition is meritorious.

The type of lawsuit which has been called medical malpractice or, more appropriately, medical negligence, is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm. In order to successfully pursue such a claim, a patient must prove that a health care provider, in most cases a physician, either failed to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent provider would not have done; and that that failure or action caused injury to the patient.[51]

This Court has recognized that medical negligence cases are best proved by opinions of expert witnesses belonging in the same general neighborhood and in the same general line of practice as defendant physician or surgeon. The deference of courts to the expert opinion of qualified physicians stems from the former's realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating, hence the indispensability of expert testimonies.[52]

In this case, both the trial and appellate courts concurred in finding that the alleged negligence of petitioner in the

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

[51] *Garcia-Rueda v. Pascasio,* G.R. No. 118141, September 5, 1997, 278 SCRA 769, 778.

[52] *Lucas v. Tuaño*, G.R. No. 178763, April 21, 2009, 586 SCRA 173, 201-202, citing *Dr. Cruz v. Court of Appeals*, 346 Phil. 872, 884-885 (1997).

administration of chemotherapy drugs to respondents' child was not proven considering that Drs. Vergara and Balmaceda, not being oncologists or cancer specialists, were not qualified to give expert opinion as to whether petitioner's lack of skill, knowledge and professional competence in failing to observe the standard of care in her line of practice was the proximate cause of the patient's death. Furthermore, respondents' case was not at all helped by the non-production of medical records by the hospital (only the biopsy result and medical bills were submitted to the court). Nevertheless, the CA found petitioner liable for her failure to inform the respondents on all possible side effects of chemotherapy before securing their consent to the said treatment.

The doctrine of *informed consent* within the context of physician-patient relationships goes far back into English common law. As early as 1767, doctors were charged with the tort of "battery" (*i.e.*, an unauthorized physical contact with a patient) if they had not gained the consent of their patients prior to performing a surgery or procedure. In the United States, the seminal case was *Schoendorff v. Society of New York Hospital*[53] which involved unwanted treatment performed by a doctor. Justice Benjamin Cardozo's oft-quoted opinion upheld the basic right of a patient to give consent to any medical procedure or treatment: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages."[54] From a purely ethical norm, informed consent evolved into a general principle of law that a physician has a duty to disclose what a reasonably prudent physician in the medical community in the exercise of reasonable care would disclose to his patient as to whatever grave risks of injury might be incurred from a proposed course of treatment, so that a patient, exercising ordinary care for his own welfare, and faced with

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[53] 105 N.E. 92, 93 (N.Y. 1914).

[54] *Id.*

a choice of undergoing the proposed treatment, or alternative treatment, or none at all, may intelligently exercise his judgment by reasonably balancing the probable risks against the probable benefits.[55]

Subsequently, in *Canterbury v. Spence*[56] the court observed that the duty to disclose should not be limited to medical usage as to arrogate the decision on revelation to the physician alone. Thus, respect for the patient's right of self-determination on particular therapy demands a standard set by law for physicians rather than one which physicians may or may not impose upon themselves.[57] The scope of disclosure is premised on the fact that patients ordinarily are persons unlearned in the medical sciences. Proficiency in diagnosis and therapy is not the full measure of a physician's responsibility. It is also his duty to warn of the dangers lurking in the proposed treatment and to impart information which the patient has every right to expect. Indeed, the patient's reliance upon the physician is a trust of the kind which traditionally has exacted obligations beyond those associated with armslength transactions.[58] The physician is not expected to give the patient a short medical education, the disclosure rule only requires of him a reasonable explanation, which means generally informing the patient in nontechnical terms as to what is at stake; the therapy alternatives open to him, the goals expectably to be achieved, and the risks that may ensue from particular treatment or no treatment.[59] As to the issue of demonstrating what risks are considered material necessitating disclosure, it was held that experts are unnecessary to a showing of the materiality of a risk to a patient's decision on treatment, or to the reasonably, expectable effect of risk

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[55] *Black's Law Dictionary*, Fifth Edition, p. 701, citing *Ze Barth v. Swedish Hospital Medical Center*, 81 Wash.2d 12, 499 P.2d 1, 8.

[56] 464 F.2d 772 C.A.D.C., 1972.

[57] *Id.* at 784.

[58] *Id.* at 780-782.

[59] *Id.* at 782.

disclosure on the decision. Such unrevealed risk that should have been made known must further materialize, for otherwise the omission, however unpardonable, is without legal consequence. And, as in malpractice actions generally, there must be a causal relationship between the physician's failure to divulge and damage to the patient.[60]

Reiterating the foregoing considerations, *Cobbs v. Grant*[61] deemed it as integral part of physician's overall obligation to patient, the duty of reasonable disclosure of available choices with respect to proposed therapy and of dangers inherently and potentially involved in each. However, the physician is not obliged to discuss relatively minor risks inherent in common procedures when it is common knowledge that such risks inherent in procedure of very low incidence. Cited as exceptions to the rule that the patient should not be denied the opportunity to weigh the risks of surgery or treatment are emergency cases where it is evident he cannot evaluate data, and where the patient is a child or incompetent.[62] The court thus concluded that the patient's right of self-decision can only be effectively exercised if the patient possesses adequate information to enable him in making an intelligent choice. The scope of the physician's communications to the patient, then must be measured by the patient's need, and that need is whatever information is material to the decision. The test therefore for determining whether a potential peril must be divulged is its materiality to the patient's decision.[63]

Cobbs v. Grant further reiterated the pronouncement in *Canterbury v. Spence* that for liability of the physician for failure to inform patient, there must be causal relationship between physician's failure to inform and the injury to patient and such connection arises only if it is established that, had

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[60] *Id.* at 790, 791-792.

[61] 8 Cal.3d 229, 502 P.2d 1 Cal. 1972.

[62] *Id.*

[63] *Id.*

revelation been made, consent to treatment would not have been given.

There are four essential elements a plaintiff must prove in a malpractice action based upon the doctrine of informed consent: "(1) the physician had a duty to disclose material risks; (2) he failed to disclose or inadequately disclosed those risks; (3) as a direct and proximate result of the failure to disclose, the patient consented to treatment she otherwise would not have consented to; and (4) plaintiff was injured by the proposed treatment." The gravamen in an informed consent case requires the plaintiff to "point to significant undisclosed information relating to the treatment which would have altered her decision to undergo it."[64]

Examining the evidence on record, we hold that there was adequate disclosure of material risks inherent in the chemotherapy procedure performed with the consent of Angelica's parents. Respondents could not have been unaware in the course of initial treatment and amputation of Angelica's lower extremity, that her immune system was already weak on account of the malignant tumor in her knee. When petitioner informed the respondents beforehand of the side effects of chemotherapy which includes lowered counts of white and red blood cells, decrease in blood platelets, possible kidney or heart damage and skin darkening, there is reasonable expectation on the part of the doctor that the respondents understood very well that the severity of these side effects will not be the same for all patients undergoing the procedure. In other words, by the nature of the disease itself, each patient's reaction to the chemical agents even with pre-treatment laboratory tests cannot be precisely determined by the physician. That death *can* possibly result from complications of the treatment or the underlying cancer itself, immediately or sometime after the administration of chemotherapy drugs, is a risk that cannot be

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[64] *Davis v. Kraff*, N.E.2d 2010 WL 4026765 Ill.App. 1 Dist., 2010, citing *Coryell v. Smith*, 274 Ill.App.3d 543, 210 Ill.Dec. 855, 653 N.E.2d 1317 (1995).

ruled out, as with most other major medical procedures, *but* such conclusion can be reasonably drawn from the general side effects of chemotherapy already disclosed.

As a physician, petitioner can reasonably expect the respondents to have considered the variables in the recommended treatment for their daughter afflicted with a life-threatening illness. On the other hand, it is difficult to give credence to respondents' claim that petitioner told them of 95% chance of recovery for their daughter, as it was unlikely for doctors like petitioner who were dealing with grave conditions such as cancer to have falsely assured patients of chemotherapy's success rate. Besides, informed consent laws in other countries generally require only a reasonable explanation of potential harms, so specific disclosures such as statistical data, may not be legally necessary.[65]

The element of ethical duty to disclose material risks in the proposed medical treatment cannot thus be reduced to one simplistic formula applicable in all instances. Further, in a medical malpractice action based on lack of informed consent, "the plaintiff must prove both the duty and the breach of that duty through expert testimony.[66] Such expert testimony must show the customary standard of care of physicians in the same practice as that of the defendant doctor.[67]

In this case, the testimony of Dr. Balmaceda who is not an oncologist but a Medical Specialist of the DOH's Operational and Management Services charged with receiving complaints against hospitals, does not qualify as expert testimony to establish the standard of care in obtaining consent for chemotherapy treatment. In the absence of expert testimony in this regard, the Court feels hesitant in defining the scope of mandatory disclosure in cases of malpractice based on lack of informed

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[65] *Arato v. Avedon,* 858 P.2d 598 (Cal. 1993).

[66] *Mason v. Walsh,* 26 Conn.App. 225, 229-30, 00 A.2d 326 (1991).

[67] *Id.*, 230, citing *Shenefield v. Greenwich Hospital Assn.*, 10 Conn.App. 239, 248-49, 522 A.2d 829 (1987).

consent, much less set a standard of disclosure that, even in foreign jurisdictions, has been noted to be an evolving one.

As society has grappled with the juxtaposition between personal autonomy and the medical profession's intrinsic impetus to cure, the law defining "adequate" disclosure has undergone a dynamic evolution. A standard once guided solely by the ruminations of physicians is now dependent on what a reasonable person in the patient's position regards as significant. This change in perspective is especially important as medical breakthroughs move practitioners to the cutting edge of technology, ever encountering new and heretofore unimagined treatments for currently incurable diseases or ailments. An adaptable standard is needed to account for this constant progression. Reasonableness analyses permeate our legal system for the very reason that they are determined by social norms, expanding and contracting with the ebb and flow of societal evolution.

As we progress toward the twenty-first century, we now realize that **the legal standard of disclosure is not subject to construction as a categorical imperative.** Whatever formulae or processes we adopt are only useful as a foundational starting point; **the particular quality or quantity of disclosure will remain inextricably bound by the facts of each case.** Nevertheless, juries that ultimately determine whether a physician properly informed a patient are inevitably guided by what they perceive as the common expectation of the medical consumer—"a reasonable person in the patient's position when deciding to accept or reject a recommended medical procedure."[68] (Emphasis supplied.)

WHEREFORE, the petition for review on *certiorari* is *GRANTED*. The Decision dated June 15, 2004 and the Resolution dated September 1, 2004 of the Court of Appeals in CA-G.R. CV No. 58013 are *SET ASIDE*.

The Decision dated September 5, 1997 of the Regional Trial Court of Legazpi City, Branch 8, in Civil Case No. 8904 is *REINSTATED and UPHELD*.

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[68] "Informed Consent: From the Ambivalence of Arato to the Thunder of Thor" Issues in Law & Medicine, Winter, 1994 by Armand Arabian. Sourced at Internet - *http://findarticles.com/p/articles/mi_m6875/is_n3_10/ai_n25022732/pg_37/?tag=content;col1*

No costs.

SO ORDERED.

Corona, C.J. and *Perez, J.,* concurs.

Abad, J., see concurring opinion.

Nachura, Leonardo-de Castro, Bersamin, and *Mendoza, JJ.*, join the separate opinion of *J.* Brion.

Brion, J., in the result, see separate opinion.

Carpio, J., see dissenting opinion.

Carpio Morales, Velasco, Jr., Peralta, and *Sereno, JJ.*, join the dissenting opinion of *J.* Carpio.

Del Castillo, J., no part.

CONCURRING OPINION

ABAD, *J.*:

I join the opinion of the majority of my colleagues as well as that of Justice Arturo D. Brion. I write this concurring opinion out of the belief that, ultimately, the issue in this case rests on a question of fact.

Plaintiffs Reynaldo and Lina Soliman claim damages against defendant Dr. Rubi Li for her failure to sufficiently inform them before hand of the risks of complications, pains, and quick death that their sick daughter, Angelica, faced when placed under chemotherapy.

As the majority points out, the Solimans had the burden of proving the following to be entitled to damages: 1) that Dr. Li had a duty to disclose the material risks of placing Angela under chemotherapy; 2) that the doctor failed to disclose or inadequately disclosed those risks; 3) that as a direct and proximate result of the failure to disclose, the Solimans consented to have Angela undergo such therapy that they otherwise would not have consented to; and 4) that Angela suffered injury on account of the chemotherapy.

The Key Issue of Fact

The key issue in this controversy, to my mind, is whether or not Dr. Li failed to disclose or inadequately disclosed to the Solimans the risks of chemotherapy for their daughter since Dr. Li and the Solimans gave opposing versions of what were disclosed.

The Plaintiffs' evidence

Lina Soliman (Lina) testified that in the summer of 1993 she noticed her daughter Angelica walking with some difficulty. She brought her to a hospital in Bicol where she was diagnosed with a malignant tumor in her right knee. They then went to the National Children's Medical Center in Manila for a second opinion but the doctor who attended her gave the same view.

On July 7, 1993 Lina brought Angelica to St. Luke's Medical Center for a biopsy of tissues taken from her ailing leg. Dr. Tamayo, whom the Solimans consulted, later told them that their daughter had cancer and her leg had to be severed to prevent the disease from spreading. Still, the procedure, he said, offered only a 50% chance that it would contain the spread of the malignant cells. With the Solimans' consent, the doctor amputated the affected leg from above the knee on July 23, 1993. Dr. Tamayo then referred Angela to Dr. Li for chemotherapy.

Before starting the chemotherapy, Dr. Li told Lina when they met its three possible side-effects: vomiting, hair loss, and weakening. When Lina asked Dr. Li if the chemotherapy had any other possible effects, she replied in the negative. The chemotherapy was originally set for August 12, 1993 but had to be reset because the Solimans returned to Bicol for a rest. Lina called up Dr. Li about the deferment and during that call she asked the doctor anew about the effects of the drugs that she would use on Angelica. Dr. Li repeated the three side effects she earlier mentioned.

When Angelica checked in at St. Luke's on August 18, Dr. Li came to administer dextrose to her. On this occasion, Dr. Li told the Solimans that Angela had a 95% chance of becoming

normal again after the chemotherapy. Lina asked the doctor anew about the side-effects and the latter said the same thing: falling hair, vomiting, and weakness.

Dr. Li first administered the drugs for chemotherapy to Angela on August 19. That night, Angelica started vomiting. Lina asked the attending nurse about it but the latter said that it was just an effect of the drugs. The treatment continued on the second day and so did the vomiting. On the third day of chemotherapy, Lina observed redness all over Angelica's face. She asked Dr. Li about this but the doctor told her that it was only a reaction to the drugs.

On the fourth day, the discoloration on Angela's face grew darker and spread to the neck and chest. Dr. Li assured Lina that this was an effect of the drugs. During the following days, Angelica complained of chest pains and difficulty in breathing, prompting Dr. Li to administer oxygen to her. As Lina saw that her daughter could not bear it anymore, she asked Dr. Li to stop the chemotherapy. Angelica passed black stool and had reddish urine. Dr. Li explained that this, too, was a reaction to the drugs. Lina wanted Angelica discharged but she had to be confined because of convulsion, which Dr. Li treated by giving her calcium.

Afterwards, when Angelica's nose and mouth secreted blood, Dr. Li attributed this to the lowering of her platelet count. They decided to move her to the hospital's intensive care unit for closer monitoring. After getting blood transfusion, Angelica's vomiting lessened but the color of her skin darkened. Later, her skin "shredded by just rubbing cotton on it." She vomited blood and her convulsions resumed to the point that she became hysterical and said "*ayaw ko na*." She passed away soon after.

Reynaldo Soliman (Reynaldo), Angelica's father, testified that they consulted with a number of doctors from the Ago Medical and Educational Center, the UERM Medical Center, and the National Children's Hospital regarding Angelica's case. After her amputation at St. Luke's hospital, they returned to Bicol but, on Dr. Tamayo's advice, Reynaldo decided to have Angelica undergo chemotherapy. She was readmitted at St.

Luke's on August 18, 1993. When Reynaldo met Dr. Li on August 19, he asked her about the effects of chemotherapy on his daughter. She replied that Angelica would manifest falling hair, vomiting, and weakness.

Angelica showed no reaction to the chemotherapy on its first day. On the next day, however, redness appeared on her face and she started vomiting. Upon inquiry from Dr. Li, she told them that this was normal. On August 23 Angelica appeared very weak. When asked about this, Dr. Li said that it was a normal reaction. Seeing the effects of chemotherapy, Reynaldo advised the doctor to stop the treatment. As they were settling the bills the next day, Angelica had an epileptic fit. It took a while for a doctor to come and give her calcium injection to calm her down. Angelica had another convulsion the next day. They again gave her calcium.

Dr. Li moved Angelica to another room to ward off infection. But she bled through her mouth. As Dr. Li could not be located, a certain Dr. Marbella came and told him that Angelica's blood platelets had gone down. They gave her continuous blood transfusions but the bleeding did not stop. Dr. Li called Dr. Abesamis, an oncologist-pediatrician, to assist in the case. When Angelica had another attack, Dr. Abesamis pumped her chest to revive her. They strapped her hands to the bed and attached instruments to her to provide her oxygen and suction blood from her stomach. She later became hysterical and tried to remove the instruments attached to her. Angelica died at 3:00 a.m. When Dr. Li came by, she said that a malfunction occurred.

When Reynaldo asked Dr. Li for a death certificate, she became arrogant, calling him names. Dr. Li even asked him to sign a promissory note as he did not have enough cash on him to settle the hospital bill.

For her part, Dr. Li testified that Dr. Tamayo referred Angelica to her after he operated on the patient. Angelica suffered from a highly malignant, highly aggressive type of cancer known as osteosarcoma. Less than 20% of patients who were operated on for this type of cancer survived the first year. It usually

came back within six months. There has been no known cure for cancer as even its causes have not been ascertained.

Dr. Tamayo referred the case to Dr. Li because he found during the surgery that the cancer could have already spread from the bone to the soft tissue and the surrounding area. Dr. Tamayo asked Dr. Li if she could give Angelica adjuvant chemotherapy. When she met the Solimans, Dr. Li told them what adjuvant chemotherapy was about, why it would be given, how it would be given, and how chemotherapy works. Surgery, she told them, was not enough for, while the tumor had been removed, it left small lesions that could not be seen by the eyes. Chemotherapy would clean out the small lesions to lower the chances of the cancer recurring. Dr. Li gave no guarantee of a cure. She merely told the Solimans that, if adjuvant chemotherapy was to be given, the chances of their daughter's survival would increase and the chances of the cancer returning would lower.

Dr. Li met the Solimans following Angelica's amputation and they discussed the side-effects of chemotherapy. Dr. Li told the Solimans that, since it could not be helped that the drugs would get into the other parts of Angelica's body, those parts could also be affected. Angelica might lose hair and experience nausea and vomiting (which may be controlled by medicines). She could become infertile or sterile. Blood elements, such as the red and white blood cells, might also be affected and so had to be monitored. She also explained to the Solimans other side-effects, including loss of appetite and darkening of skin when exposed to sunlight. The kidneys and heart could also be affected which was the reason for monitoring these organs as well.

Dr. Li met the Solimans again sometime in the first week of August at which meeting they again discussed the chemotherapy procedure and its side-effects. When Dr. Li met Lina about a week later to once more discuss the treatment, the latter wanted to be told again about the side-effects of chemotherapy. Before Angelica was admitted to the hospital, Lina called up Dr. Li at her house and they discussed the same things.

On August 18 St. Luke's hospital readmitted Angelica for the chemotherapy. On the first day, they gave her fluids to make sure that her kidney functioned well and that she was hydrated. Seeing no problem, Dr. Li started Angelica's chemotherapy on August 19.

Regarding the redness on Angelica's face, Dr. Li explained that these were rashes. To make sure, Dr. Li consulted Dr. Abesamis because the rashes could also possibly mean that the patient had systemic lupus. Regarding Angelica's convulsions or epileptic attacks, these were actually carpo-petal spasms, a twitching of a group of muscles of the hands and legs. Dr. Li checked Angelica's calcium levels, which turned out low, so she gave her supplemental calcium. Regarding the vomiting of blood, Dr. Li explained that she did not actually vomit blood but that her gums began bleeding. She just had to spit it out.

According to Dr. Li, Angelica died due to overwhelming infection which had spread throughout her body, causing multiple organ failures and platelet reduction. Dr. Li insisted that the reduction in platelet count was due to infection although she conceded on cross-examination that, theoretically, the chemotherapy could have reduced the platelets as well. Dr. Li also alleged that Angelica had a poor defense mechanism because of her cancer.

Dr. Jaime Tamayo testified for Dr. Li. He recalled treating the cancerous growth in Angelica's lower left leg. The doctor amputated the leg to remove the source of the tumor. Residual tumor cells had to be treated, however, by chemotherapy. Even before the amputation, the Solimans knew of the possibility that Angelica would have to undergo chemotherapy after surgery. The Soliman's consultation with other doctors, including the doctor who performed the biopsy and confirmed the diagnosis for osteosarcoma, made them aware of that possibility.

After the surgery, Dr. Tamayo explained to the Solimans that the amputation was not enough and that chemotherapy was needed to go after the malignant cells that might have metastasized. He told the Solimans that their daughter's condition was grave and that her chances would improve with

chemotherapy. Dr. Tamayo knew that even with surgery and chemotherapy, very few patients lived beyond five years, as the mortality rate was between 80 to 90%. He did not, however, consider it necessary to tell the Solimans this.

In sum, the Solimans claim that Dr. Li informed them of only three possible side-effects of chemotherapy: falling hair, vomiting, and weakness. Dr. Li, on the other hand, testified that she was more thorough than this, apprising the Solimans of the following side-effects of chemotherapy: hair loss, nausea, vomiting, possible infertility or sterility, lowering of red and white blood cells, adverse effects on platelets, loss of appetite, darkening of the skin, and possible adverse effects on the heart and kidneys.

The question now is who to believe.

First. The burden is of course on the Solimans to prove their allegations of wrong-doing on Dr. Li's part. Quite importantly, the trial court which had the benefit of perceiving not only the witnesses' utterances but what the movements of their eyes and mouths said, gave credence to Dr. Li's testimony over that of the Solimans. The trial court held that Dr. Li in fact explained the effects of the chemotherapy to them prior to the procedure.

Second. The Court of Appeals (CA) of course found otherwise. It believed the Solimans' version that Dr. Li warned them only of the three side effects, given that every time Angelica's condition appeared to worsen, they would seek an explanation from Dr. Li. This, said the CA, tended to show that they were unaware of the other side-effects of the treatment.

But if it were true that Dr. Li assured Lina no less than three times that her daughter would suffer only three bearable side effects, why did Lina not confront the doctor when other side effects, which caused Angelica greater pains, began to surface?

Besides, the fact that the Solimans, especially Lina, still sought explanations from Dr. Li for her daughter's new pains and distress is understandable. Lina had a clear tendency to repeatedly inquire about matters of which she had been previously informed. By

her own admission, she asked Dr. Li to tell her of the side effects of chemotherapy no less than three times: a) when they first met after the amputation; b) on the phone while she discussed the rescheduling of the chemotherapy with Dr. Li; and c) when the latter came to administer dextrose to Angelica before the chemotherapy. It should not, therefore, be surprising for Lina to want to hear the doctor's explanation about those side effects even when the latter had previously done so.

What is more, it would be quite natural for parents, watching their daughter's deteriorating condition, to want to know the doctor's explanation for it. The previous explanations did not have the benefit of the real thing occurring in their sight. The Solimans needed assurances that these manifestations, now come to pass, were to be expected. In fact, when Angelica began vomiting, the first anticipated side effect, the Solimans still anxiously queried the attending medical staff the reason for it.[1]

Third. The claim that Dr. Li gave assurance that Angelica had a 95% chance of recovery after chemotherapy cannot be believed. The Solimans knew that their daughter had bone cancer. Having consulted with other doctors from four medical institutions, the Ago Medical and Educational Center in Bicol, the UERM Medical Center in Manila, the National Children's Hospital in Quezon City, and finally the St. Luke's hospital, all of whom gave the same dire opinion, it would be quite unlikely for the Solimans to accept Dr. Li's supposed assurance that their daughter had 95% chance of returning to normal health after chemotherapy. In fact, it would be most unlikely for someone of Dr. Li's expertise to make such a grossly reckless claim to a patient who actually had only a 20% chance of surviving the first year. She would literary be inviting a malpractice suit.

Fourth. At the heart of the Solimans' claim for damages is the proposition that they would not have agreed to submit their

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[1] TSN, September 19, 1994, p. 14; TSN, December 15, 1994, pp. 6-7.

daughter to chemotherapy had they known that the side effects she faced were more than just hair loss, vomiting, and weakness. They would not have agreed if they had known that she would suffer greater distress and soon die.

But the Solimans are arguing from hindsight. The fact is that they were willing to assume huge risks on the chance that their daughter could cheat death. They did not mind that their young daughter's left leg would be amputated from above the knee for a 50% chance of preventing the spread of the cancer. There is probably no person on this planet whose family members, relatives, or close friends have not been touched by cancer. Every one knows of the travails and agonies of chemotherapy, yet it is rare indeed for a cancer patient or his relatives not to take a chance with this treatment, which had proved successful in extending the lives of some. Unfortunately for the Solimans, their daughter did not number among the successful cases.

Fifth. The Solimans accepted the risks that chemotherapy offered with full knowledge of its effects on their daughter. It is not fair that they should blame Dr. Li for Angelica's suffering and death brought about by a disease that she did not wish upon her. Indeed, it was not Dr. Li, according to Reynaldo, who convinced him to agree to submit his daughter to chemotherapy but Dr. Tamayo. The latter explained to him the need for her daughter to undergo chemotherapy to increase the chance of containing her cancer. This consultation took place even before the Solimans met Dr. Li.

It is a mark of their insensitivity that the Solimans included as proof of the damages they suffered, the expenses they incurred for the surgical procedure performed by Dr. Tamayo, including the latter's professional fees. The amputation that Dr. Tamayo performed took place before the chemotherapy and before the Solimans met Dr. Li. The Solimans cannot be trusted to make an appropriate claim.

SEPARATE OPINION

BRION, *J.*:

I. The Concurrence and Supporting Reasons

I concur ***in the result*** with the *ponencia* and its conclusion that the respondents failed to prove by preponderance of evidence the essential elements of a cause of action based on the doctrine of informed consent. This case presents to us for the first time the application of the common-law doctrine of informed consent in a medical negligence case, based on Article 2176 of the Civil Code. I do not question the applicability of this novel doctrine in this jurisdiction.

However, I do not agree with the *ponencia's* conclusion that "there was adequate disclosure of material risks of the [chemotherapy administered] with the consent of Angelica's parents"[1] in view of a complete absence of competent expert testimony establishing a medical disclosure standard in the present case. As I shall discuss below, the respondents failed to sufficiently establish the information that should have been disclosed to enable them to arrive at a decision on how to proceed with the treatment.

As in any ordinary medical negligence action based on Article 2176 of the Civil Code, the burden to prove the necessary elements – *i.e.*, duty, breach, injury and proximate causation – rests with the plaintiff.[2] In a lack of informed consent litigation, the plaintiff must prove by preponderance of evidence the following requisites:[3]

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[1] Decision, p. 18.

[2] *Flores v. Pineda*, G.R. No. 158996, November 14, 2008, 571 SCRA 83, 91.

[3] *Davis v. Kraff*, N.E.2d 2010 WL 4026765 Ill. App. 1 Dist. 2010, citing *Coryell v. Smith*, 274 Ill. App. 3d 543, 210 Ill. Dec. 855, 653 N.E.2d 1317 (1995).

(1) **the physician had a duty to disclose material risks;**

(2) he failed to disclose or inadequately disclosed those risks;

(3) as a direct and proximate result of the failure to disclose, the patient consented to treatment she otherwise would not have consented to; and

(4) **plaintiff was injured by the proposed treatment.**

Of crucial significance in establishing the elements involved in medical negligence cases is expert medical testimony since the facts and issues to be resolved by the Court in these cases are matters peculiarly within the knowledge of experts in the medical field.[4]

I base my conclusion on the ground that the respondents **failed to prove by competent expert testimony** the first and fourth elements of a *prima facie* case for lack of informed consent, specifically:

(1) the scope of the duty to disclose and the violation of this duty, *i.e.*, the failure to define what should be disclosed and to disclose the required material risks or side effects of the chemotherapy that allow the patient (and/or her parents) to properly decide whether to undergo chemotherapy; and

(2) that the chemotherapy administered by the petitioner proximately caused the death of Angelica Soliman.

II. Background

On July 7, 1993, the respondents Spouses Reynaldo and Lina Soliman's (*respondents*) 11-year old daughter, Angelica Soliman (*Angelica*), was diagnosed with *osteosarcoma, osteoblastic type* (cancer of the bone) after a biopsy of the mass in her lower extremity showed a malignancy. Following this diagnosis, Dr. Jaime Tamayo (*Dr. Tamayo*) of the St. Luke's Medical Center (*SLMC*) amputated Angelica's right leg to remove the tumor. Dr. Tamayo also recommended adjuvant chemotherapy to

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[4] *Supra* note 2.

eliminate any remaining cancer cells and prevent its spread to the other parts of the body, and referred Angelica to the petitioner Dr. Rubi Li (*petitioner*), an oncologist.[5]

On July 23, 1993, the petitioner saw the respondents and discussed with them Angelica's condition.[6] The petitioner claims that she did not then give the respondents any assurance that chemotherapy would cure Angelica's cancer considering that "a cure for cancer has not been discovered" and "its exact cause is not known up to the present"; she merely told them **that there is 80% chance that the cancer [of Angelica] could be controlled [by chemotherapy].**[7] In her Answer, the petitioner alleges that she informed the respondents that chemotherapy will be administered intravenously; the chemotherapy will flow throughout Angelica's body and will affect not only the cancer cells but also the fast growing "normal" parts of her body. She also then disclosed and explained to the respondents the following side effects of chemotherapy:

(1) Falling hair;

(2) Nausea and vomiting;

(3) Loss of appetite considering that there will be changes in the taste buds of the tongue and lead to body weakness and this defendant therefore, in anticipation of the changes in the taste buds, instructed the plaintiffs to teach and encourage the deceased patient to eat even though she has no normal taste;

(4) Low count of white blood cells (WBC count), red blood cells (RBC count), and platelets as these would be lowered by the chemotherapy and therefore this defendant had to check these counts before starting the chemotherapy (it is important to note at this point that white blood cells [WBC] are the cells that defend the body against infection);

(5) The deceased patient's ovaries may be affected resulting to sterility;

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[5] *Rollo*, p. 34.

[6] TSN, January 26, 1995, p. 3.

[7] Petitioner's Answer dated March 28, 1994; *rollo*, p. 96.

(6) The kidneys and the heart might be affected so that this defendant had to check the status of these organs before starting chemotherapy;

(7) There will be darkening of the skin especially when the skin is exposed to sunlight.[8]

The respondents, however, disputed this claim and countered that the petitioner gave them an assurance that there was a 95% chance of healing if Angelica would undergo chemotherapy - *"Magiging normal na ang anak nyo basta ma-chemo. 95 % ang healing.* - and that the side effects were only hair loss, vomiting and weakness - *"Magsusuka ng kaunti. Malulugas ang buhok. Manghihina."*[9]

On August 18, 1993, Angelica was readmitted to the SLMC for chemotherapy. Upon admission, Angelica's mother, respondent Lina Soliman, signed the Consent for Hospital Care, which pertinently stated:[10]

Permission is hereby given to the medical, nursing and laboratory staff of St. Luke's Medical Center to perform such diagnostic procedures and administer such medications and treatments as may be deemed necessary or advisable by the Physicians of this hospital [for my daughter] during this confinement. It is understood that such procedures may include blood transfusions, intravenous or other injections and infusions[,] administrations of serums, antitoxins and toxoids for treatment or prophylaxis, local of (*sic*) general anesthesia, spinal puncture, bone marrow puncture, venessection, thoracentesis, paracenthesis, physiotherapy and laboratory test.

The following day, the petitioner intravenously administered three chemotherapy drugs, namely: Cisplatin, Doxorubicin and Cosmegen. On September 1, 1993, or thirteen days after the induction of the first cycle of chemotherapy, Angelica died.[11]

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[8] *Id.* at 97.

[9] Respondents' Complaint dated February 21, 1994, *Id.* at 81.

[10] *Id.* at 174.

[11] *Id.* at 35.

The autopsy conducted by the Philippine National Police (*PNP*) Crime Laboratory indicated **the cause of death as "Hypovolemic shock secondary to multiple organ hemorrhages and Disseminated Intravascular Coagulation."**[12]

On February 21, 1994, the respondents filed a case for damages against the petitioner, Dr. Leo Marbella, a certain Dr. Arriete and SLMC. The respondents raised two causes of action; the **first cause of action** was based on the petitioner's negligence in the administration of the chemotherapy, and the **second cause of action** was based on the petitioner's negligence in failing to disclose the risks or side effects of chemotherapy so that they could give a valid informed consent.[13] In her Answer, the petitioner countered that she was not negligent and that the massive bleeding that caused Angelica's death was brought about by her underlying condition and the sepsis that resulted from her weakened immune system.[14]

a. The RTC Ruling

The trial court dismissed the complaint and held that the petitioner was not negligent since she observed the best known procedures and employed her highest skill and knowledge in the administration of the chemotherapy to Angelica. It cited Dr. Tamayo's testimony that he knew the petitioner as one of the most proficient in the treatment of cancer and that Angelica was afflicted with a very aggressive type of cancer that necessitated adjuvant chemotherapy.[15]

b. The CA Ruling

On appeal, the Court of Appeals (*CA*) – while concurring with the trial court's finding that the petitioner was not negligent in the administration of the chemotherapy to Angelica – found the petitioner negligent in failing to explain fully to the

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[12] *Id.* at 89.

[13] *Supra* note 8 at 81-82.

[14] *Supra* note 6 at 95-108.

[15] *Id.* at 119-162.

respondents all the known side effects of the chemotherapy. The CA gave credence to the respondents' testimony that the petitioner merely told them of only three side effects of chemotherapy, which prompted them to readily give their consent. The CA stressed that had the petitioner made known to the respondents the other side effects (carpo-pedal spasm, sepsis, decrease in platelet counts, bleeding, infection and death), which gravely affected Angelica, they could have decided differently or took a different course of action, which could have delayed or prevented the early death of their child.[16]

c. The Respondents' Supporting Testimonies

Angelica's medical records were not submitted in evidence; instead, the Regional Trial Court (RTC) and the CA solely relied on the testimonial evidence of the petitioner and the respondents.

In support of her Complaint, the respondent Lina Soliman testified on direct examination that on August 18, 1993, Angelica was admitted to the SLMC for chemotherapy. She declared that the petitioner examined Angelica on that same day and administered dextrose on her. The petitioner assured them that if Angelica is subjected to chemotherapy, there will be a ***"95% chance"*** that "*she will be normal*" and that the "*possible side effects of chemotherapy*" are "*falling of the hair, vomiting and weakness (manghihina).*"[17] On cross examination, the respondent Lina Soliman clarified that "*when she insisted on some other possible side effect*," the petitioner said that those three she mentioned "*were the only [side] effects*."[18] During rebuttal, the respondent Lina Soliman testified that the petitioner gave them a "*90% guarantee that if [her] daughter will be subjected to chemotherapy, [her] child will recover completely*."[19] Finally, she declared that she was only aware of the three side effects and had she known all the side effects of chemotherapy that

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[16] *Id.* at 33-63.

[17] TSN, December 14, 1994, pp. 12-14.

[18] *Id.* at 58.

[19] TSN, January 27, 1997, p. 3.

the petitioner should have mentioned, she would not have subjected Angelica to the chemotherapy.[20]

The respondent Reynaldo Soliman was also presented to corroborate the testimony of his wife Lina Soliman. He declared that he asked the petitioner about the side effects of chemotherapy and that the petitioner mentioned of only "*falling hair, weakness and vomiting*" to him.[21]

During the trial, the respondents also presented two expert witnesses: Dr. Jesusa Vergara, a Medico-Legal Officer of the PNP Crime Laboratory, and Dr. Melinda Balmaceda, a Medical Specialist employed at the Department of Health (*DOH*).[22]

Dr. Vergara declared that she has been a physician since 1989; she did not undergo medical resident physician training and only practiced as a general practitioner at Andamon General Hospital in Lucena City for six months. She testified further that she has been employed as a Medico-Legal Officer at the PNP Crime Laboratory since January 1990. In this capacity, she declared that she performs autopsy to determine the cause of death of victims; conducts examinations of rape victims, victims of other sex crimes and physical injuries; examines and identifies skeletal remains; attends court hearings on cases she has examined; and gives lectures to students and medico-legal opinion on cases referred to her.[23]

Dr. Vergara testified that she conducted the autopsy on Angelica's body on September 2, 1993. She explained that *the extensive multiple organ hemorrhages* and *disseminated intravascular coagulation* that caused Angelica's demise can be attributed to the chemical agents given to her; these agents caused platelet reduction resulting in massive bleeding and, eventually, in her death. She further noted that Angelica would

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[20] *Id.* at 5.

[21] TSN, December 15, 1994, p. 5-6.

[22] *Rollo,* p. 52.

[23] TSN, December 14, 1994, pp. 7-8.

have also died of *osteosarcoma* even with amputation and chemotherapy; in this case, her death was not caused by *osteosarcoma* as it has a survival period of three years.[24] **Dr. Vergara admitted that she is not a pathologist;**[25] **also, her statements were based on the opinion of an oncologist she had previously interviewed.**[26]

Dr. Balmaceda, for her part, declared that she is a Medical Specialist working at the DOH Operations and Management Service; her work encompasses the administration and management of medical hospitals; her office receives complaints against hospitals for mismanagement of admissions and medical health. Dr. Balmaceda also stated that she obtained a Masters of Hospital Administration from the Ateneo de Manila University, and took special courses on medical and pediatric training at the Philippine General Hospital and Children's Medical Center in 1979.[27]

Dr. Balmaceda testified that it is a physician's duty to inform and explain to the patient or his family every known side effect of the therapeutic agents to be administered, before securing their consent. She stressed that the patient or his family must be informed of all known side effects based on studies and observations, even if this disclosure will have the effect of aggravating the patient's condition.[28] **On cross-examination, Dr. Balmaceda admitted that she is not an oncologist.**[29]

Despite their counsel's representation during the trial, the respondents failed to present expert testimony from an oncologist or a physician who specializes in the diagnosis and treatment of cancers.[30]

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[24] *Id.* at 24-25.

[25] *Id.* at 39.

[26] *Id.* at 40.

[27] TSN, April 28, 1995, pp. 9-11.

[28] *Id.* at 22-24.

[29] *Id.* at 27.

[30] *Id.* at 15 and 27.

d. The Petitioner's Supporting Expert Testimonies

The petitioner testified that she is a licensed physician and a board certified medical oncologist; she underwent sub-specialty training in medical oncology where she dealt with different types of cancers, including bone cancers. She also declared that she is a member of the Philippine Society of Medical Oncologists; has written and co-authored various medical papers on cancer; and has attended yearly conventions of the American Society of Clinical Oncology and the Philippine Society of Medical Oncologists where she was updated with the latest advances in cancer treatment and management. The petitioner also declared that she has been engaged in the treatment and management of bone cancers for almost thirteen years, and has seen more than 5,000 patients.[31]

On direct examination, the petitioner testified that she met and discussed the side effects of chemotherapy with the respondents three times; **she mentioned that the side effects of chemotherapy may consist of hair loss, nausea, vomiting, sterility, and low white and red blood cells and platelet count.** She declared that the respondents consented to the chemotherapy when they signed the hospital's consent form.[32]

The petitioner also declared that Angelica died not because of the chemotherapy but because of sepsis – an overwhelming infection that caused her organs to fail. She testified that the cancer brought on the sepsis because of her poor defense mechanism.[33] On cross-examination, the petitioner clarified that the sepsis also triggered the platelet reduction; the bleeding was, in fact, controlled by the blood transfusion but the infection was so prevalent it was hard to control. The petitioner also added that the three drugs administered to Angelica could theoretically cause platelet reduction, but a decrease in platelets

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[31] TSN, October 6, 1995, pp. 5-15.

[32] *Id.* at 22-27.

[33] *Id.* at 33-34.

is usually seen only after three cycles of chemotherapy and not in the initial administration.[34]

Dr. Tamayo, the *orthopedic* surgeon who amputated Angelica's right leg, testified for the petitioner. He explained that the modes of therapy for Angelica's cancer are the surgical removal of the primary source of the cancerous growth and, subsequently, the treatment of the residual cancer (metastatic) cells with chemotherapy.[35] He further explained that patients with *osteosarcoma* have a poor defense mechanism due to the cancer cells in the bloodstream. In Angelica's case, he explained to the parents that chemotherapy was imperative to address metastasis of cancerous cells since *osteosarcoma* is a very aggressive type of cancer requiring equally aggressive treatment. He declared that the mortality rate for *osteosarcoma* remains at 80% to 90% despite the advent of modern chemotherapy. Finally, Dr. Tamayo testified that he refers most of his cancer patients to the petitioner since he personally knows her to be a very competent oncologist.[36]

III. The Ponencia

The *ponencia* cites two grounds for granting the petition. *First*, there was adequate disclosure of the side effects of chemotherapy on the part of the petitioner. *Second*, the respondents failed to present expert testimony to establish the standard of care in obtaining consent prior to chemotherapy.

a. Adequate Disclosure of Material Risks

The *ponencia* finds "that there was adequate disclosure of material risks inherent in the chemotherapy [administered] with the consent of Angelica's parents." The *ponencia* emphasizes that when the petitioner informed the respondents of the side effects of chemotherapy (*i.e.* low white and red blood cell and platelet count, kidney or heart damage and skin darkening), it

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[34] *Id.* at 39.

[35] TSN, May 20, 1996, pp. 8-9.

[36] *Id.* at 12.

was reasonable for the former to expect that the latter understood very well the side effects are not the same for all patients undergoing the procedure. Given this scenario, the *ponencia* notes that the "respondents could not have been unaware in the course of initial treatment… that [Angelica's] immune system was already weak on account of the malignant tumor in her knee." The *ponencia* also implies that death as a result of complications of the chemotherapy or the underlying cancer is a risk that can be reasonably inferred by the respondents from the general side effects disclosed by the petitioner. Finally, the *ponencia* disregarded the respondents' claim that the petitioner assured them of 95% chance of recovery for Angelica as it is unlikely for doctors (like the petitioner) who are dealing with grave illnesses to falsely assure patients of the chemotherapy's success rate; at any rate, specific disclosures such as statistical data are not legally necessary.[37]

b. Failure to Present Expert Testimony

The *ponencia* holds that in a medical malpractice action based on lack of informed consent, the plaintiff must prove both the duty to disclose material risks and the breach of that duty through expert testimony. The expert testimony must show the customary standard of care of physicians in the same practice as that of the defendant doctor. In the present case, the *ponencia* notes that Dr. Balmaceda's expert testimony is not competent to establish the standard of care in obtaining consent for chemotherapy treatment.[38]

IV. The Doctrine of Informed Consent

The present case **is one of first impression in this jurisdiction** in the application of the doctrine of informed consent in a medical negligence case. For a deeper appreciation of the application of this novel doctrine, a brief look at the historical context, the different approaches underlying informed consent, and the standards of disclosure would be very helpful.

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[37] Decision, pp. 18-19.

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

a. Battery v. Negligence Approaches

The doctrine of informed consent first appeared in American jurisprudence in cases involving unconsented surgeries which fit the analytical framework of traditional battery.[39] Most commentators begin their discussions of the legal doctrine of informed consent with the "famous 1914 opinion of Associate Justice Benjamin Cardozo in *Schloendorff v. Society of New York Hospitals*"[40] where he wrote:

> Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without the patient's consent commits an assault, for which he is liable in damages. This is true, except in cases of medical emergency, where the patient is unconscious, and where it is necessary to operate before consent can be obtained.[41]

Scholendorff is significant because it "characterized the wrong [committed by the physician] as a trespass, and not [as] a negligent act." It illustrated the concept of medical battery "[where] a patient is subjected to an examination or treatment without express or implied consent." Thus, "[this] battery approach to informed consent seeks to protect the patient's physical integrity and personal dignity from harmful and unwanted contact."[42]

"[A]s the century progressed and the practice of medicine became more sophisticated, courts began to consider whether the patient had been given sufficient information to give true

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[39] Bryan J. Warren, *Pennsylvania Medical Informed Consent Law: A Call To Protect Patient Autonomy Rights By Abandoning The Battery Approach*, 38 Duq. L. Rev. 917, 927 (2000). In American perspective, battery is "[a] harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff or a third person to suffer such a contact." *Infra* note 35, at 890, citing W. Keeton, D. Dobbs R. Keeton, R. Keeton & D. Owen, Prosser & Keeton on *The Law of Torts*, § 9, at 39 (5th ed. 1984).

[40] 105 N.E. 92, 93 (N.Y. 1914).

[41] *Supra* note 39.

[42] *Id.* at 928.

consent."[43] One commentator notes that in the mid-1950s, the courts had *shifted their focus from the issue of whether the patient gave consent, to whether adequate information was given for the patient to have made an informed consent*. Thus, the quantity of information provided to the patient in making decisions regarding medical treatment was given greater scrutiny and the physician's duty to disclose assumed a primary role.[44]

The 1957 case of *Salgo v. Leland Stanford Jr. University of Board of Trustees*[45]first "established the modern view of the doctrine of informed consent," declaring "that the physician violates his duty to his patient if he fails to provide information necessary for the patient to form intelligent consent to the proposed treatment."[46] Although *Salgo* held that the physician was under a duty to disclose, this duty remained unclear; it did not answer the critical question of "what constituted 'full disclosure' sufficient for the patient to make an informed consent."[47]

In the 1960s, "[c]ourts and commentators began to understand [and realize] that actions for battery – an intentional tort – made little sense when couched in negligence terminology."[48] Thus, in 1960, the Kansas Supreme Court explicitly rejected the battery approach in *Natanson v. Kline*[49] where it held that the "failure to disclose to the patient sufficient information to allow informed consent to the procedure was an action based in negligence and not on an unconsented x x x touching [or]

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[43] *Id.* at 929.

[44] Richard E. Shugrue & Kathryn Linstromberg, *The Practitioner's Guide To Informed Consent*, 24 Creighton L. Rev. 881, 893 (1991).

[45] 154 Cal. App. 2d 560, 317 P.2d 170.

[46] *Supra* note 39, at 930.

[47] *Supra* note 44, at 893.

[48] *Id.* at 883.

[49] 186 Kan. 393, 350 P.2d 1093 (1960).

battery."[50] The courts in *Natanson v. Kline*[51] and *Mitchell v. Robinson*[52] clarified as well the scope of the physician's duty to disclose and held that the "central information needed in making an informed consent was a disclosure of the material risks involved in a medical procedure."[53] *Natanson* went on to require the physician to provide "in addition to risk information, disclosure of the ailment, the nature of the proposed treatment, the probability of success, and possible alternative treatments."[54]

Finally, in 1972, the California Supreme Court in *Cobbs v. Grant*[55] articulated "*the rationale behind abandoning the battery approach to informed consent in favor of [a] negligence approach.*" It held that "*it was inappropriate to use intentional tort of battery when the actual wrong was an omission, and the physician acted without intent to injure the patient.*"[56]

b. Standards of Disclosure: Professional Disclosure Standard v. Reasonable Patient Standard

A significant development in the evolution of the doctrine of informed consent in the United States is the standard by which the adequacy of disclosure is judged.[57] In *Natanson,*[58] the Court examined the adequacy of the physician's disclosure by looking at accepted medical practices and held that a charge of failure to disclose should be judged by the standards of the reasonable medical practitioner. This came to be known as the ***"professional disclosure standard."***[59] The question under

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[50] *Supra* note 39, at 930.

[51] *Supra* note 49.

[52] 334 S.W.2d 11 (Mo. 1960).

[53] *Supra* note 44, at 894.

[54] *Ibid.*

[55] 8 Cal.3d 229, 502 P.2d 1, 104 Cal. Rptr. 505.

[56] *Supra* note 39, at 931.

[57] *Id.* at 923.

[58] *Supra* note 49.

[59] *Supra* note 44, at 899.

the standard is: ***did the doctor disclose the information that, by established medical practice, is required to be disclosed?*** Under this standard, "a patient claiming a breach of the duty was required to produce *expert medical testimony* as to what the standard practice would be in [the medical community in a particular case] and how the physician deviated from the practice."[60] This requirement, however, came under harsh criticism as one commentator noted:

> The fulfillment of this requirement often precluded a finding of liability not only because of the difficulty in obtaining expert testimony, and breaking through the medical community's so-called "conspiracy of silence," but also because there was no real community standard of disclosure. Establishing community custom through expert testimony is perfectly acceptable where such custom exists. However, because a physician supposedly considers his patient's emotional, mental, and physical condition in deciding whether to disclose, and because each patient is mentally and emotionally unique, there can be no single established custom concerning disclosure; if there is one, it is so general that it is of little value. Requiring the plaintiff to present expert testimony that a standard does exist and was breached may well impose an insuperable burden.[61]

In the early 1970s, the courts and legislature in the United States realized that "the professional community standard of disclosure was inconsistent with patients' rights to make their own health care decisions."[62] In 1972, a new standard was established in the landmark case of *Canterbury v. Spence*.[63] This standard later became known as the ***"reasonable patient standard."*** It required the doctor "to disclose all material risks incident to the proposed therapy in order to secure an informed consent,"[64] and gave rise to a new **disclosure test**: ***"the test for determining whether a particular peril must be divulged***

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[60] *Id.* at 900-901.

[61] *Id.* at 901.

[62] *Id.* at 902.

[63] 464 F.2d 772, 150 U.S. App. D.C. 263 (1972).

[64] *Supra* note 62.

is its materiality to the patient's decision: all risks potentially affecting the decision must be unmasked."[65] Under this standard, adequate disclosure "required the physician to discuss the nature of the proposed treatment, whether it was necessary or merely elective, the risks, and the available alternatives and their risks and benefits."[66]

The *Canterbury* court, however, warned that ***the standard does not mean "full disclosure" of all known risks***. One commentator emphasized:[67]

> Thus, the reasonable patient standard included more information than a professional community standard, but **did not require the doctor to tell the patient all information about risks, benefits, alternatives, diagnosis, and the nature of the treatment**. To do so would require the patient first to undergo complete medical training himself. "The patient's interest in information does not extend to a lengthy polysyllabic discourse on all possible complications. A mini-course in medical science is not required...." [emphasis supplied]

In *Sard v. Hardy*,[68] the Maryland Court of Appeals succinctly explained the rationale in adopting the reasonable patient standard first established in *Cantebury v. Spence*,[69] as follows:

> In recent years, however, an ever-expanding number of courts have declined to apply a professional standard of care in informed consent cases, employing instead a general or lay standard of reasonableness set by law and independent of medical custom. These decisions recognize that protection of the patient's fundamental right of physical self-determination the very cornerstone of the informed consent doctrine mandates that the scope of a physician's duty to disclose therapeutic risks and alternatives be governed by the patient's informational needs. Thus, the appropriate test is not what the physician in the exercise of his medical judgment thinks a patient should know before acquiescing

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[65] *Supra* note 44, at 903.

[66] *Ibid.*

[67] *Id.* at 903-904.

[68] 281 Md. 432, 379 A.2d 1014 Md. 1977.

[69] *Supra* note 63.

in a proposed course of treatment; rather, the focus is on what data the patient requires in order to make an intelligent decision. [Citations omitted]

Since then, this line of ruling has prevailed, as shown by the rulings discussed below on the need for expert evidence in the application of the preferred reasonable patient standard.

c. **Expert Testimony in *Ordinary* Medical Negligence Cases**

Philippine jurisprudence tells us that expert testimony is crucial, if not determinative of a physician's liability in a medical negligence case.[70] In litigations involving medical negligence as in any civil action, we have consistently ruled that the burden to prove by preponderance of evidence the essential elements – *i.e.*, duty, breach, injury and proximate causation — rests with the plaintiff. Expert testimony is, therefore, essential since the factual issue of whether a physician or surgeon exercised the requisite degree of skill and care in the treatment of his patient is generally a matter of expert opinion.[71]

Cruz v. Court of Appeals,[72] a 1997 case, provided the first instance for the Court to elaborate on the crucial significance of expert testimony to show that a physician fell below the requisite standard of care. In acquitting the petitioner of the crime of reckless imprudence resulting in homicide because of **a complete absence of any expert testimony of the matter of the standard of care** employed by other physicians of good standing in the conduct of similar operations, the Court emphasized:

In the recent case of *Leonila Garcia-Rueda v. Wilfred L. Pacasio, et al.*, this Court stated that in accepting a case, a doctor in effect represents that, having the needed training and skill possessed by physicians

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[70] See *Cruz v. Court of Appeals*, G.R. No. 122445, November 18, 1997, 282 SCRA 188; *Flores v. Pineda*, *supra* note 2; *Cayao-Lasam v. Ramolete*, G.R. No. 159132, December 18, 2008, 574 SCRA 439.

[71] *Flores v. Pineda*, *supra* note 2.

[72] *Supra* note 70, at 189-190.

and surgeons practicing in the same field, he will employ such training, care and skill in the treatment of his patients. He therefore has a duty to use at least the same level of care that any other reasonably competent doctor would use to treat a condition under the same circumstances. **It is in this aspect of medical malpractice that expert testimony is essential to establish not only the standard of care of the profession but also that the physician's conduct in the treatment and care falls below such standard. Further, inasmuch as the causes of the injuries involved in malpractice actions are determinable only in the light of scientific knowledge, it has been recognized that expert testimony is usually necessary to support the conclusion as to causation.**

x x x The deference of courts to the expert opinion of qualified physicians stems from its realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating. Expert testimony should have been offered to prove that the circumstances cited by the courts below are constitutive of conduct falling below the standard of care employed by other physicians in good standing when performing the same operation. It must be remembered that when the qualifications of a physician are admitted, as in the instant case, there is an inevitable presumption that in proper cases he takes the necessary precaution and employs the best of his knowledge and skill in attending to his clients, unless the contrary is sufficiently established. **This presumption is rebuttable by expert opinion which is so sadly lacking in the case at bench.** [Emphasis supplied]

Ramos v. Court of Appeals[73] meanwhile illustrates that in cases where the doctrine of *res ipsa loquitur*[74] is applicable, the requirement for expert testimony may be dispensed with. Thus, in finding that the respondent was negligent in the administration of anesthesia on the basis of the testimony of

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[73] G.R. No. 124354, December 29, 1999, 321 SCRA 584.

[74] *Res ipsa loquitur* is a Latin phrase which literally means "the thing or the transaction speaks for itself." The phrase "*res ipsa loquitur*" is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiffs *prima facie* case, and present a question of fact for defendant to meet with an explanation. *Id.* at 598.

a dean of a nursing school and not of an anesthesiologist, the Court held:

> We do not agree with the above reasoning of the appellate court. Although witness Cruz is not an anesthesiologist, she can very well testify upon matters on which she is capable of observing such as, the statements and acts of the physician and surgeon, external appearances, and manifest conditions which are observable by any one. This is precisely allowed under the doctrine of *res ipsa loquitur* where the testimony of expert witnesses is not required. It is the accepted rule that expert testimony is not necessary for the proof of negligence in non-technical matters or those of which an ordinary person may be expected to have knowledge, or where the lack of skill or want of care is so obvious as to render expert testimony unnecessary. We take judicial notice of the fact that anesthesia procedures have become so common, that even an ordinary person can tell if it was administered properly. As such, it would not be too difficult to tell if the tube was properly inserted. This kind of observation, we believe, does not require a medical degree to be acceptable.[75]

d. The Limited but Critical Role of Expert Testimony in Informed Consent Litigation

One of the major and fiercely contested issues in the growing number of informed consent cases in the United States is *"whether it is necessary for the plaintiff to produce expert medical testimony to establish the existence and scope of a physician's duty to disclose risks of a proposed treatment."*[76] A majority of legal commentators on the subject agree that "most courts will continue to require expert testimony to establish the existence and extent of a physician's duty to disclose risks of a proposed treatment, in view of the rule that expert testimony usually is necessary in medical malpractice cases generally."[77]

In informed consent cases (unlike in ordinary medical negligence cases), however, many issues do not necessarily

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[75] *Id.* at 609-610.

[76] 52 ALR 3d 1084.

[77] *Ibid.*

involve medical science. In the landmark case of *Canterbury v. Spence*,[78] the United States Court of Appeals for the District Columbia Circuit defined the limited role of expert testimony in informed consent cases and provided examples of situations appropriate for non-expert testimony:

> There are obviously important roles for medical testimony in such cases, and some roles which only medical evidence can fill. Experts are ordinarily indispensible to identify and elucidate for the fact finder the *risks of therapy* and the *consequences of leaving existing maladies untreated*. They are normally needed on issues as to the *cause of any injury or disability suffered by the patient* and, where privileges are asserted, as to the *existence of any emergency* claimed and the *nature and seriousness of any impact upon the patient from risk-disclosure*. Save for relative infrequent instances where questions of this type are resolvable wholly within the realm of ordinary human knowledge and experience, the need for the expert is clear.
>
> The guiding consideration our decisions distill, however, is that **medical facts are for medical experts and other facts are for any witnesses-expert or not-having sufficient knowledge and capacity to testify to them**. It is evident that many of the issues typically involved in nondisclosure cases do not reside peculiarly within the medical domain. Lay witness testimony can competently establish a physician's failure to disclose particular risk information, the patient's lack of knowledge of the risk, and the adverse consequences following the treatment. Experts are unnecessary to a showing of the materiality of a risk to a patient's decision on treatment, or to the reasonably, expectable effect of risk disclosure on the decision. These conspicuous examples of permissible uses of nonexpert testimony illustrate the relative freedom of broad areas of the legal problem of risk nondisclosure from the demands for expert testimony that shackle plaintiffs' other types of medical malpractice litigation. [Citations omitted; emphasis supplied]

This ruling underwent refinements in subsequent applications. The 1983 case of *Smith v. Shannon*,[79] — where the Supreme Court of Washington held that an expert testimony is required

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[78] *Supra* note 63.

[79] 100 Wash.2d 26, 666 P.2d 351.

to establish initially the existence of the risk of the proposed treatment — is particularly instructive in its two-step discussion in the use of expert testimony in the application of the reasonable patient test. To quote from this case:

> The determination of materiality is a 2-step process. **Initially, the scientific nature of the risk must be ascertained, *i.e.*, the nature of the harm which may result and the probability of its occurrence.** The trier of fact must then decide whether that probability of that type of harm is a risk which a reasonable patient would consider in deciding on treatment.
>
> **While the second step of this determination of materiality clearly does not require expert testimony, the first step almost as clearly does. Only a physician (or other qualified expert) is capable of judging what risks exist and their likelihood of occurrence.** The central reason for requiring physicians to disclose risks to their patients is that patients are unable to recognize the risks by themselves. Just as patients require disclosure of risks by their physicians to give an informed consent, **a trier of fact requires description of risks by an expert to make an informed decision.**
>
> Some expert testimony is thus necessary to prove materiality. **Specifically, expert testimony is necessary to prove the existence of a risk, its likelihood of occurrence, and the type of harm in question**. Once those facts are shown, expert testimony is unnecessary. [Citations omitted, emphasis supplied]

In *Jambazian v. Borden*,[80] a 1994 case, the California Court of Appeals held that in proving his informed consent claim, the plaintiff was required "to present properly qualified medical opinion evidence that his alleged diabetic condition created surgical risks other than those related by defendant prior to the procedure." The Court held further:

> In every case the court must be guided by the general rules governing the use of expert testimony. If the fact sought to be proved is one within the general knowledge of laymen, expert testimony is not required; otherwise the fact can be proved only by the opinions of experts." The diagnosis of diabetes, its magnitude, scientific

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[80] 25 Cal. App. 4th 836.

characteristics, and the inherent risks associated with the condition are not matters of such common knowledge that opinion testimony is unnecessary in informed consent litigation to establish defendant should have disclosed the risks of surgery on a diabetic to plaintiff *when there is no medical evidence that the illness exists.*[Citations omitted.]

Betterton v. Leichtling,[81] another California Court of Appeals ruling, distinguished "between the use of expert testimony to prove the duty to disclose a known risk and the use of expert testimony to prove the existence of the risk itself"[82] and held that the effect of Betterton's aspirin use on the risk of surgical complications is subject to proof only by expert witnesses, *viz*:

Whether to disclose a significant risk is not a matter reserved for expert opinion. **Whether a particular risk exists, however, may be a matter beyond the knowledge of lay witnesses, and therefore appropriate for determination based on the testimony of experts**. Here, the effect of Betterton's aspirin use on the risk of surgical complications was a subject beyond the general knowledge of lay people. Therefore, the jury should have relied only on expert testimony when it determined whether the use of aspirin causes significant risks in surgery. [Citations omitted, emphasis supplied]

In *Morhaim v. Scripps Clinic Medical Group, Inc.*[83] that followed, the Court dismissed Morhaim's informed consent claim based on his failure to present expert testimony that diabetes is a risk of the Kenalog injections. The California Court of Appeals held:

Betterton and *Jambazian* make clear that while no expert testimony is required to establish a doctor's duty to disclose a "*known* risk of death or serious bodily harm," expert testimony *is* required to establish whether a risk exists in the first instance where the matter is beyond the knowledge of a lay person.

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[81] 101 Cal. App. 4th 749 (2002).

[82] *Infra* note 83.

[83] 2005 WL 237772 (Cal.App.4 Dist.).

In this case, whether diabetes is a risk of the Kenalog injections Morhaim received is clearly a matter beyond the knowledge of a layperson. Therefore, Morhaim would have to present expert testimony regarding the existence of that risk in order to prevail on his informed consent claim. Once Morhaim's counsel conceded in his opening statement that Morhaim could not present such testimony, the trial court properly granted Scripps's motion for nonsuit.

All these, *Canterbury v. Spence*[84] best summed up when it observed that "*medical facts are for medical experts and other facts are for any witness – expert or not – having sufficient knowledge and capacity to testify to them.*"[85]

V. Application to the Present Case

The ***issue*** in the present case is: ***Did the respondents prove by preponderance of evidence all the elements of a cause of action for medical negligence under the doctrine of informed consent***?

As stated above, the plaintiff – as in any ordinary medical negligence action – bears the burden of proving the necessary elements of his or her cause of action. *Canterbury v. Spence*[86] tells us that informed consent plaintiffs also share this burden, *viz*:

> In the context of trial of a suit claiming inadequate disclosure of risk information by a physician, the patient has the burden of going forward with evidence tending to establish *prima facie* the essential elements of the cause of action, and ultimately the burden of proof – the risk of nonpersuasion – on those elements. These are normal impositions upon moving litigants, and no reason why they should not attach in nondisclosure cases is apparent. [Citations omitted.]

In the present case, I find that the plaintiffs (the present respondents) utterly failed to establish their cause of action.

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[84] *Supra* note 63.

[85] *Ibid.*

[86] *Supra* note 63.

They failed to establish their claim of lack of informed consent, particularly on the first and fourth elements.

a. First Element: Duty to Disclose Material Risks

As discussed, two competing standards are available to determine the scope and adequacy of a physician's disclosure – the *professional disclosure standard* or the *reasonable patient standard*.

While I concur with the results of the *ponencia*, I find its approach and reasoning in its use of the standards to be confused. The *ponencia* claims that "expert testimony must show the customary standard of care of physicians in the same practice as that of the defendant doctor,"[87] thereby indicating its partiality to the *use of the professional disclosure standard.* At the same time, the *ponencia* felt "hesitant in defining the scope of mandatory disclosure in cases based on lack of informed consent, much less set a standard of disclosure,"[88] citing lack of expert testimony in this regard. In plainer terms, it effectively said that the respondents failed to prove what must be disclosed. Yet, it also concluded that "there was adequate disclosure of material risks inherent in the chemotherapy procedure performed with the consent of Angelica's parents."[89]

After considering the American experience in informed consent cases, I opt to use the reasonable patient standard which focuses "on the informational needs of an average reasonable patient, rather than on professionally-established norms."[90] In the doctor-patient relationship, it is the patient who is subjected to medical intervention and who gets well or suffers as a result of this intervention. It is thus for the patient to decide what type of medical intervention he would accept or reject; it is his or her health and life that are on the line. To arrive at a

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[87] Decision, p. 20.

[88] *Id.*

[89] *Supra* note 1.

[90] *Supra* note 44, at 902.

reasonable decision, the patient must have sufficient advice and information; this is the reason he or she consults a doctor, while the role of the doctor is to provide the medical advice and services the patient asks for or chooses after informed consideration.[91]

In this kind of relationship, the doctor carries the obligation to determine and disclose all the risks and probabilities that will assist the patient in arriving at a decision on whether to accept the doctor's advice or recommended intervention.[92] While the disclosure need not be an encyclopedic statement bearing on the patient's illness or condition, the doctor must disclose enough information to reasonably allow the patient to decide.

In an informed consent litigation, American experiences documented through the decided cases, as well as our own common empirical knowledge and limited line of cases on medical negligence, tell us that at least the testimony on the determination of the *attendant risks and the probabilities* of the proposed treatment or procedure is a matter for a medical expert, not for a layperson, to provide. This is generally the first of the two-step process that *Smith v. Shannon*, cited above, speaks of[93] in describing the reasonable patient standard and its application.

The second step relates to testimony on the determination of the adequacy of the disclosure based on the materiality of the disclosed information to the patient's decision-making. In

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[91] See *Miller v. Kennedy*, 11Wash.App. 272, 522 P.2d 852 (1974) where the Washington Court of Appeals emphasized that it is for the patient to evaluate the risks of treatment and that the only role to be played by the physician is to provide the patient with information as to what those risks are. *Supra* note 72.

[92] See *Cobbs v. Grant* , *supra* note 53 where the Supreme Court of California held: "[T]he patient, being unlearned in medical sciences, has an abject independence upon and trust in his physician for the information upon which he relies during the decisional process, thus raising an obligation in the physician that transcends arms-length transactions."

[93] *Supra* note 79.

this regard, *Canterbury v. Spence*[94] again offers some help when it states:

> Once the circumstances give rise to a duty on the physician's part to inform his patient, the next inquiry is the scope of the disclosure the physician is legally obliged to make. The courts have frequently confronted this problem but no uniform standard defining the adequacy of the divulgence emerges from the decisions. **Some have said "full" disclosure, a norm we are unwilling to adopt literally. It seems obviously prohibitive and unrealistic to expect physicians to discuss with their patients every risk of proposed treatment — no matter how small or remote — and generally unnecessary from the patient's viewpoint as well.** Indeed, the cases speaking in terms of "full" disclosure appear to envision something less than total disclosure, leaving unanswered the question of just how much.[95]

To my mind, the scope that this ruling describes, while not given with mathematical precision, is still a good rule to keep in mind in balancing the interests of the physician and the patient; the disclosure is not total by reason of practicality, but must be adequate to be a reasonable basis for an informed decision. For this aspect of the process, non-expert testimony may be used on non-technical detail so that the testimony may dwell on "a physician's failure to disclose risk information, the patient's lack of knowledge of the risk, and adverse consequences following the treatment."[96]

In the present case, expert testimony is required in determining the *risks and or side effects of chemotherapy that the attending physician should have considered and disclosed* as these are clearly beyond the knowledge of a layperson to testify on. In other words, to prevail in their claim of lack of informed consent, the respondents must present expert supporting testimony to establish the scope of what should be disclosed and the significant risks attendant to chemotherapy that the petitioner should have considered and disclosed; the determination of the scope of

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[94] *Supra* note 63.

[95] *Id.* at 786.

[96] *Supra* note 63.

disclosure, and the risks and their probability are matters a medical expert must determine and testify on since these are beyond the knowledge of laypersons.[97]

As expert witness, the respondents presented Dr. Balmaceda who testified on the physician's general duty to explain to the patient or to his relatives all the known side effects of the medical procedure or treatment. Specifically, Dr. Balmaceda gave the following expert opinion:

ATTY. NEPOMUCENO

Q: Madam Witness, what is the standard operating procedure before a patient can be subjected to procedures like surgery or administration of chemotheraphic (*sic*) drugs?

A: Generally, every physician base (*sic*) her or his assurance on the patient, on the mode of recovery by her or his personal assessment of the patient's condition and his knowledge of the general effects of the agent or procedure that will be allowed to the patient.

Q: What is the duty of the physician in explaining the side effects of medicines to the patient?

A: Every known side effects of the procedure or the therapeutic agents should really be explained to the relatives of the patient if not the patient.

Q: Right, what could be the extent of the side effect to the patient?

A: I said, all known side effects based on studies and observations.

Q: Should be?

A: Made known to the relatives of the patient or the patient.

Q: Then, after informing the relatives of the patient about [all the] side effects, what should be the next procedure?

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[97] *Turner v. The Cleveland Clinic Foundation*, 2002 WL 31043137 (Ohio App. 8 Dist.), citing *Harris v. Ali* (May 27,1999), Cuyahoga App. No. 73432, citing *Ratcliffe v. University Hospitals of Cleveland* (March 11, 1993), Cuyahoga App. No. 61791, citing *Ware v. Richey*, 14 Ohio App.3d 3, 7, 469 N.E.2d 899.FN1.

WITNESS

A: The physician should secure consent from the relatives or the patient himself for the procedure for the administration of the procedure, the therapeutic agents.

ATTY. NEPOMUCENO

Q: Now, should the physician ask the patient's relatives whether they under[stood] the explanation?

A: Yes, generally, they (*sic*) should.[98]

On cross-examination, Dr. Balmaceda only clarified that all known side-effects of the treatment, including those that may aggravate the patient's condition, should be disclosed, *viz*:

ATTY. CASTRO

Q: And you mentioned a while ago, Madam Witness that all known side effects of drugs should be made known to the patient to the extent that even he dies because of making known the side effect, you will tell him?

A: I said, all known side effect[s] should be made known to the relatives or to the patient so that consent and the responsibility there lies on the patient and the patient's relatives.

Q: So, even that information will aggravate his present condition?

A: Making known the side effect?

A: Yes.

A: In my practice, I did not encounter any case that will aggravate it. I make him know of the side effect[s] and if indeed there is, I think the person that should approve on this matter should be the relatives and not the patient. It is always the patient that become (*sic*) aggravated of the side effects of the procedure in my experience.[99]

Unfortunately for the respondents, ***Dr. Balmaceda's testimony failed to establish the existence of the risks or side-effects***

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[98] TSN, April 28, 1995, pp. 22-24.

[99] *Id.* at 25.

the petitioner should have disclosed to them in the use of chemotherapy in the treatment of osteosarcoma; the witness, although a medical doctor, could not have testified as an expert on these points for the simple reason that she is not an oncologist nor a qualified expert on the diagnosis and treatment of cancers.[100] Neither is she a pharmacologist who can properly advance an opinion on the toxic side effects of chemotherapy, particularly the effects of *Cisplatin*, *Doxorubicin* and *Cosmegen* – the drugs administered to Angelica. As a doctor whose specialty encompasses hospital management and administration, she is no different from a layperson for purposes of testifying on the risks and probabilities that arise from chemotherapy.

In the analogous case of *Ramos v. Court of Appeals*[101] that dwelt on the medical expertise of a witness, we held that a pulmonologist cannot be considered an expert in the field of anesthesiology simply because he is not an anesthesiologist:

> First of all, Dr. Jamora cannot be considered an authority in the field of anesthesiology simply because he is not an anesthesiologist. Since Dr. Jamora is a pulmonologist, he could not have been capable of properly enlightening the court about anesthesia practice and procedure and their complications. Dr. Jamora is likewise not an allergologist and could not therefore properly advance expert opinion on allergic-mediated processes. Moreover, he is not a pharmacologist and, as such, could not have been capable, as an expert would, of explaining to the court the pharmacologic and toxic effects of the supposed culprit, Thiopental Sodium (Pentothal).
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> An anesthetic accident caused by a rare drug-induced bronchospasm properly falls within the fields of anesthesia, internal medicine-allergy, and clinical pharmacology. The resulting anoxic encephalopathy belongs to the field of neurology. While admittedly, many bronchospastic-mediated pulmonary diseases are within the expertise of pulmonary medicine, Dr. Jamora's field, the anesthetic drug-induced, allergic mediated bronchospasm alleged in this case is within the

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[100] *Supra* note 30.

[101] *Supra* note 72.

disciplines of anesthesiology, allergology and pharmacology. On the basis of the foregoing transcript, in which the pulmonologist himself admitted that he could not testify about the drug with medical authority, it is clear that the appellate court erred in giving weight to Dr. Jamora's testimony as an expert in the administration of Thiopental Sodium.

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Generally, to qualify as an expert witness, one must have acquired special knowledge of the subject matter about which he or she is to testify, either by the study of recognized authorities on the subject or by practical experience. Clearly, Dr. Jamora does not qualify as an expert witness based on the above standard since he lacks the necessary knowledge, skill, and training in the field of anesthesiology. Oddly, apart from submitting testimony from a specialist in the wrong field, private respondents intentionally avoided providing testimony by competent and independent experts in the proper areas.[102]

At best, Dr. Balmaceda's testimony only established *generally* the petitioner's duty to disclose all the known risks of the proposed treatment and nothing more. Even if this testimony is deemed competent, its probative value – on the risks attendant to chemotherapy and the probabilities that the attending chemotherapy specialist should have considered and disclosed to the patient and her parents – cannot but be negligible for lack of the required capability to speak on the subject of the testimony.

In this regard, Justice Carpio proffers the view that the petitioner "as an expert in oncology identified [in the present case] the material risks and side effects of chemotherapy."[103]

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[102] *Id.* at 614-616.

[103] Justice Carpio asserts that the petitioner testified and admitted that the following are the risks and side effects of chemotherapy: (1) Falling hair; (2) Nausea; (3) Vomiting; (4) Loss of appetite; (5) Lowering of white blood cell count; (6) Lowering of red blood cell count; (7) Lowering of platelet count; (8) Sterility; (9) Damage to kidneys; (9) Damage to the heart; (11) Skin darkening; (12) Rashes; (13) Difficulty in breathing; (14) Fever; (15) Excretion of blood in the mouth; (16) Excretion of blood in the anus; (17) Development of ulcers in the mouth; (18) Sloughing off of skin; (19) Systemic Lupus Erythematosus; (20) Carpo-pedal spasm; (21) Loose bowel

To support his conclusion, Justice Carpio cites jurisprudence which allowed the use of the defendant-physician's expert testimony to prove the medical disclosure standard in the community.[104] I cannot subscribe to this point of view.

Arguably, the medical disclosure standard can be established through the petitioner's own expert testimony, as has been done in some courts in the United States in cases where the defendant physician testified that he did disclose the risks, but the plaintiff denied it.[105] In these cases, the defendant physicians are qualified as expert witnesses and their testimonies are considered expert medical testimony insofar as they disclose the practice of competent and responsible medical practitioners in a particular medical situation.[106]

Reliance on this line of cases for purposes of the present case is however, inapt.

First, these cases are appropriate only if we are to adopt the professional disclosure or the "physician standard" – a standard that Justice Carpio himself admits "is not the modern and prevailing standard among United States courts." Citing

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movement; (22) Infection; (23) Gum bleeding; (24) Hypovolemic shock; (25) Sepsis; (26) Death after 13 days. Dissenting Opinion, pp. 6-7.

A close scrutiny of the evidence on record reveals otherwise. In her Answer, the petitioner only mentioned the following side-effects of chemotherapy: (1) falling hair; (2) nausea and vomiting; (3) Loss of appetite; (4) low count of white blood cells, red blood cells and platelets, (5) possible sterility, (6) damage to the heart and kidneys, and (7) darkening of skin. *Supra* note 7. During trial, the petitioner testified that she mentioned only the following side effects of chemotherapy to the respondents: hair loss, nausea, vomiting, sterility, and low and white blood cells and platelet count. *Supra* note 31.

[104] Dissenting Opinion, p. 5.

[105] 88 A.L.R.3d 1008 citing *Hood v. Phillips* (1977, Tex) 554 SW2d 160.

[106] *Nishi v. Hartwell*, 52 Haw. 188, 473 P.2d 116 (1970) citing *Vigil v. Herman*, 102 Ariz. 31, 424, P.2d 159 (1967); *Sheffield v. Runner*, 163 Cal.App.2d 48, 328 P.2d 828 (1958); *McPhee v. Bay City Samaritan Hospital*,10 Mich.App. 567, 159 N.W.2d 880 (1968); *Wilson v. Scott*, 412 S.W.2d 299 (Tex.1967).

Canterbury v. Spence,[107] Justice Carpio declares that the "prevailing trend among courts is to use the patient standard of materiality." As held in *Febud v. Barot*:[108]

> Sufficiency of disclosure under the prudent patient standard requires that disclosure be viewed through the mind of [the] patient, not [the] physician. Implicit in this shift of emphasis is recognition that expert testimony is no longer required in order to establish the medical community's standard for disclosure and whether the physician failed to meet that standard.

Second, this line of cases also cannot apply to the present case since the petitioner's testimony, on its own, did not establish the medical standard in obtaining consent for chemotherapy treatment. Stated differently, the petitioner's testimony did not specifically refer to the prevailing medical practice insofar as what risks or side-effects of chemotherapy should be disclosed to the respondents. In fact, during the trial, the respondents failed to elicit any expert testimony from the petitioner regarding the recognized standard of care in the medical community about what risks of chemotherapy should have been disclosed to them.

b. Second Element: Adequacy of Disclosure of Risks

The *ponencia* concludes that "there was adequate disclosure of material risks of the [chemotherapy administered] with the consent of Angelica's parents" in view of the fact that the petitioner informed the respondents of the side effects of chemotherapy, such as low white and red blood cell and platelet count, kidney or heart damage and skin darkening.

I cannot agree with this conclusion because it was made without the requisite premises. As heretofore discussed, sufficiency of disclosure can be made only after a determination and assessment of risks have been made. As discussed above, no evidence exists showing that these premises have been properly laid and proven. Hence, for lack of basis, no conclusion

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[107] *Supra* note 63.

[108] 260 NJ Super 322, 616 A2d 933 (1992).

can be made on whether sufficient disclosure followed. In other words, the disclosure cannot be said to be sufficient in the absence of evidence of what, in the first place, should be disclosed.

Even assuming that the *ponencia* used the professional disclosure standard in considering the material risks to be disclosed, the existing evidence still does not support the conclusion arrived at. The reason again is the respondent's failure to establish a baseline to determine adequacy of disclosure; in the case of the professional disclosure standard, determination of adequacy requires expert medical testimony on the standard medical practice that prevails in the community. Thus, it has been held that "[e]xpert testimony is required in an informed consent case to establish what the practice is in the general community with respect to disclosure of risks that the defendant physician allegedly failed to disclose."[109]

Lastly, the respondent Lina Soliman's testimony on this point bears close examination in light of the totality of the evidence adduced. A **first consideration** is the nature of the illness of the deceased – *osteosarcoma* – that according to the undisputed expert testimony of Dr. Tamayo is a "very aggressive type of cancer that requires adjuvant chemotherapy." In plainer terms, the amputation of Angelica's right leg was not sufficient, chemotherapy must follow; despite modern chemotherapy, the mortality rate of *osteosarcoma* is 80 to 90%.[110] In light of this

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[109] *Supra* note 76 citing *Giles v. Brookwood Health Services, Inc*., 5 So. 3d 533 (Ala. 2008). The case of *Williams v. Menehan* (1963) 191 Kan 6, 379 P2d 292 is instructive. In that case, "the parents of a child who died during a heart catherization alleged that they were not informed of all of the risks of the diagnostic procedure." "The court [in] affirming a judgment for the defendant doctors, … applied the rule that when a doctor makes an allegedly partial disclosure of risks of a proposed treatment, the plaintiff must produce expert testimony to establish the inadequacy of the doctor's disclosure. The court noted that the plaintiff parents had offered no testimony of what a reasonable physician would have disclosed under the same or similar circumstances." *Supra* note 76.

[110] *Supra* note 36.

expert testimony, the respondent Lina Soliman's testimony that she was assured of a 95% chance of healing (should Angelica undergo chemotherapy) by the petitioner cannot be accepted at face value.

A **second consideration** is that the claim of a 95% chance of healing cannot also be given any credence considering the respondent Lina Soliman's inconsistent testimony on this point. In fact, the record bears out that the respondent Lina Soliman testified on direct examination that the petitioner assured her of a 95% chance of healing. However, she contradicted her earlier testimony, when on rebuttal, she declared that the petitioner gave her a 90% guarantee of full recovery should Angelica undergo chemotherapy.

A **third consideration** is that specific disclosures such as life expectancy probabilities[111] are not legally necessary or "required to be disclosed in informed consent situations,"[112] thus the respondent Lina Soliman's testimony on this point cannot be given any probative value. Thus, in the landmark case of *Arato v. Avedon*[113] — where family members of a patient who died of pancreatic cancer brought an informed consent action against defendant physicians who failed to provide the patient material information (statistical life expectancy) necessary for his informed consent to undergo chemotherapy and radiation treatment[114] — the Supreme Court of California "rejected the mandatory disclosure of life expectancy probabilities"[115] on account "of the variations among doctor-patient interactions and the intimacy of the relationship itself."[116]

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[111] *Arato v. Avedon,* 5 Cal.4th 1172, 858 P.2d 598, 23 Cal.Rptr.2d 131.

[112] *Id.* See also *infra* note 114.

[113] *Id.*

[114] William J. McNichols, *Informed Consent Liability In A "Material Information Jurisdiction: What Does The Future Portend?* 48 Okla. L. Rev. 711,742 (1996).

[115] *Id.* at 743.

[116] Denise Ann Dickerson, *A Doctor's Duty To Disclose Life Expectancy Information To Terminally Ill Patients,* 43 Clev. St. L. Rev. 319, 343 (1995).

Likewise, the statement that the side effects were confined to hair loss, vomiting and weakness can hardly be given full credit, given the petitioner's own testimony of what she actually disclosed. Respondent Lina Soliman's testimony, tailor-fitted as it is to an informed consent issue, should alert the Court to its unreliability. Even if given in good faith, it should, at best reflect **what the respondents heard (or chose to hear)**, not what the petitioner disclosed to them – a common enough phenomenon in high-stress situations where denial of an unacceptable consequence is a first natural response. That death may occur is a given in an *osteosarcoma* case where the most drastic intervention – amputation – has been made. That death was not proximately caused by the chemotherapy (as testified to by experts and as discussed below) demonstrates its particular relevance as a consequence that the doctor administering the chemotherapy must disclose.

c. Fourth Element: Causation

In addition to the failure to prove the first element, I also submit that the respondents failed to prove that the chemotherapy administered by the petitioner proximately ***caused*** the death of Angelica Soliman.

Traditionally, plaintiffs alleging lack of informed consent must show two types of causation: 1) adequate disclosure would have caused the plaintiff to decline the treatment, and **2) the treatment proximately caused injury to the plaintiff**. The second causation requirement is critical since a medical procedure performed without informed consent does not, in itself, proximately cause an actionable injury to a plaintiff; a plaintiff must show that he or she has suffered some injury as a result of the undisclosed risk to present a complete cause of action.[117]

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[117] *Gorney v. Meaney*, 214 Ariz. 226, 150 P.3d 799, citing *Shetter v. Rochelle*, 2 Ariz.App. 358, 367, 409 P.2d 74, 83 (1965); William L. Prosser and W. Page Keeton, *The Law of Torts* § 32, at 191 5th ed. (1984); *see also Hales*, 118 Ariz. at 311, 576 P.2d at 499; *McGrady v. Wright*, 151 Ariz. 534, 537, 729 P.2d 338, 341 (App.1986); *Gurr v. Willcutt*, 146 Ariz. 575, 581, 707 P.2d 979, 985 (App.1985).

In the recent case of *Gorney v. Meaney*,[118] the Arizona Court of Appeals held that expert testimony is essential to demonstrate that the treatment proximately caused the injury to the plaintiff, *viz*:

> Expert testimony is not required for the first type of causation because it is plainly a matter to which plaintiffs themselves could testify and is within the knowledge of the average layperson.
>
> **Expert testimony is required, however, to demonstrate that the treatment proximately caused injury to the plaintiff. Such testimony helps to ensure that the plaintiff's alleged injury was not caused by the progression of a pre-existing condition or was the result of some other cause, such as natural aging or a subsequent injury x x x.** Thus, Gorney's expert opinion affidavit should have stated that the surgery proximately caused an injury to Gorney, *e.g.*, the "worsen[ed]" condition in Gorney's knee. [Citations omitted, emphasis supplied]

In the present case, respondent Lina Soliman's lay testimony at best only satisfied the first type of causation – that adequate disclosure by the petitioner of all the side effects of chemotherapy would have caused them to decline treatment. The respondents in this case must still show by competent expert testimony that the chemotherapy administered by the petitioner proximately caused Angelica's death.

In this regard, the respondents presented Dr. Vergara as an expert witness, who gave the following opinion:

> ATTY. NEPOMUCENO
>
> Q: Under the word conclusions are contained the following words: "Cause of death is hypovolemic shock secondary to multiple organ hemorrhages and disseminated Intravascular Coagulation," in layman's term, what is the meaning of that?
>
> WITNESS
>
> A: The victim died of hemorrhages in different organs and disseminated intravascular coagulation is just a complication.

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[118] *Ibid.*

ATTY. NEPOMUCENO

Q: Madam Witness, what could have caused this organ hemorrhages and disseminated intravascular coagulation?

A: The only thing I could think of, sir, was the drugs given to the victim, the chemical agents or this anti-plastic drugs can cause x x x the reduction in the platelet counts and this could be the only cause of the bleeding.

Q: And that bleeding could have been sufficient to cause the death of Angelica Soliman?

A: Yes, Sir.[119]

On cross-examination, Dr. Vergara admitted that the opinions she advanced to the court were not based on her opinion as an expert witness but on the interview she had previously conducted with an oncologist, *viz*:

ATTY. CASTRO

Q: Now, you mentioned chemotherapy, Madam Witness, that it is not a treatment really, are you initiating that?

A: Sir, I asked for an opinion from an Oncologist, and she said that only one person really survived the 5-year survival rate. Only one person.

Q: That is, are you referring to malignant osteosarcoma?

A: Yes, sir.[120]

x x x x x x x x x

ATTY. AYSON

Q: Madam Witness, you said a while ago that you are not a pathologist?

A: Yes, sir.

Q: And during the cross-examination and the re-direct, you admitted that you have had to refer or interview an oncologist?

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[119] TSN, December 14, 1994, pp. 24-25.

[120] *Id.* at 36.

A: Yes, sir.

Q: What is an oncologist Madam?

A: She is a doctor in cancers.

Q: So, whatever opinion you have stated before this Honorable Court [is] based on the statement made by the oncologist you have interviewed?

A: Only for the disease osteosarcoma.

x x x x x x x x x

COURT

Q: So then, the opinion you gave us that the patient afflicted with cancer of the bone, osteosarcoma that she will live for 5 years is not of your own opinion but that of the oncologist?

A: Yes, your Honor, but that 5 years survival is only for patients undergoing chemotherapy but actually it is less than 5 years.

Q: You mean to tell the Court Mrs. Witness that the patient has been diagnosed [with] cancer, may still have a life span of five (5) years after examination having been found to have cancer?

A: No, sir. Less than five (5) years.

Q: In this particular case, what was the information given you by the Oncologist you consulted?

A: Only one person lived after she was given chemotherapy, five years sir.

Q: In this particular case, the Oncologist you consulted also told you that the patient Soliman did not die of cancer but died of complication, is that correct?

A: Yes, sir.

Q: So, it was not actually your own observation?

A: Sir, considering my findings at the body or the different organs, of the victim, I have said I found hemorrhages, so I think that is enough to have caused the death of the victim.[121]

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[121] *Id.* at 39-40.

Under these terms, Dr. Vergara's expert testimony was clearly incompetent to prove that the chemotherapy proximately caused Angelica's demise for two reasons.

First, Dr. Vergara, who is an autopsy expert, is not qualified to be an expert witness in an *osteosarcoma* case involving chemotherapy. Her admission that she consulted an oncologist prior to her testimony in court confirms this. Dr. Vergara is also not a pharmacologist who can competently give expert opinion on the factual issue of whether the toxic nature of the chemotherapy proximately caused Angelica's death. As previously stated, the respondents failed to present competent experts in the field of oncology despite their representation to do so during trial.

Second, Dr. Vergara's testimony is doubly incompetent as it is hearsay; her opinions were not based on her own knowledge but based on the opinion of another oncologist she previously interviewed.

Additionally, I cannot help but note that Dr. Vergara could not have adequately testified regarding the medical condition and the cause of death of Angelica without referring to her medical records. As the records of the case show, these medical records were never introduced into evidence by either party to the case. The absence of these medical records significantly lessened the probative value of Dr. Vergara's testimony regarding the causation of Angelica's death.

Thus, in the absence of competent evidence that the chemotherapy proximately caused Angelica's death, **what stands in the record in this case is the petitioner's uncontroverted and competent expert testimony that Angelica died of sepsis brought about by the progression of her *osteosarcoma* – an aggressive and deadly type of bone cancer.** That the petitioner is a competent expert witness cannot be questioned since she was properly qualified to be an expert in medical oncology.

In this respect, the petitioner – who is a board certified medical oncologist with thirteen (13) years of experience in the treatment of *osteosarcoma* – testified that Angelica died of sepsis, *viz*:

Q: Now, despite all these medications, the patient has been deceased on September 1, 1993, what do you think can be the cause of x x x death of the patient?

A: This is probably the cause of death[-]overwhelming infection that has gone through her body that has also caused her other organs or systems to fail and this is also because of poor defense mechanism brought about from the cancer per se.[122]

On cross-examination, the petitioner rebutted the respondents' theory that the chemotherapy caused platelet reduction and the massive bleeding that ultimately caused Angelica's death, *viz*:

Q: Would you agree with me if I say that the platelet reduction triggered a chain of physiological pathological mechanism in the body of Angelica Soliman which eventually triggered her death?

A: No, sir.

Q: Why not?

A: Because the platelet decrease was not the main cause of death of Angelica Soliman, it was an overwhelming infection which also triggered the reduction of platelets.

Q: So, which came ahead, the overwhelming infection or the platelet reduction?

A: The infection, sir.

Q: And you said overwhelming?

A: Because we were talking about the death.

Q: No, no, no. You said that the infection that attacked Angelica Soliman was overwhelming, will you define what you mean by overwhelming?

A: Overwhelming is a condition wherein the infection has already gone to other parts of the body and caused the decrease in the function of the organs and systems.

x x x x x x x x x

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[122] TSN, October 6, 1995, p. 33.

Q: And you are saying that the platelet reduction eventually led to the bleeding and the bleeding led to the death?

A: No, sir.

Q: Why not?

A: Because we were able to control the bleeding of Angelica Soliman because of the transfusion that we were giving her with platelets. We were able to stall the bleeding but the infection was there and it was the infection that was hard to control.

x x x x x x x x x

Q: Now, would I be correct if I say that any or all of these three drugs could cause the platelet reduction in the body of Angelica Soliman?

A: Theoretically, yes, sir.

Q: Practically, what do you mean?

A: Practically, we see usually a decrease in platelets, usually after three cycles of chemotherapy but not on the initial chemotherapy. In the initial chemotherapy the usual blood elements which is decreased is in the white cells of the body.[123]

Q: Alright, at what point and time did it ever occur to your mind that said infection would develop into sepsis?

A: I think it changed the following day.

Q: It was the fifth day already?

A: Yes, sir.

Q: And you changed [the] antibiotic?

A: [I] changed it into something stronger, sir.

Q: What transpired?

A: She was given Fortum intravenously.

x x x x x x x x x

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[123] *Id.* at 37-39.

Q: By sepsis, meaning that the germs, the bacteria were already in the blood system, is that correct?

A: Yes, beginning.

x x x x x x x x x

Q: What about Fortum did it take effect?

A: No, sir.

Q: Why not?

A: The patient has been going down ever since and the white cells were down for it was not enough to control the infection because there was nothing in her body to fight and help Fortum fight the infection, that is why, we also add (*sic*) another medicine that would increase her white cell count called Leucomax.

Q: And did Leucomax help?

A: No, sir.[124]

Q: Of the 500 patients, you said you treated before, how may developed sepsis?

A: I will say 1/5 developed sepsis.

Q: And of the 1/5 that developed sepsis before Angelica Soliman, how many died?

A: Seventy percent (70%).

Q: Died?

A: Yes, sir.[125]

Justice Carpio is of the view that the facts as stated by the RTC and the Court of Appeals clearly show that the chemotherapy caused Angelica's death.[126]

I disagree. As heretofore discussed, in the absence of competent expert testimony, the Court has no factual basis to

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

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

[126] Dissenting Opinion, pp. 10-11.

declare that the chemotherapy administered by the petitioner proximately caused Angelica's death. Our ruling in *Cruz v. Court of Appeals* is instructive:[127]

> **But while it may be true that the circumstances pointed out by the courts below seemed beyond cavil to constitute reckless imprudence on the part of the surgeon, this conclusion is still best arrived at not through the educated surmises nor conjectures of laymen, including judges, but by the unquestionable knowledge of expert witnesses.** For whether a physician or surgeon has exercised the requisite degree of skill and care in the treatment of his patient is, in the generality of cases, a matter of expert opinion. [Emphasis supplied]

In sum, the respondents failed to prove by appropriate evidence – *i.e.*, by expert testimony – that Angelica's death was *caused* by the chemotherapy the petitioner administered. This failure in establishing the fourth requisite of the respondents' cause of action *fatally* seals the fate of the respondent's claim of medical negligence due to lack of informed consent.

On the basis of the foregoing, I vote to grant the petition.

DISSENTING OPINION

CARPIO, *J.*:

Dr. Rubi Li (Dr. Li), as oncologist, should have obtained the informed consent of Reynaldo Soliman (Reynaldo) and Lina Soliman (Lina) before administering chemotherapy to their 11-year old daughter Angelica Soliman (Angelica). Unfortunately, Dr. Li failed to do so. For her failure to obtain the informed consent of Reynaldo and Lina, Dr. Li is liable for damages.

The doctrine of informed consent requires doctors, before administering treatment to their patients, to disclose adequately the material risks and side effects of the proposed treatment.

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[127] *Supra* note 70.

The duty to obtain the patient's informed consent is distinct from the doctor's duty to skillfully diagnose and treat the patient. In *Wilkinson v. Vesey*,[1] the Supreme Court of Rhode Island held that:

> One-half century ago, Justice Cardozo, in the oft-cited case of *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 105 N.E. 92 (1914), made the following observation:
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> "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages. This is true except in cases of emergency where the patient is unconscious and where it is necessary to operate before consent can be obtained." *Id*. at 129-130, 105 N.E. at 93.
>
> x x x x x x x x x
>
> Shortly after the Schloendorff case, there began to appear on the judicial scene a doctrine wherein courts with increasing frequency began to rule that **a patient's consent to a proposed course of treatment was valid only to the extent he had been informed by the physician as to what was to be done, the risk involved and the alternatives to the contemplated treatment. This theory, which today is known as the doctrine of informed consent, imposes a duty upon a doctor which is completely separate and distinct from his responsibility to skillfully diagnose and treat the patient's ills**. (Emphasis supplied)

Four requisites must be proven in cases involving the doctrine of informed consent. The plaintiff must show that (1) the doctor had a duty to disclose the associated risks and side effects of a proposed treatment; (2) the doctor failed to disclose or inadequately disclosed the associated risks and side effects of the proposed treatment; (3) the plaintiff consented to the proposed treatment because of the doctor's failure to disclose or because of the inadequate disclosure of the associated risks and side effects of the proposed treatment; and (4) the plaintiff was injured

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[1] 110 R.I. 606, 295 A. 2d 676, 69 A.L.R. 3d 1202.

as a result of the treatment. In *Coryell v. Smith*,[2] the Court of Appeals of Illinois held that:

> To succeed in a malpractice action based on the doctrine of informed consent the plaintiff must plead and ultimately prove four essential elements: (1) the physician had a duty to disclose material risks; (2) he failed to disclose or inadequately disclosed those risks; (3) as direct and proximate result of the failure to disclose, the patient consented to treatment she otherwise would not have consented to; and (4) plaintiff was injured by proposed treatment.

There are two standards by which courts determine what constitutes adequate disclosure of associated risks and side effects of a proposed treatment: the physician standard, and the patient standard of materiality. Under the physician standard, a doctor is obligated to disclose that information which a reasonable doctor in the same field of expertise would have disclosed to his or her patient. In *Shabinaw v. Brown*,[3] the Supreme Court of Idaho held that:

> A valid consent must be preceded by the physician disclosing those pertinent facts to the patient so that he or she is sufficiently aware of the need for, and the significant risks ordinarily involved in the treatment to be provided in order that the giving or withholding of consent be a reasonably informed decision. **The requisite pertinent facts to be disclosed to the patient are those which would be given by a like physician of good standing in the same community**. (Emphasis supplied)

Under the patient standard of materiality, a doctor is obligated to disclose that information which a reasonable patient would deem material in deciding whether to proceed with a proposed treatment. In *Johnson by Adler v. Kokemoor*,[4] the Supreme Court of Wisconsin held that:

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[2] 274 Ill. App. 3d 543, 653 N.E. 2d 1317.

[3] 125 Idaho 705, 874 P. 2d 516.

[4] 199 Wis. 2d 615, 545 N.W. 2d 495.

x x x The concept of informed consent is based on the tenet that in order to make a rational and informed decision about undertaking a particular treatment or undergoing a particular surgical procedure, a patient has the right to know about significant potential risks involved in the proposed treatment or surgery. In order to insure that a patient can give an informed consent, a "physician or surgeon is under the duty to provide the patient with such information as may be necessary under the circumstances then existing' to assess the significant potential risks which the patient confronts.

The information that must be disclosed is that information which would be "material" to a patient's decision. (Emphasis supplied)

Historically, courts used the physician standard. However, the modern and prevailing trend among courts is to use the patient standard of materiality. In *Canterbury v. Spence*,[5] the Court of Appeals of District of Columbia held that:

x x x **Some have measured the disclosure by "good medical practice," others by what a reasonable practitioner would have bared under the circumstances, and still others by what medical custom in the community would demand. We have explored this rather considerable body of law but are unprepared to follow it**. The duty to disclose, we have reasoned, arises from phenomena apart from medical custom and practice. The latter, we think, should no more establish the scope of the duty than its existence. Any definition of scope in terms purely of a professional standard is at odds with the patient's prerogative to decide on projected therapy himself. That prerogative, we have said, is at the very foundation of the duty to disclose, and both the patient's right to know and the physician's correlative obligation to tell him are diluted to the extent that its compass is dictated by the medical profession.

In our view, the patient's right to self-decision shapes the boundaries of the duty to reveal. That right can be effectively exercised only if the patient possesses enough information to enable an intelligent choice. **The scope of the physician's communications to the patient, then, must be measured by the patient's need, and that need is the information material to the decision. Thus the test for determining whether a particular peril must be divulged**

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[5] 464 F. 2d 772, 150 U.S. App. D.C. 263.

is its materiality to the patient's decision: all risks potentially affecting the decision must be unmasked. (Emphasis supplied)

In *Johnson by Adler*, the Court held that:

What constitutes informed consent in a given case emanates from what a reasonable person in the patient's position would want to know. This standard regarding what a physician must disclose is described as the prudent patient standard; it has been embraced by a growing number of jurisdictions since the *Canterbury* decision.

The *Scaria* [*v. St. Paul Fire & Marine Insurance Co.*] court emphasized that those "disclosures which would be made by doctors of good standing, under the same or similar circumstances, are certainly relevant and material" in assessing what constitutes adequate disclosure, adding that physician disclosures conforming to such a standard "would be adequate to fulfill the doctor's duty of disclosure in most instances." But **the evidentiary value of what physicians of good standing consider adequate disclosure is not dispositive, for ultimately "the extent of the physician's disclosures is driven… by what a reasonable person under the circumstances then existing would want to know."** (Emphasis supplied)

In order to determine what the associated risks and side effects of a proposed treatment are, testimony by an expert witness is necessary because these are beyond the common knowledge of ordinary people. In *Canterbury*, the Court held that, "There are obviously important roles for medical testimony in [nondisclosure] cases, and some roles which only medical evidence can fill. Experts are ordinarily indispensable to identify and elucidate for the fact-finder the risks of therapy." The Court also held that, "medical facts are for medical experts."

On the other hand, in order to determine what risks and side effects of a proposed treatment are material and, thus, should be disclosed to the patient, testimony by an expert witness is unnecessary. In *Canterbury*, the Court held that:

x x x It is evident that many of the issues typically involved in nondisclosure cases do not reside peculiarly within the medical domain. Lay witness testimony can competently establish a physician's failure to disclose particular risk information, the patient's lack of knowledge

of the risk, and the adverse consequences following the treatment. **Experts are unnecessary to a showing of the materiality of a risk to a patient's decision on treatment, or to the reasonably, expectable effect of risk disclosure on the decision**. (Emphasis supplied)

In *Betterton v. Leichtling*,[6] the Court of Appeals of California held that, "Whether to disclose a significant risk is not a matter reserved for expert opinion."

Again, under the patient standard of materiality, a doctor is obligated to disclose that information which a reasonable patient would deem material in deciding whether to proceed with a proposed treatment. Stated differently, what should be disclosed depends on what a reasonable person, in the same or similar situation as the patient, would deem material in deciding whether to proceed with the proposed treatment.

The testimony of an expert witness is necessary to determine the associated risks and side effects of the treatment. This is the only purpose. In the present case, an expert witness identified the associated risks and side effects of chemotherapy — Dr. Li is an expert in oncology. In its 5 September 1997 Decision, the Regional Trial Court (RTC), Judicial Region 5, Branch 8, Legazpi City, stated that:

Dr. Rubi Li is a Doctor of Medicine and a Medical Oncologist. She obtained her degree in Medicine in 1981 at the University of the East. She went on Junior Internship for one year in Rizal Medical Center wherein she was exposed to different diseases and specifications. After the post-graduate internship she underwent six (6) months rural service internship and then took and passed the board examination. She likewise underwent a 3-year residency training in internal medicine wherein she was exposed to different patients, particularly patients with bone diseases and cancer patients, including their treatment. After the residency training in internal medicine, one becomes an internist. She likewise underwent sub-specialty training in medical oncology wherein she dealt with cancer patients, including bone and breast cancers, and learned how to deal with the patient as a whole and the treatment. Before she was admitted to the Society of Medical

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[6] 101 Cal. App. 4th 749.

Oncologists, she first took the test for and registered with the Philippine College of Physicians. She was likewise invited to join the Society of Clinical Oncologists. She has written and has been co-authoring papers on cancer and now she is into the training program of younger doctors and help them with their papers.

Every year Dr. Li goes to conventions, usually in May, known as the American Society of Clinical Oncologist Convention, wherein all the sub-specialties in cancer treatment and management meet and the latest in cancer treatment and management is [sic] presented. In December of each year the Philippine Society of Medical Oncologists have their convention wherein the latest with regards [sic] to what is going on in the Philippines is presented. They also have an upgrading or what they call continuous medical education with [sic] cancer, which is usually every now and then, especially when there are foreign guests from abroad.

Dr. Li has been dealing with bone cancer treatment for almost thirteen (13) years now and has seen more than 5,000 patients.

As an expert, Dr. Li identified the associated risks and side effects of chemotherapy: (1) falling hair; (2) nausea; (3) vomiting; (4) loss of appetite; (5) lowering of white blood cell count; (6) lowering of red blood cell count; (7) lowering of platelet count; (8) sterility; (9) damage to the kidneys; (10) damage to the heart; (11) skin darkening; (12) rashes; (13) difficulty in breathing; (14) fever; (15) excretion of blood in the mouth; (16) excretion of blood in the anus; (17) development of ulcers in the mouth; (18) sloughing off of skin; (19) systemic lupus erythematosus; (20) carpo-pedal spasm; (21) loose bowel movement; (22) infection; (23) gum bleeding; (24) hypovolemic shock; (25) sepsis; and (26) death in 13 days.

Dr. Li admitted that she assured Reynaldo and Lina that there was an 80% chance that Angelica's cancer would be controlled and that she disclosed to them only some of the associated risks and side effects of chemotherapy. In its 5 September 1997 Decision, the RTC stated that:

By way of affirmative and special defenses, Dr. Rubi Li alleged that she saw the deceased patient, Angelica Soliman, and her parents on July 25, 1993, and discussed the patient's condition and the

possibility of adjuvant chemotherapy x x x. The giving of chemotherapy is merely in aid, or an adjuvant, of surgery, hoping to prevent or control the recurrence of the malignant disease (cancer). The plaintiffs were likewise told that there is 80% chance that the cancer could be controlled and that no assurance of cure was given, considering that the deceased was suffering from cancer which up to this moment, cure is not yet discovered and not even the exact cause of cancer is known up to the present.

Plaintiffs were likewise informed that chemotherapy will be given through dextrose and will, therefore, affect not only the cancer cells, but also the patient's normal parts of the body, more particularly the fast growing parts, and as a result, the patient was expected to experience, as she has in fact experienced, side effects consisting of: 1) Falling hair; 2) Nausea and vomiting; 3) Loss of appetite considering that there will be changes in the taste buds of the tongue and lead to body weakening; 4) Low count of white blood cells (WBC count), red blood cells (RBC count), and platelets as these would be lowered by the chemotherapy; 5) The deceased patient's ovaries may be affected resulting to sterility; 6) The kidneys and the heart might be affected; and 7) There will be darkening of the skin especially when the skin is exposed to sunlight.

Thus, **Dr. Li impliedly admits that she failed to disclose to Reynaldo and Lina many of the other associated risks and side effects of chemotherapy, including the most material — infection, sepsis and death**. She impliedly admits that she failed to disclose as risks and side effects (1) rashes; (2) difficulty in breathing; (3) fever; (4) excretion of blood in the mouth; (5) excretion of blood in the anus; (6) development of ulcers in the mouth; (7) sloughing off of skin; (8) systemic lupus erythematosus; (9) carpo-pedal spasm; (10) loose bowel movement; (11) infection; (12) gum bleeding; (13) hypovolemic shock; (14) sepsis; and (15) death in 13 days.

Clearly, infection, sepsis and death are material risks and side effects of chemotherapy. To any reasonable person, the risk of death is one of the most important, if not the most important, consideration in deciding whether to undergo a proposed treatment. Thus, Dr. Li should have disclosed to Reynaldo and Lina that there was a chance that their 11-year

old daughter could die as a result of chemotherapy as, in fact, she did after only 13 days of treatment.

In *Canterbury* and in *Wilkinson*, the Court of Appeals of District of Columbia and Supreme Court of Rhode Island, respectively, held that, "A very small chance of death x x x may well be significant." In the present case, had Reynaldo and Lina fully known the severity of the risks and side effects of chemotherapy, they may have opted not to go through with the treatment of their daughter. In fact, after some of the side effects of chemotherapy manifested, they asked Dr. Li to stop the treatment.

The facts, as stated by the RTC and the Court of Appeals, clearly show that, because of the chemotherapy, Angelica suffered lowering of white blood cell count, lowering of red blood cell count, lowering of platelet count, skin darkening, rashes, difficulty in breathing, fever, excretion of blood in the mouth, excretion of blood in the anus, development of ulcers in the mouth, sloughing off of skin, systemic lupus erythematosus, carpo-pedal spasm, loose bowel movement, infection, gum bleeding, hypovolemic shock, sepsis, and death after 13 days.

After the administration of chemotherapy, Angelica suffered infection, which progressed to sepsis. Thereafter, Angelica died. In its 5 September 1997 Decision, the RTC stated that:

> Angelica Soliman was admitted at the St. Luke's Medical Center on August 18, 1993. Preparatory to the chemotherapy, she was hydrated to make sure that her kidneys will function well and her output was monitored. Blood test, blood count, kidney function test and complete liver function test were likewise done. Chemotherapy started on August 19, 1993 with the administration of the three drugs, namely, Cisplatine, Doxorubicin and Cosmegen. In the evening Angelica started vomiting which, according to Dr. Rubi Li, was just an effect of the drugs administered.
>
> Chemotherapy was likewise administered on August 20, 1993. Vomiting continued. On August 21, 1993 Angelica Soliman developed redness or rashes all over her face, particularly on the nose and cheek area, which on subsequent day became darker and has spread to the

neck and chest. Dr. Li told plaintiffs that was just a reaction or effect of the medicines and it was normal. Vomiting likewise continued. Dr. Li then consulted Dr. Abesamis, a pediatric oncologist, because she was entertaining the possibility that the patient might also have systemic lupus erythematosus.

Angelica Soliman developed fever and difficulty of breathing on the fourth day and she became weak already. She was placed on oxygen and antibiotics. Her blood count was checked. Dr. Li began to entertain the possibility of infection, the lungs being considered the focus of such infection. An auscultation of the lungs showed just harsh breathing sounds. She was given Bactrim. The following day the antibiotic was changed into something stronger by giving the patient Fortum intravenously. Dr. Li started to consider the possibility of beginning sepsis, meaning that the germs or bacteria were already in the blood system. Fortum did not, however, take effect. White cells were down and it was not enough to control the infection because there was nothing in her body to fight and help Fortum fight the infection. Another medicine, Leucomax, was added that would increase the patient's white cell count, but even this did not help.

Plaintiffs then requested Dr. Li to stop the chemotherapy. Dr. Li complied, although according to her the chemotherapy should not be stopped. So chemotherapy was not given on August 22, 1993. Plaintiffs then asked if they could already bring their daughter home. They were permitted by Dr. Li.

On August 23, 1993, preparatory to the discharge, Dr. Li prescribed take home medicines, but while still in the premises of SLMC, Angelica Soliman had a convulsive attack so she was placed back to her room.

This convulsive attack mentioned by the plaintiffs was actually what is referred to as "carpopedal spasm" in medical parlance, which Dr. Li described as "*naninigas ang kamay at paa*." It is a twitching of a group of muscles of the hands and legs. The patient's calcium was checked and it was noted to be low, so she was given supplemental calcium which calmed her down. ECG was likewise conducted. Angelica Soliman started to bleed through the mouth. This, according to Dr. Li, was only a spitting of blood because at that time the patient had gum bleeding. Dr. Li told plaintiffs the bleeding was due to platelet reduction. Angelica Soliman was then transferred to a private room wherein the plaintiffs themselves were required to wear a mask to avoid any infection as their daughter was already sensitive and they might have colds or flu and might contaminate the patient who was

noted to have low defense mechanism to infection. Plaintiffs were asked to sign a consent form for blood transfusion. Patient was transfused with more than three (3) bags of blood and platelets. The bleeding was lessened, but she became weak.

The bleeding and blood transfusion continued until August 31, 1993. Angelica Soliman became hysterical and uneasy with the oxygen and nasogastric tube attached to her. Parts of her skin were shredding or peeling off, and according to plaintiffs, she already passed black stool.

On September 1, 1993, at around 3:00 p.m., Angelica Soliman died, but prior to her demise, she pulled out her endotracheal tube at 9:30 p.m. of August 31, 1993.

As admitted by Dr. Li, infection, sepsis and death are associated risks and side effects of chemotherapy. These risks and side effects are material to Reynaldo and Lina, and to any other reasonable person, in deciding whether to undergo chemotherapy. Had Dr. Li adequately disclosed to Reynaldo and Lina that there was a chance that their 11-year old daughter could die of infection as a result of chemotherapy, they may have decided against it and sought for an alternative treatment.

Accordingly, I vote to **DENY** the petition.

EN BANC

[G.R. No. 177130. June 7, 2011]

HON. EDUARDO ERMITA in his official capacity as THE EXECUTIVE SECRETARY, *petitioner, vs.* **HON. JENNY LIND R. ALDECOA-DELORINO, Presiding Judge, Branch 137, Regional Trial Court, Makati City, ASSOCIATION OF PETROCHEMICAL MANUFACTURERS OF THE PHILIPPINES, representing JG Summit Petrochemical Corporation, *et al.,*** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; LIES AGAINST JUDICIAL OR MINISTERIAL FUNCTIONS, BUT *NOT AGAINST LEGISLATIVE OR QUASI-LEGISLATIVE FUNCTIONS*.— Rule 65, Sec. 2 of the Rules of Court provides: Sec. 2. *Petition for Prohibition*. - When **the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions**, are without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and **praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein**, or otherwise granting such incidental reliefs as law and justice may require. *Holy Spirit Homeowners' Association v. Defensor* expounds on prohibition as a remedy to assail executive issuances: x x x **Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions.** Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters

clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained.

2. ID.; ID.; *CERTIORARI* AND PROHIBITION; APPROPRIATE REMEDIES TO RAISE CONSTITUTIONAL ISSUES AND TO REVIEW AND/OR PROHIBIT OR NULLIFY, WHEN PROPER, ACTS OF LEGISLATIVE AND EXECUTIVE OFFICIALS.— [W]hat determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought. A perusal of the petition of Association of Petrochemical Manufacturers of the Philippines (APMP) before the trial court readily shows that it is not a mere petition for prohibition with application for the issuance of a writ of preliminary injunction. For it is also one for *certiorari* as it specifically alleges that E.O. 486 is invalid for being unconstitutional, it having been issued in contravention of Sec. 4 of R.A. 6647 and Sec. 402(e) of the Tariff and Customs Code, hence, its enforcement should be enjoined and petitioner prohibited from implementing the same. Petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials. Thus, even if the petition was denominated as one for prohibition, public respondent did not err in treating it also as one for certiorari and taking cognizance of the controversy.

3. ID.; ID.; *CERTIORARI*; REQUIRES PRIOR FILING OF MOTION FOR RECONSIDERATION; EXCEPTIONS; CASE AT BAR WHICH INVOLVES THE CONSTITUTIONALITY AND IMPLEMENTATION OF AN EXECUTIVE ISSUANCE INVOLVING TARIFF RATES AND THE GOVERNMENT'S COMMITMENTS UNDER THE ASEAN FREE TRADE AREA (AFTA).— Ordinarily, *certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors. This rule, however, is not without exceptions. x x x (c) **where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government** or of the petitioner or the subject matter of the action is perishable; x x x (i) **where the issue raised is one**

purely of law or where public interest is involved. The present case involves the constitutionality and implementation of an executive issuance involving tariff rates and, as alleged by petitioner, the Government's commitments under the Asean Free Trade Area (AFTA). Clearly, the filing of a motion for reconsideration may be dispensed with following exceptions (c) and (i) in the above enumeration.

4. ID.; PROVISIONAL REMEDIES; WRIT OF PRELIMINARY INJUNCTION; WHERE IMPLEMENTATION OF GOVERNMENT ISSUANCE IS SOUGHT TO BE ENJOINED, GRANT OF INJUNCTION MUST BE EXERCISED WITH UTMOST CAUTION.— It is well to emphasize that the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance thereof. In the present case, however, where it is the Government which is being enjoined from implementing an issuance which enjoys the presumption of validity, such discretion must be exercised with utmost caution. *Executive Secretary v. Court of Appeals*, enlightens: In *Social Security Commission v. Judge Bayona*, we ruled that a law is presumed constitutional until otherwise declared by judicial interpretation. **The suspension of the operation of the law is a matter of extreme delicacy because it is an interference with the official acts not only of the duly elected representatives of the people but also of the highest magistrate of the land.** x x x

5. ID.; ID.; ID.; REQUISITES BEFORE WRIT OF PRELIMINARY INJUNCTION, BE IT MANDATORY OR PROHIBITORY, WILL ISSUE.— Indeed, a writ of preliminary injunction is issued precisely to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied or adjudicated – to preserve the *status quo* until the merits of the case can be heard fully. Still, even if it is a temporary and ancillary remedy, its issuance should not be trifled with, and an applicant must convincingly show its entitlement to the relief. *St. James College of Parañaque v. Equitable PCI Bank*, [provides:] x x x And following jurisprudence, these requisites must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, will issue: (1) **The applicant must have a clear and unmistakable right to be protected, that is a right in *esse;*** (2) **There is a material**

and substantial invasion of such right; (3) **There is an urgent need for the writ to prevent irreparable injury** to the applicant; and (4) **No other ordinary, speedy, and adequate remedy exists** to prevent the infliction of irreparable injury.

6. ID.; ID.; ID.; REQUISITE OF CLEAR AND UNMISTAKABLE RIGHT TO BE PROTECTED; NOT PRESENT IN CASE AT BAR WHERE APPLICANT IS SEEKING TARIFF PROTECTION.— Contrary to public respondent's ruling, APMP failed to adduce any evidence to prove that it had a clear and unmistakable right which was or would be violated by the enforcement of E.O. 486. The filing of the petition at the court *a quo* was anchored on APMP and its members' **fear of loss or reduction of their income** once E.O. 486 is implemented and imported plastic and similar products flood the domestic market due to reduced tariff rates. As correctly posited by petitioner, APMP was seeking protection over "*future* economic benefits" which, at best, it had an inchoate right to. More importantly, tariff protection is not a right, but a privilege granted by the government and, therefore, APMP cannot claim redress for alleged violation thereof.

7. ID.; ID.; ID.; REQUISITE OF IRREPARABLE INJURY; ELUCIDATED.— Respecting the element of "irreparable injury," the landmark case of *Social Security Commission v. Bayona* teaches: **Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy** (*Crouc v. Central Labor Council*, 83 ALR, 193). "**An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement**" (*Phipps v. Rogue River Valley Canal Co*., 7 ALR, 741). An irreparable injury to authorize an injunction consists of "a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof" (*Dunker v. Field and Tub Club*, 92 P., 502). As does the more recent case of *Philippine Air Lines v. National Labor Relations Commission*: **An injury is considered irreparable if it is of**

> **such constant and frequent recurrence that no fair and reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy**, that is, it is not susceptible of mathematical computation. It is considered irreparable injury when it cannot be adequately compensated in damages due to the nature of the injury itself or the nature of the right or property injured or when there exists no certain pecuniary standard for the measurement of damages.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Romulo Mabanta Buenaventura Sayoc and Delos Angeles for Association of Petrochemical Manufacturers of the Philippines.

D E C I S I O N

CARPIO MORALES, *J.*:

Then Executive Secretary petitioner Eduardo Ermita assailed via *certiorari* the writ of preliminary injunction granted by public respondent Judge Jenny Lind R. Aldecoa-Delorino, then Presiding Judge of the Regional Trial Court of Makati City, Branch 137, by Omnibus Order[1] dated February 6, 2007 in favor of private respondent Association of Petrochemical Manufacturers of the Philippines (APMP or private respondent) denying petitioner's Motion to Dismiss and enjoining the government from implementing Executive Order No. 486.

Executive Order No. 486 (E.O. 486) issued on January 12, 2006 by then President Gloria Macapagal-Arroyo reads:

LIFTING THE SUSPENSION OF THE APPLICATION OF THE TARIFF REDUCTION SCHEDULE ON PETROCHEMICALS AND CERTAIN PLASTIC PRODUCTS UNDER THE COMMON

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[1] *Rollo*, pp. 50-58.

EFFECTIVE PREFERENTIAL TARIFF (CEPT) SCHEME FOR THE ASEAN FREE TRADE AREA (AFTA)

WHEREAS, Executive Order 234 dated 27 April 2000, which implemented the 2000-2003 Philippine schedule of tariff reduction of products transferred from the Temporary Exclusion List and the Sensitive List to the Inclusion List of the accelerated CEPT Scheme for the AFTA, provided that **the CEPT rates on petrochemicals and certain plastic products will be reduced to 5% on 01 January 2003**;

WHEREAS, Executive Order 161 issued on 9 January 2003 provides for the suspension of the application of the tariff reduction schedule on petrochemicals and certain products in 2003 and 2004 only;

WHEREAS, the government recognizes the need to provide an enabling environment for the naphtha cracker plant to attain international competitiveness;

WHEREAS, the NEDA Board approved the **lifting of the suspension of the aforesaid tariff reduction schedule on petrochemicals and certain plastic products and the reversion of the CEPT rates on these products to EO 161 (s.2003) levels once the naphtha cracker plant is in commercial operation**;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, pursuant to the powers vested in me under Section 402 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), as amended, do hereby order:

SECTION 1. The articles specifically listed in *Annex "A"* (Articles Granted Concession under the CEPT Scheme for the AFTA) hereof, as classified under Section 104 of the Tariff and Customs Code of 1978, as amended, shall be subject to the ASEAN CEPT rates in accordance with the schedule indicated in Column 4 of *Annex "A"*. The ASEAN CEPT rates so indicated shall be accorded to imports coming from ASEAN Member States applying CEPT concession to the same product pursuant to Article 4 of the CEPT Agreement and Its Interpretative Notes.

SECTION 2. In the event that any subsequent change is made in the basic (MFN) Philippine rate of duty on any of the article listed in *Annex "A"* to a rate lower than the rate prescribed

in Column 4 of *Annex "A"*, such article shall automatically be accorded the corresponding reduced duty.

SECTION 3. From the date of effectivity of this Executive Order, all articles listed in *Annex "A"* entered into or withdrawn from warehouses in the Philippines for consumption shall be imposed the rates of duty therein prescribed subject to qualification under the Rules of Origin as provided for in the Agreement on the CEPT Scheme for the AFTA signed on 28 January 1992.

SECTION 4. The Department of Trade and Industry, in coordination with National Economic and Development Authority, the Department of Finance, the Tariff Commission and the Bureau of Customs, shall promulgate the implementing rules and regulations that will govern the reversion of the CEPT rates on petrochemicals and plastic products to EO 161 (s.2003) levels once the naphtha cracker plant is in commercial operation.

SECTION 5. All presidential issuances, administrative rules and regulations, or parts thereof, which are contrary to or inconsistent with this Executive Order are hereby revoked or modified accordingly.

SECTION 6. This Executive Order shall take effect immediately following its complete publication in two (2) newspapers of general circulation in the Philippines.

Done in the City of Manila, this 12th day of January in the year of Our Lord Two Thousand and Six. (emphasis supplied)

The above issuance in effect reduces protective tariff rates from 10% to 5% on the entry of inexpensive products, particularly plastic food packaging, from ASEAN Free Trade (AFTA) member countries into the Philippines.

APMP, an organization composed of manufacturers of petrochemical and resin products, opposed the implementation of E.O. 486. Contending that the E.O. would affect local manufacturers, it filed a petition before the RTC of Makati, docketed as Civil Case No. 06-2004, seeking the declaration of its unconstitutionality for being violative of Sec. 4 of Republic Act No. 6647 which prohibits the President from increasing or

reducing taxes while Congress is in session[2] and Sec. 402(e)[3] of the Tariff and Customs Code. It thereupon prayed for the issuance of a writ of preliminary injunction to enjoin its implementation.

Petitioner contends that public respondent gravely abused her discretion in assuming jurisdiction over the petition for prohibition and granting the writ of preliminary injunction as the exercise of the quasi-legislative functions of the President cannot be enjoined. He avers that writs of prohibition lie only against those persons exercising judicial, quasi-judicial or ministerial functions.

By granting injunctive relief, petitioner contends that public respondent effectively preempted the trial of and pre-judged the case, given that what private respondent seeks is to stop the implementation of E.O. 486. Further, petitioner contends

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[2] Sec. 4. The ad valorem rates herein of import duties indicated hereof shall be subject to modification by Congress after review and recommendation by the National Economic and Development Authority after one (1) year from the effectivity of the rates prescribed: Provided, **That before any recommendation is submitted to Congress pursuant to this Section, the Tariff Commission shall conduct an investigation in the course of which shall hold public hearings wherein interested parties shall be afforded reasonable opportunity to be present, produce evidence and to be heard.** The Tariff Commission shall also hear the views and recommendations of any government office, agency or instrumentality concerned. chan robles virtual law library.

Subject to the provisions of the preceding paragraph, the National Economic and Development Authority shall recommend to Congress the necessary adjustment in such specific rates of import duties indicates thereof after six (6) months from their effectivity: **Provided, finally, That the President may not increase or decrease any ad valorem or specific duty rates herein provided when Congress is in session.** (emphasis supplied)

[3] Sec. 402.

x x x x x x x x x

e. **Nothing in this section shall be construed to give any authority to cancel or reduce in any manner any of the indebtedness of any foreign country to the Philippines or any claim of the Philippines against any foreign country.** (emphasis supplied)

that the grant of injunctive relief was not supported by fact and law, for what APMP sought to be protected was "future economic benefits" which may be affected by the implementation of the E.O. – benefits which its members have no right to since protective tariff rates are government privileges wherein no one can claim any vested right to.

On the merits, petitioner maintains that E.O. 486 is not constitutionally infirm, it having been issued under the authority of Secs. 401 and 402 of the Tariff and Customs Code which set no limitations on the President's power to adjust tariff rate and serve as the government's response to its AFTA commitment on Common Effective Preferential Tariff (CEPT).

Since it is only the Omnibus Order denying the Motion to Dismiss and granting a writ of preliminary injunction that is being assailed, the Court will not pass on the constitutionality of E.O. 486 which is still pending before the trial court.

Private respondent prays in its Comment for the denial of the present petition, alleging that, among other things, the petition is premature as petitioner failed to file a Motion for Reconsideration of the assailed Omnibus Order of public respondent, and maintaining the propriety of the remedy of prohibition which it filed to assail the E.O.

The issues then are:

1. Whether public respondent erred in assuming jurisdiction over the petition for prohibition and not granting petitioner's motion to dismiss the petition;
2. Whether a motion for reconsideration should have been filed by petitioner; and
3. Whether public respondent erred in granting the writ of preliminary injunction in favor of APMP.

On the issue of jurisdiction

Rule 65, Sec. 2 of the Rules of Court provides:

> Sec. 2. *Petition for Prohibition*. - When **the proceedings of any tribunal, corporation, board, officer or person, whether**

> **exercising judicial, quasi-judicial or ministerial functions**, are without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and **praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein**, or otherwise granting such incidental reliefs as law and justice may require. (emphasis supplied)

Holy Spirit Homeowners' Association v. Defensor[4] expounds on prohibition as a remedy to assail executive issuances:

> **A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-legislative function.** Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. **Prohibition lies against judicial or ministerial functions, but <u>not against legislative or quasi-legislative functions</u>.** Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained. Where the principal relief sought is to invalidate an IRR, petitioners' remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court. In any case, petitioners' allegation that "respondents are performing or threatening to perform functions without or in excess of their jurisdiction" may appropriately be enjoined by the trial court through

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[4] G.R. No. 163980, August 3, 2006, 497 SCRA 581.

a writ of injunction or a temporary restraining order. (emphasis supplied)

Be that as it may, it is settled that **what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought**.[5] A perusal of the petition of APMP before the trial court readily shows that it is not a mere petition for prohibition with application for the issuance of a writ of preliminary injunction. For it is also one for *certiorari* as it specifically alleges that E.O. 486 is invalid for being unconstitutional, it having been issued in contravention of Sec. 4 of R.A. 6647 and Sec. 402(e) of the Tariff and Customs Code, hence, its enforcement should be enjoined and petitioner prohibited from implementing the same.

Petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials.[6] Thus, even if the petition was denominated as one for prohibition, public respondent did not err in treating it also as one for *certiorari* and taking cognizance of the controversy.

On the propriety of filing a motion for reconsideration

Ordinarily, *certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors.[7] This rule, however, is not without exceptions.

The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court *a quo* had no jurisdiction; (b) where the questions raised in the *certiorari*

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[5] Vide *Fernando v. Spouses Lim*, G.R. No. 176282, August 22, 2008, 563 SCRA 147.

[6] *Francisco v. Toll Regulatory Board*, G.R. No. 166910, October 19, 2010.

[7] *People v. Duca*, G.R. No. 171175, October 30, 2009.

proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) **where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government** or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte*, or in which the petitioner had no opportunity to object; and (i) **where the issue raised is one purely of law or where public interest is involved**.[8] (emphasis supplied)

The present case involves the constitutionality and implementation of an executive issuance involving tariff rates and, as alleged by petitioner, the Government's commitments under the AFTA. Clearly, the filing of a motion for reconsideration may be dispensed with following exceptions (c) and (i) in the above enumeration in *Siok Ping Tang*.

On the grant of the writ of preliminary injunction

APMP alleges that it is composed of manufacturers of petrochemical products and that the implementation of the assailed E.O. reducing tariff rates on certain petroleum-based products will result in the local market being flooded with lower-priced imported goods which will, consequently, adversely affect their sales profits. In granting the assailed writ, public respondent held that, based on the initial evidence presented, the APMP stands to lose "substantial revenues" and some of its members "may eventually have to close up or stop ongoing works on their Naphtha Cracker plants" if E.O. 486 is implemented. Public respondent thus ruled that the APMP was entitled to the writ as it has a "valuable stake in the petrochemical industry"

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[8] *Siok Ping Tang v. Subic Bay Distribution*, G.R. No. 162575, December 15, 2010.

and the enforcement of E.O. 486 will adversely affect its members; and that petitioner violated APMP's right on the strength of an invalid executive issuance.

Public respondent noted that the *Southern Cross* case cited by petitioner which ruled that no court is allowed to grant injunction to restrain the collection of taxes is inapplicable in the present case, since restraining the implementation of E.O. 486 will not deprive the Government of revenues; instead, it will result in more revenues as the proposed reduction of rates will be enjoined.

Public respondent thus concluded that there is sufficient basis for the issuance of a writ of preliminary injunction in favor of APMP.

It is well to emphasize that the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance thereof.[9] In the present case, however, where it is the Government which is being enjoined from implementing an issuance which enjoys the presumption of validity, such discretion must be exercised with utmost caution. *Executive Secretary v. Court of Appeals*,[10] enlightens:

> In *Social Security Commission v. Judge Bayona*, we ruled that a law is presumed constitutional until otherwise declared by judicial interpretation. **The suspension of the operation of the law is a matter of extreme delicacy because it is an interference with the official acts not only of the duly elected representatives of the people but also of the highest magistrate of the land.**
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> In *Younger v. Harris, Jr.*, the Supreme Court of the United States emphasized, thus:
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> **Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course,**

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[9] *Bustamante v. Court of Appeals*, 430 Phil. 797 (2002).

[10] G.R. No. 131719, 473 Phil. 27 (2004).

even if such statutes are unconstitutional. No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and, hence, unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid. 752 *Beal v. Missouri Pacific Railroad Corp*., 312 U.S. 45, 49, 61 S.Ct. 418, 420, 85 L.Ed. 577.

And similarly, in Douglas, *supra*, we made clear, after reaffirming this rule, that:

"It does not appear from the record that petitioners have been threatened with any injury other than that incidental to every criminal proceeding brought lawfully and in good faith . . ." 319 U.S., at 164, 63 S.Ct., at 881.

The possible unconstitutionality of a statute, on its face, does not of itself justify an injunction against good faith attempts to enforce it, unless there is a showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief. The "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort," and is generally disfavored.

To be entitled to a preliminary injunction to enjoin the enforcement of a law assailed to be unconstitutional, the party must establish that it will suffer irreparable harm in the absence of injunctive relief and must demonstrate that it is likely to succeed on the merits, or that there are sufficiently serious questions going to the merits and the balance of hardships tips decidedly in its favor. The higher standard reflects judicial deference toward "legislation or regulations developed through presumptively reasoned democratic processes." Moreover, an injunction will alter, rather than maintain, the *status quo*, or will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits. Considering that injunction is an exercise of equitable relief and authority, in assessing whether to issue a preliminary injunction, the courts must sensitively assess all the equities of the situation, including the public interest. **In litigations between governmental and private parties, courts go much further**

> **both to give and withhold relief in furtherance of public interest than they are accustomed to go when only private interests are involved. Before the plaintiff may be entitled to injunction against future enforcement, he is burdened to show some substantial hardship.** (emphasis supplied)

Indeed, a writ of preliminary injunction is issued precisely to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied or adjudicated – to preserve the *status quo* until the merits of the case can be heard fully. Still, even if it is a temporary and ancillary remedy, its issuance should not be trifled with, and an applicant must convincingly show its entitlement to the relief. *St. James College of Parañaque v. Equitable PCI Bank*,[11] explains:

> Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established, thus:
>
> (a) **That the applicant is entitled to the relief demanded, and the whole or part of such relief** consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.
>
> And following jurisprudence, these requisites must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, will issue:
>
> (1) **The applicant must have a clear and unmistakable right to be protected, that is a right *in esse***;

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[11] G.R. No. 179441, August 9, 2010, 627 SCRA 328.

(2) **There is a material and substantial invasion of such right;**

(3) **There is an urgent need for the writ to prevent irreparable injury** to the applicant; and

(4) **No other ordinary, speedy, and adequate remedy exists** to prevent the infliction of irreparable injury. (emphasis supplied)

It is thus ineluctable that for it to be entitled to the writ, the APMP must show that it has a **clear and unmistakable right that is violated and that there is an urgent necessity for its issuance.**[12] That APMP had cause of action and the standing to interpose the action for prohibition did not *ipso facto* call for the grant of injunctive relief in its favor without it proving its entitlement thereto.

Transfield Philippines, Inc. v. Luzon Hydro Corporation,[13] illuminates on the right of a party to injunctive relief:

Before a writ of preliminary injunction may be issued, there must be a clear showing by the complaint that **there exists a right to be protected and that the acts against which the writ is to be directed are violative of the said right. It must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage. Moreover, an injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation**. (emphasis supplied)

Contrary to public respondent's ruling, APMP failed to adduce any evidence to prove that it had a clear and unmistakable right which was or would be violated by the enforcement of E.O. 486. The filing of the petition at the court *a quo* was anchored on APMP and its members' **fear of loss or reduction of their income** once E.O. 486 is implemented and imported plastic

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[12] Vide *First Global Realty and Dev't. Corp. v. San Agustin*, 427 Phil. 593 (2002).

[13] G.R. No. 146717, 485 Phil. 699 (2004).

and similar products flood the domestic market due to reduced tariff rates. As correctly posited by petitioner, APMP was seeking protection over "*future* economic benefits" which, at best, it had an inchoate right to.

More importantly, tariff protection is not a right, but a privilege granted by the government and, therefore, APMP cannot claim redress for alleged violation thereof. In a similar case wherein the validity of R.A. 9337 with respect to provisions authorizing the President to increase the value-added tax (VAT) rates, the Court held:

> The input tax is not a property or a property right within the constitutional purview of the due process clause. **A VAT-registered person's entitlement to the creditable input tax is a mere statutory privilege**.
>
> **The distinction between statutory privileges and vested rights must be borne in mind for persons have no vested rights in statutory privileges. The state may change or take away rights, which were created by the law of the state,** although it may not take away property, which was vested by virtue of such rights.[14] (emphasis supplied)

Assuming *arguendo* that it was upon the government's assurances that the members of APMP allegedly "invested hundred of millions of dollars in putting up the necessary infrastructure," that does not vest upon APMP a right which must be protected.

Respecting the element of "irreparable injury," the landmark case of *Social Security Commission v. Bayona*[15] teaches:

> **Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy** (*Crouc v. Central Labor Council*, 83 ALR, 193). "**An irreparable injury which a court of equity will enjoin includes that degree of wrong**

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[14] *Abakada Guro Party List, Inc. v. Hon. Exec. Sec. Ermita*, 506 Phil. 1 (2005).

[15] G.R. No. L-13555, May 30, 1962, 5 SCRA 126.

of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement" (*Phipps v. Rogue River Valley Canal Co.*, 7 ALR, 741). An irreparable injury to authorize an injunction consists of "a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof" (*Dunker v. Field and Tub Club*, 92 P., 502). (emphasis supplied)

As does the more recent case of *Philippine Air Lines v. National Labor Relations Commission*:[16]

An injury is considered irreparable if it is of such constant and frequent recurrence that no fair and reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation. It is considered irreparable injury when it cannot be adequately compensated in damages due to the nature of the injury itself or the nature of the right or property injured or when there exists no certain pecuniary standard for the measurement of damages. (emphasis supplied)

In the present case, aside from APMP's allegations that the reduced tariff rates will adversely affect its members' business and may lead to closure, there is no showing what "irreparable injury" it stood to suffer with the implementation of E.O. 486.

IN FINE, not only is there no showing of a clear right on the part of APMP which was violated; the injury sought to be protected is prospective in nature, hence, the injunctive relief should not have been granted.

WHEREFORE, the petition is *PARTLY GRANTED*. The Omnibus Order dated February 6, 2007 issued by public respondent Hon. Judge Jenny Lind R. Aldecoa-Delorino is *REVERSED* insofar as it granted a Writ of Preliminary Injunction in favor of private respondent, Association of Petrochemical

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[16] G.R. No. 120567, March 20, 1998, 287 SCRA 672.

Manufacturers of the Philippines (APMP). Accordingly, the Writ is *DISSOLVED*, and the case *REMANDED* to the court of origin for further appropriate proceedings.

SO ORDERED.

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

Sereno, J., no part.

EN BANC

[G.R. No. 177131. June 7, 2011]

BOY SCOUTS OF THE PHILIPPINES, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; COMMISSION ON AUDIT (COA); AUDIT JURISDICTION; INCLUDES FUNDS OF THE BOY SCOUTS OF THE PHILIPPINES (BSP) WHICH IS A PUBLIC CORPORATION.— After looking at the legislative history of its amended charter and carefully studying the applicable laws and the arguments of both parties, we find that the BSP is a public corporation and its funds are subject to the COA's audit jurisdiction. The BSP Charter (Commonwealth Act No. 111, approved on October 31, 1936), entitled "*An Act to Create a Public Corporation to be Known as the Boy Scouts of the Philippines, and to Define its Powers and Purposes*" created the BSP as a "public corporation" to serve the following public interest or purpose: Sec. 3. The purpose of this corporation shall be to promote through organization and cooperation with other agencies, the ability of boys to do useful things for themselves and others, to train them in scoutcraft, and to inculcate

in them patriotism, civic consciousness and responsibility, courage, self-reliance, discipline and kindred virtues, and moral values, using the method which are in common use by boy scouts.

2. ID.; ID.; PUBLIC CORPORATIONS; BSP CLASSIFIED AS SUCH UNDER THE CIVIL CODE.— There are three classes of juridical persons under Article 44 of the Civil Code and the BSP, as presently constituted under Republic Act No. 7278, **falls under the second classification**. Article 44 reads: Art. 44. The following are juridical persons: (1) The State and its political subdivisions; (2) **Other corporations, institutions and entities for public interest or purpose created by law; their personality begins as soon as they have been constituted according to law**; (3) Corporations, partnerships and associations for **private interest or purpose** to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member. The BSP, which is a corporation created for a public interest or purpose, is subject to the law creating it under Article 45 of the Civil Code, which provides: **Art. 45. Juridical persons mentioned in Nos. 1 and 2 of the preceding article are governed by the laws creating or recognizing them.** x x x The purpose of the BSP as stated in its amended charter shows that it was created in order to implement a State policy declared in Article II, Section 13 of the Constitution, which reads: ARTICLE II - DECLARATION OF PRINCIPLES AND STATE POLICIES Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs. Evidently, the BSP, which was created by a special law to serve a public purpose in pursuit of a constitutional mandate, comes within the class of "public corporations" defined by paragraph 2, Article 44 of the Civil Code and governed by the law which creates it, pursuant to Article 45 of the same Code.

3. ID.; ID.; ID.; BSP CLASSIFIED AS AN ATTACHED AGENCY OF THE DECS UNDER THE ADMINISTRATIVE CODE OF 1987.— The public, rather than private, character of the BSP is recognized by the fact that, along with the Girl Scouts of the Philippines, it is classified as an **attached agency** of the DECS under Executive Order No. 292, or the **Administrative**

Code of 1987. x x x The administrative relationship of an attached agency to the department is defined in the Administrative Code of 1987. x x x As an attached agency, the BSP enjoys operational autonomy, as long as policy and program coordination is achieved by having **at least one representative of government in its governing board**, which in the case of the BSP is the DECS Secretary. In this sense, the BSP is not under government control or "supervision and control." Still this characteristic does not make the attached chartered agency a private corporation covered by the constitutional proscription in question.

4. ID.; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; SCOPE AND COVERAGE.— The scope and coverage of Section 16, Article XII of the Constitution can be seen from the declaration of state policies and goals which pertains to **national economy** and **patrimony** and the **interests of the people in economic development**. Section 16, Article XII deals with "**the formation, organization, or regulation of private corporations**," which should be done through a general law enacted by Congress, provides for an exception, that is: if the corporation is government owned or controlled; its creation is in the interest of the common good; and it meets the test of economic viability. The rationale behind Article XII, Section 16 of the 1987 Constitution was explained in *Feliciano v. Commission on Audit*, in the following manner: The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens. **The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens**. It may be gleaned from the above discussion that Article XII, Section 16 bans the creation of "**private corporations**" by special law. The said constitutional provision should not be construed so as to prohibit the creation of **public corporations** or a corporate agency or instrumentality of the government intended to serve a public interest or purpose, which should not be measured on the basis of economic viability, but according to the public interest or purpose it serves as envisioned by **paragraph (2), of Article 44 of the Civil Code** and the pertinent provisions of the **Administrative Code of 1987**.

5. ID.; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; BSP AS PUBLIC CORPORATION IS NOT SUBJECT TO

THE TEST OF GOVERNMENT OWNERSHIP OR CONTROL AND ECONOMIC VIABILITY.— The BSP is a public corporation or a government agency or instrumentality with juridical personality, which does not fall within the constitutional prohibition in Article XII, Section 16, notwithstanding the amendments to its charter. Not all corporations, which are **not** government owned or controlled, are *ipso facto* to be considered private corporations as there exists another distinct class of corporations or chartered institutions which are otherwise known as "public corporations." These corporations are treated by law as agencies or instrumentalities of the government which are not subject to the tests of ownership or control and economic viability but to different criteria relating to their public purposes/interests or constitutional policies and objectives and their administrative relationship to the government or any of its Departments or Offices.

6. ID.; ID.; ADMINISTRATIVE CODE OF 1987; EXISTENCE OF PUBLIC CORPORATE OR JURIDICAL ENTITIES OR CHARTERED INSTITUTIONS BY LEGISLATIVE FIAT DISTINGUISHED FROM PRIVATE CORPORATIONS AND GOVERNMENT OWNED OR CONTROLLED CORPORATION.— The existence of public or government corporate or juridical entities or chartered institutions by legislative fiat distinct from private corporations and government owned or controlled corporation is best exemplified by the 1987 Administrative Code cited above, which we quote in part: Sec. 2. *General Terms Defined*. – Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning: x x x (10) "**Instrumentality**" refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers,** administering special funds, and **enjoying operational autonomy, usually through a charter.** This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations. x x x (12) "**Chartered institution**" refers to any agency organized or operating under a special charter, and vested by law with functions **relating to specific constitutional policies or objectives**. This term includes the state universities and colleges and the monetary authority of the State. (13) "**Government-owned or controlled corporation**"

refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether **governmental or proprietary in nature**, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, **That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations**. Assuming for the sake of argument that the BSP ceases to be owned or controlled by the government because of reduction of the number of representatives of the government in the BSP Board, it does not follow that it also ceases to be a government instrumentality as it still retains all the characteristics of the latter as an attached agency of the DECS under the Administrative Code. Vesting corporate powers to an attached agency or instrumentality of the government is not constitutionally prohibited and is allowed by the above-mentioned provisions of the Civil Code and the 1987 Administrative Code.

7. STATUTORY CONSTRUCTION; REQUISITES WHERE CONSTITUTIONALITY OF THE LAW IS QUESTIONED.— When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: **(1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case**. Thus, when it comes to the exercise of the power of judicial review, the constitutional issue should be the very *lis mota*, or threshold issue, of the case, and that it should be raised by either of the parties. These requirements would be ignored under the dissent's rather overreaching view of how this case should have been decided. True, it was the Court that asked the parties to comment, but the Court cannot be the one to raise a constitutional issue. Thus, the Court chooses to once more exhibit restraint in the exercise of its power to pass upon the validity of a law.

8. POLITICAL LAW; COMMISSION ON AUDIT; JURISDICTION OVER THE BSP, UPHELD.— Regarding the COA's jurisdiction over the BSP, Section 8 of its amended charter allows the BSP to receive contributions or donations from the government. x x x The sources of funds to maintain the BSP were identified before the House Committee on Government Enterprises while the bill was being deliberated. x x x The nature of the funds of the BSP and the COA's audit jurisdiction were likewise brought up in said congressional deliberations. x x x Historically, the BSP had been subjected to government audit in so far as public funds had been infused thereto. However, this practice should not preclude the exercise of the audit jurisdiction of COA, clearly set forth under the Constitution, which pertinently provides: Section 2. (1) **The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters.** x x x Since the BSP, under its amended charter, continues to be a public corporation or a government instrumentality, we come to the inevitable conclusion that it is subject to the exercise by the COA of its audit jurisdiction in the manner consistent with the provisions of the BSP Charter.

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

1. POLITICAL LAW; COMMISSION ON AUDIT (COA); AUDIT JURISDICTION; DISCUSSED.— Section 2(1), Article IX-D of the Constitution provides for COA's audit jurisdiction. x x x Based on this Constitutional provision, the COA exercises jurisdiction on a pre-audit basis over the (1) Government, (2) any of its subdivisions, (3) agencies, (4) instrumentalities, and (5) GOCCs with original charters. The COA also has jurisdiction on a post-audit basis over (1) constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; (2) autonomous state colleges and universities; (3) other GOCCs and their subsidiaries; and (4) non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of

subsidy or equity. Hence, if an entity is properly identified and categorized as among those enumerated in Section 2(1), Article IX-D of the Constitution, then the COA can indisputably "examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property" of that particular entity.

2. ID.; ID.; DETERMINING FACTOR OF COA'S AUDIT JURISDICTION IS GOVERNMENT OWNERSHIP OR CONTROL OF THE CORPORATION.— In *Feliciano v. Commission on Audit*, the Court declared that the determining factor of COA's audit jurisdiction is **government ownership or control** of the corporation. Citing *Philippine Veterans Bank Employees Union-NUBE v. Philippine Veterans Bank*, the Court held in *Feliciano* that the **criterion of ownership and control is more important than the issue of original charter**. x x x Employing the test laid down in Feliciano in determining COA's jurisdiction, we find that the BSP is not a GOCC.

3. ID.; REVISED ADMINISTRATIVE CODE; GOVERNMENT OWNED AND CONTROLLED CORPORATIONS (GOCC); UNDER THE DEFINITION OF GOCC, BSP IS NOT OWNED BY THE GOVERNMENT.— Under Section 2(13) of the Revised Administrative Code, a GOCC refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock. Under the above definition, a GOCC must be **owned** or **controlled** by the government, and in the case of a stock corporation, at least a majority of its capital stock must be owned by the government. In the case of a non-stock corporation, by analogy, at least a majority of the members must be government officials holding such membership by appointment or designation by the government. In this case, the BSP is a non-stock and non-profit organization composed **almost entirely of members coming from the private sector**, more particularly boys ranging from ages four (known as KID Scouts) to seventeen (known as SENIOR Scouts). The BSP is one of the largest Scout organizations in the world today (after Gerakan Pramuka of Indonesia and the Boy Scouts of America, first and second, respectively) and is

one of the world's National Scout Associations having the highest penetration rate (Scout density), with one Scout out of two boys of Scouting age enrolled in the Scouting program. Since the BSP is composed almost entirely of members and officers from the private sector, the BSP is clearly not owned by the government.

4. ID.; ID.; ID.; UNDER THE DEFINITION OF GOCC, BSP IS NOT CONTROLLED BY THE GOVERNMENT.— [U]nder RA 7278 only one Cabinet Secretary remains a member of the National Executive Board, as opposed to the previous composition where the President of the Philippines and six cabinet secretaries were members of the same board. x x x Significantly, the lone cabinet member, who is the Education Secretary, merely serves as an *ex-officio* member. x x x Except for the Education Secretary, none of the other members of the National Executive Board is a government official or holds such position or membership through appointment or designation by the government. Moreover, the government lacks the power to fill up vacancies in the National Executive Board of the BSP or remove any of its members. In fact, "vacancies in the National Executive Board shall be filled by a majority vote of the remaining members." **This structural set-up and membership of BSP's governing body under RA 7278, where all except one come from the private sector, glaringly negate any form of government control over the BSP.** Moreover, if the BSP is a GOCC, as what the COA insists, then it must be under the President's power of control. x x x However, there is absolutely nothing which demonstrates that the President of the Philippines exercises control over the acts or decisions of the BSP's National Executive Board or any of its members. The President does not have the power to alter or modify or nullify or set aside what the BSP's National Executive Board does in the performance of its duties and to substitute the judgment of the former for that of the latter. The title "Chief Scout" does not confer on the President any power of control over the affairs and management of the BSP. This absence of any form of presidential control reinforces the fact that the government does not control the BSP. In short, the President, while holding the title of "Chief Scout," does not control the BSP.

5. ID.; ID.; ID.; THE BSP IS NOT A GOCC AS THE FUNDS OF THE BSP ARE PRIVATE IN NATURE.— The Court

noted in *BSP v. NLRC* that the original assets of the BSP were acquired by purchase or gift or other equitable arrangement with the Boy Scouts of America, of which the BSP was part before the establishment of the Commonwealth of the Philippines. The BSP charter, however, does not indicate that such assets were public or statal in character or had originated from the government. No public capital was invested in the BSP. **According to the BSP, its operating funds used for carrying out its purposes and programs are derived principally from membership dues paid by the Boy Scouts themselves and from property rentals. The BSP does not have government assets and does not receive any appropriation from Congress.** x x x Further, BSP's properties are being managed and operated by the BSP itself, not by the government or any of its agencies. Therefore, it is crystal-clear that the funds of the BSP come from private sources. As such, the BSP funds are necessarily beyond the jurisdiction of the COA, which exclusively audits public funds and assets.

6. ID.; ID.; ID.; THE PUBLIC PURPOSE OF THE BSP DOES NOT MAKE IT A GOCC.— Indeed, the BSP performs functions which may be classified as public in character, in the sense that it promotes "virtues of citizenship and patriotism and the general improvement of the moral spirit and fiber of our youth." However, this fact alone does not automatically make the BSP a GOCC. Significantly, the Court declared in *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*, **"the fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good."**

7. ID.; CONSTITUTIONAL LAW; GOCC SUBJECT TO THE TEST OF ECONOMIC VIABILITY; VIEW THAT BSP IS A PUBLIC CORPORATION NOT SUBJECT TO THE TEST OF ECONOMIC VIABILITY IS PATENTLY ERRONEOUS AND BASELESS.— Section 16, Article XII of the Constitution provides: Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of **private corporations. Government-owned or controlled corporations** may be created or established by special charters

in the interest of the common good and **subject to the test of economic viability**. x x x In *Manila International Airport Authority (MIAA) v. Court of Appeals*, where the Court ruled that MIAA is a government instrumentality, the Court explained the importance of the "test of economic viability," in this wise: x x x **The intent of the Constitution is to prevent the creation of government-owned or controlled corporations that cannot survive on their own in the market place and thus merely drain the public coffers.** x x x [T]he creation by Congress of a government owned or controlled corporation not satisfying the test of economic viability clearly runs counter to the express mandate of Section 16, Article XII of the Constitution. x x x [T]he majority's view that BSP is a "public corporation" which does not fall under either of the classifications of corporation recognized under Section 16, Article XII of the Constitution, and consequently not subject to the test of economic viability, is patently erroneous and baseless.

8. ID.; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; THAT AN ENTITY IS IMPRESSED WITH PUBLIC INTEREST DOES NOT MAKE IT A PUBLIC CORPORATION, NEITHER DOES ADMINISTRATIVE RELATIONSHIP TO THE GOVERNMENT MAKE IT WITHIN THE PURVIEW OF THE COA'S AUDIT JURISDICTION.— As the Court emphatically stated in *Philippine Society for the Prevention of Cruelty to Animals*, **"the fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good."** Neither does "administrative relationship to the government" indicate that an entity is an instrumentality within the purview of the COA's audit jurisdiction. Only corporations controlled and owned by the government, which are subject to the test of economic viability, and government instrumentalities, as defined by the Administrative Code, fall under COA's audit jurisdiction. The BSP is neither; hence, it is beyond the COA's audit jurisdiction.

9. ID.; ID.; GOVERNMENT INSTRUMENTALITY; DEFINED.— A government instrumentality is defined by the Revised Administrative Code as "any agency of the National Government,

not integrated within the department framework vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter." In other words, to be considered a government instrumentality, an entity must be (1) **an agency of the National Government;** (2) outside the department framework of the National Government; (3) **vested with special functions or jurisdiction by law;** (4) endowed with some, if not all, corporate powers; (5) **administering special funds;** and (6) enjoying operational autonomy.

10. ID.; ID.; ID.; BSP IS NOT A GOVERNMENT INSTRUMENTALITY.— The BSP is not an agency of the National Government because the BSP is not a unit of the National Government, like a "department, bureau, office, instrumentality or government owned or controlled corporation, or a local government or a distinct unit therein." **There is also no dispute that the BSP does not administer special funds of the government.** While the BSP may receive donations or contributions from the government just like other non-government organizations, the same cannot be characterized as special funds. **Moreover, the BSP is not vested with special functions or jurisdiction *by law*. Hence, the BSP is not a government instrumentality.**

11. COMMERCIAL LAW; CORPORATION LAW; BSP IS A PRIVATE, NON-STOCK AND NON-PROFIT CORPORATION PERFORMING PUBLIC FUNCTIONS.— Scouting is a non-partisan, **non-governmental** worldwide youth movement geared towards the "development of young people in achieving their full physical, mental, social, intellectual and spiritual potentials as individuals, as responsible citizens and as members of their local, national and international communities." Scouting complements the school and the family, filling the needs not met by either. "It belongs to the category of non-formal education since, while it takes place outside the formal educational system, it is an organized institution with an educational aim and is addressed to a specific clientele." x x x The fact that the BSP, like the BSA, is a private, non-stock, non-profit corporation is consistent with the clear intent of the Legislature in enacting RA 7278. x x x **There is no question that RA 7278 was enacted precisely to remove government**

control and return the BSP to the private sector and to its non-governmental status. In other words, the government lost control over the BSP to the private sector upon the effectivity of RA 7278. The absence of government control or ownership, coupled with the private nature of BSP funds, makes the BSP a private corporation beyond the audit jurisdiction of the COA. Clearly, the attributes of BSP's relationship with the State that point to its being a private non-stock corporation are overwhelming and irrefutable.

12. STATUTORY CONSTRUCTION; CONSTITUTIONALITY OF BSP CHARTER, AS AMENDED; DISCUSSED.— Since the BSP is not a GOCC, can Congress create, organize and regulate the BSP by enacting its charter, or Commonwealth Act No. 111, as amended by PD 460 and further amended by RA 7278? The answer is in the negative. x x x While both BSP and COA submit that Commonwealth Act No. 111 and its amendatory laws do not violate Section 16, Article XII of the Constitution, the Court should reject such contention. Considering that the BSP is not a GOCC, it follows that the law creating and regulating the BSP clearly violates Section 16, Article XII of the Constitution which specifically states that "Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations," unless such corporations are owned or controlled by the Government or any of its subdivision or instrumentality. x x x The Constitution prohibits the creation of a private corporation through a special law. The Constitutional prohibition under Section 16, Article XII is clear, categorical, absolute, and admits of no exception. Since the BSP is a private corporation and not a government owned or controlled corporation, Sections 1, 2, 3, 5, 6, 7, 9, and 11 of Commonwealth Act No. 111, as amended, are unconstitutional, and hence void, for contravening the Constitutional proscription against the creation, organization, and regulation of private corporations by Congress. The rest of the provisions, namely, Sections 4, 8, and 10 of Commonwealth Act No. 111, as amended, remain valid as these do not refer to BSP's creation as a corporation and thus, do not violate the prohibition under Section 16, Article XII of the Constitution. Moreover, Section 5 of RA 7278, amending Commonwealth Act No. 111, provides for a separability clause.

APPEARANCES OF COUNSEL

Chato & Vinzons-Chato for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The jurisdiction of the Commission on Audit (COA) over the Boy Scouts of the Philippines (BSP) is the subject matter of this controversy that reached us *via* petition for prohibition[1] filed by the BSP under Rule 65 of the 1997 Rules of Court. In this petition, the BSP seeks that the COA be prohibited from implementing its June 18, 2002 **Decision**,[2] its February 21, 2007 **Resolution,**[3] as well as all other issuances arising therefrom, and that all of the foregoing be rendered null and void.[4]

Antecedent Facts and Background of the Case

This case arose when the COA issued **Resolution No. 99-011**[5] on August 19, 1999 ("the COA Resolution"), with the subject "*Defining the Commission's policy with respect to the audit of the Boy Scouts of the Philippines.*" In its whereas clauses, the COA Resolution stated that the BSP was created as a public corporation under Commonwealth Act No. 111, as amended by Presidential Decree No. 460 and Republic Act No. 7278; that in *Boy Scouts of the Philippines v. National Labor Relations Commission*,[6] the Supreme Court ruled that

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[1] With prayer for preliminary injunction and/or temporary restraining order.

[2] *Rollo*, pp. 35-38; COA Decision No. 2002-107.

[3] *Id.* at 39-41; COA Decision No. 2007-008.

[4] *Id.* at 29.

[5] *Id.* at 42-43.

[6] G.R. No. 80767, April 22, 1991, 196 SCRA 176.

the BSP, as constituted under its charter, was a "government-controlled corporation within the meaning of Article IX(B)(2)(1) of the Constitution"; and that "the BSP is appropriately regarded as a government instrumentality under the 1987 Administrative Code."[7] The COA Resolution also cited its constitutional mandate under Section 2(1), Article IX (D). Finally, the COA Resolution reads:

> NOW THEREFORE, in consideration of the foregoing premises, the COMMISSION PROPER HAS RESOLVED, AS IT DOES HEREBY RESOLVE, **to conduct an annual financial audit of the Boy Scouts of the Philippines in accordance with generally accepted auditing standards**, and express an opinion on whether the financial statements which include the Balance Sheet, the Income Statement and the Statement of Cash Flows present fairly its financial position and results of operations.
>
> x x x x x x x x x
>
> BE IT RESOLVED FURTHERMORE, that for purposes of audit supervision, **the Boy Scouts of the Philippines shall be classified among the government corporations belonging to the Educational, Social, Scientific, Civic and Research Sector** under the Corporate Audit Office I, to be audited, similar to the subsidiary corporations, by employing the team audit approach.[8] (Emphases supplied.)

The BSP sought reconsideration of the COA Resolution in a **letter**[9] dated November 26, 1999 signed by the BSP National President Jejomar C. Binay, who is now the Vice President of the Republic, wherein he wrote:

> It is the position of the BSP, with all due respect, that it is not subject to the Commission's jurisdiction on the following grounds:
>
> 1. We reckon that the ruling in the case of Boy Scouts of the *Philippines vs. National Labor Relations Commission, et al.* (G.R. No. 80767) classifying the BSP as a government-controlled

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[7] *Rollo,* p. 42.

[8] *Id.* at 42-43.

[9] *Id.* at 44-46.

corporation is anchored on the "substantial Government participation" in the National Executive Board of the BSP. It is to be noted that the case was decided when the BSP Charter is defined by Commonwealth Act No. 111 as amended by Presidential Decree 460.

However, may we humbly refer you to Republic Act No. 7278 which amended the BSP's charter after the cited case was decided. The most salient of all amendments in RA No. 7278 is the alteration of the composition of the National Executive Board of the BSP.

The said RA virtually eliminated the "substantial government participation" in the National Executive Board by removing: (i) the President of the Philippines and executive secretaries, with the exception of the Secretary of Education, as members thereof; and (ii) the appointment and confirmation power of the President of the Philippines, as Chief Scout, over the members of the said Board.

The BSP believes that the cited case has been superseded by RA 7278. Thereby weakening the case's conclusion that the BSP is a government-controlled corporation (*sic*). The 1987 Administrative Code itself, of which the *BSP vs. NLRC* relied on for some terms, defines government-owned and controlled corporations as agencies organized as stock or non-stock corporations which the BSP, under its present charter, is not.

Also, the Government, like in other GOCCs, does not have funds invested in the BSP. What RA 7278 only provides is that the Government or any of its subdivisions, branches, offices, agencies and instrumentalities can from time to time donate and contribute funds to the BSP.

x x x x x x x x x

Also the BSP respectfully believes that the BSP is not "appropriately regarded as a government instrumentality under the 1987 Administrative Code" as stated in the COA resolution. As defined by Section 2(10) of the said code, instrumentality refers to "any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter."

> The BSP is not an entity administering special funds. It is not even included in the DECS National Budget. x x x
>
> It may be argued also that the BSP is not an "agency" of the Government. The 1987 Administrative Code, merely referred the BSP as an "attached agency" of the DECS as distinguished from an actual line agency of departments that are included in the National Budget. The BSP believes that an "attached agency" is different from an "agency." Agency, as defined in Section 2(4) of the Administrative Code, is defined as any of the various units of the Government including a department, bureau, office, instrumentality, government-owned or controlled corporation or local government or distinct unit therein.
>
> Under the above definition, the BSP is neither a unit of the Government; a department which refers to an executive department as created by law (Section 2[7] of the Administrative Code); nor a bureau which refers to any principal subdivision or unit of any department (Section 2[8], Administrative Code).[10]

Subsequently, requests for reconsideration of the COA Resolution were also made separately by Robert P. Valdellon, Regional Scout Director, Western Visayas Region, Iloilo City and Eugenio F. Capreso, Council Scout Executive of Calbayog City.[11]

In a **letter**[12] dated July 3, 2000, Director Crescencio S. Sunico, Corporate Audit Officer (CAO) I of the COA, furnished the BSP with a copy of the **Memorandum**[13] dated June 20, 2000 of Atty. Santos M. Alquizalas, the COA General Counsel. In said Memorandum, the COA General Counsel opined that Republic Act No. 7278 did not supersede the Court's ruling in *Boy Scouts of the Philippines v. National Labor Relations Commission*, even though said law eliminated the substantial government participation in the selection of members of the

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[10] *Id.* at 44-46.

[11] *Id.* at 8.

[12] *Id.* at 47.

[13] *Id.* at 48-50.

National Executive Board of the BSP. The Memorandum further provides:

Analysis of the said case disclosed that the substantial government participation is only one (1) of the three (3) grounds relied upon by the Court in the resolution of the case. Other considerations include the character of the BSP's purposes and functions which has a public aspect and the statutory designation of the BSP as a "public corporation". These grounds have not been deleted by R.A. No. 7278. On the contrary, these were strengthened as evidenced by the amendment made relative to BSP's purposes stated in Section 3 of R.A. No. 7278.

On the argument that BSP is not appropriately regarded as "a government instrumentality" and "agency" of the government, such has already been answered and clarified. The Supreme Court has elucidated this matter in the BSP case when it declared that BSP is regarded as, both a "government-controlled corporation with an original charter" and as an "instrumentality" of the Government. Likewise, it is not disputed that the Administrative Code of 1987 designated the BSP as one of the attached agencies of DECS. Being an attached agency, however, it does not change its nature as a government-controlled corporation with original charter and, necessarily, subject to COA audit jurisdiction. Besides, Section 2(1), Article IX-D of the Constitution provides that COA shall have the power, authority, and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations with original charters.[14]

Based on the Memorandum of the COA General Counsel, Director Sunico wrote:

In view of the points clarified by said Memorandum upholding COA Resolution No. 99-011, we have to comply with the provisions of the latter, among which is to conduct an annual financial audit of the Boy Scouts of the Philippines.[15]

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[14] *Id.* at 49-50.

[15] *Id.* at 47.

In a letter dated November 20, 2000 signed by Director Amorsonia B. Escarda, CAO I, the COA informed the BSP that a preliminary survey of its organizational structure, operations and accounting system/records shall be conducted on November 21 to 22, 2000.[16]

Upon the BSP's request, the audit was deferred for thirty (30) days. The BSP then filed a Petition for Review with Prayer for Preliminary Injunction and/or Temporary Restraining Order before the COA. This was **denied** by the COA in its questioned Decision, which held that the BSP is under its audit jurisdiction. The BSP moved for reconsideration but this was likewise denied under its questioned Resolution.[17]

This led to the filing by the BSP of this petition for prohibition with preliminary injunction and temporary restraining order against the COA.

The Issue

As stated earlier, the sole issue to be resolved in this case is whether the BSP falls under the COA's audit jurisdiction.

The Parties' Respective Arguments

The BSP contends that *Boy Scouts of the Philippines v. National Labor Relations Commission* is inapplicable for purposes of determining the audit jurisdiction of the COA as the issue therein was the jurisdiction of the National Labor Relations Commission over a case for illegal dismissal and unfair labor practice filed by certain BSP employees.[18]

While the BSP concedes that its functions do relate to those that the government might otherwise completely assume on its own, it avers that this alone was not determinative of the COA's audit jurisdiction over it. The BSP further avers that the Court in *Boy Scouts of the Philippines v. National Labor Relations*

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[16] *Id.* at 51.

[17] *Id.* at 9.

[18] *Id.* at 11.

Commission "simply stated x x x that in respect of functions, the BSP is *akin* to a public corporation" but this was not synonymous to holding that the BSP is a government corporation or entity subject to audit by the COA.[19]

The BSP contends that Republic Act No. 7278 introduced crucial amendments to its charter; hence, the findings of the Court in *Boy Scouts of the Philippines v. National Labor Relations Commission* are no longer valid as the government has ceased to play a controlling influence in it. The BSP claims that the pronouncements of the Court therein must be taken only within the context of that case; that the Court had categorically found that its assets were acquired from the Boy Scouts of America and not from the Philippine government, and that its operations are financed chiefly from membership dues of the Boy Scouts themselves as well as from property rentals; and that "the BSP may correctly be characterized as non-governmental, and hence, beyond the audit jurisdiction of the COA." It further claims that the designation by the Court of the BSP as a government agency or instrumentality is mere *obiter dictum*.[20]

The BSP maintains that the provisions of Republic Act No. 7278 suggest that "governance of BSP has come to be overwhelmingly a private affair or nature, with government participation restricted to the seat of the Secretary of Education, Culture and Sports."[21] It cites *Philippine Airlines Inc. v. Commission on Audit*[22] wherein the Court declared that, "PAL, having ceased to be a government-owned or controlled corporation is no longer under the audit jurisdiction of the COA."[23] Claiming that the amendments introduced by Republic Act No. 7278 constituted a supervening event that changed

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[19] *Id.* at 13.

[20] *Id.* at 15-16.

[21] *Id.* at 18.

[22] 314 Phil. 896 (1995).

[23] *Id* at 903.

the BSP's corporate identity in the same way that the government's privatization program changed PAL's, the BSP makes the case that the government no longer has control over it; thus, the COA cannot use *the Boy Scouts of the Philippines v. National Labor Relations Commission* as its basis for the exercise of its jurisdiction and the issuance of COA Resolution No. 99-011.[24] The BSP further claims as follows:

> It is not far-fetched, in fact, to concede that BSP's funds and assets are private in character. Unlike ordinary public corporations, such as provinces, cities, and municipalities, or government-owned and controlled corporations, such as Land Bank of the Philippines and the Development Bank of the Philippines, the assets and funds of BSP are not derived from any government grant. For its operations, BSP is not dependent in any way on any government appropriation; as a matter of fact, it has not even been included in any appropriations for the government. To be sure, COA has not alleged, in its Resolution No. 99-011 or in the Memorandum of its General Counsel, that BSP received, receives or continues to receive assets and funds from any agency of the government. The foregoing simply point to the private nature of the funds and assets of petitioner BSP.
>
> x x x x x x x x x
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> As stated in petitioner's third argument, BSP's assets and funds were never acquired from the government. Its operations are not in any way financed by the government, as BSP has never been included in any appropriations act for the government. Neither has the government invested funds with BSP. BSP, has not been, at any time, a user of government property or funds; nor have properties of the government been held in trust by BSP. This is precisely the reason why, until this time, the COA has not attempted to subject BSP to its audit jurisdiction. x x x.[25]

To summarize its other arguments, the BSP contends that it is not a government-owned or controlled corporation; neither is it an instrumentality, agency, or subdivision of the government.

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[24] *Rollo,* pp. 19-20.

[25] *Id.* at 21-22.

In its **Comment**,[26] the COA argues as follows:

1. The BSP is a public corporation created under Commonwealth Act No. 111 dated October 31, 1936, and whose functions relate to the fostering of public virtues of citizenship and patriotism and the general improvement of the moral spirit and fiber of the youth. The manner of creation and the purpose for which the BSP was created indubitably prove that it is a government agency.

2. Being a government agency, the funds and property owned or held in trust by the BSP are subject to the audit authority of respondent Commission on Audit pursuant to Section 2 (1), Article IX-D of the 1987 Constitution.

3. Republic Act No. 7278 did not change the character of the BSP as a government-owned or controlled corporation and government instrumentality.[27]

The COA maintains that the functions of the BSP that include, among others, the teaching to the youth of patriotism, courage, self-reliance, and kindred virtues, are undeniably sovereign functions enshrined under the Constitution and discussed by the Court in *Boy Scouts of the Philippines v. National Labor Relations Commission.* The COA contends that any attempt to classify the BSP as a private corporation would be incomprehensible since no less than the law which created it had designated it as a public corporation and its statutory mandate embraces performance of sovereign functions.[28]

The COA claims that the only reason why the BSP employees fell within the scope of the Civil Service Commission even before the 1987 Constitution was the fact that it was a government-owned or controlled corporation; that as an attached agency of the Department of Education, Culture and Sports (DECS), the BSP is an agency of the government; and that the

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[26] *Id.* at 61-82.

[27] *Id.* at 67.

[28] *Id.* at 70-71.

BSP is a chartered institution under Section 1(12) of the Revised Administrative Code of 1987, embraced under the term government instrumentality.[29]

The COA concludes that being a government agency, the funds and property owned or held by the BSP are subject to the audit authority of the COA pursuant to Section 2(1), Article IX (D) of the 1987 Constitution.

In support of its arguments, the COA cites *The Veterans Federation of the Philippines (VFP) v. Reyes*,[30] wherein the Court held that among the reasons why the VFP is a public corporation is that its charter, Republic Act No. 2640, designates it as one. Furthermore, the COA quotes the Court as saying in that case:

> In several cases, we have dealt with the issue of whether certain specific activities can be classified as sovereign functions. These cases, which deal with activities not immediately apparent to be sovereign functions, upheld the public sovereign nature of operations needed either to promote social justice or to stimulate patriotic sentiments and love of country.
>
> x x x x x x x x x
>
> Petitioner claims that its funds are not public funds because no budgetary appropriations or government funds have been released to the VFP directly or indirectly from the DBM, and because VFP funds come from membership dues and lease rentals earned from administering government lands reserved for the VFP.
>
> The fact that no budgetary appropriations have been released to the VFP does not prove that it is a private corporation. The DBM indeed did not see it fit to propose budgetary appropriations to the VFP, having itself believed that the VFP is a private corporation. If the DBM, however, is mistaken as to its conclusion regarding the nature of VFP's incorporation, its previous assertions will not prevent future budgetary appropriations to the VFP. The erroneous application

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[29] *Id.* at 72-73.

[30] G.R. No. 155027, February 28, 2006, 483 SCRA 426.

of the law by public officers does not bar a subsequent correct application of the law.[31] (Citations omitted.)

The COA points out that the government is not precluded by law from extending financial support to the BSP and adding to its funds, and that "as a government instrumentality which continues to perform a vital function imbued with public interest and reflective of the government's policy to stimulate patriotic sentiments and love of country, the BSP's funds from whatever source are public funds, and can be used solely for public purpose in pursuance of the provisions of Republic Act No. [7278]."[32]

The COA claims that the fact that it has not yet audited the BSP's funds may not bar the subsequent exercise of its audit jurisdiction.

The BSP filed its **Reply**[33] on August 29, 2007 maintaining that its statutory designation as a "public corporation" and the public character of its purpose and functions are not determinative of the COA's audit jurisdiction; reiterating its stand that *Boy Scouts of the Philippines v. National Labor Relations Commission* is not applicable anymore because the aspect of government ownership and control has been removed by Republic Act No. 7278; and concluding that the funds and property that it either owned or held in trust are not public funds and are not subject to the COA's audit jurisdiction.

Thereafter, considering the BSP's claim that it is a private corporation, this Court, in a **Resolution**[34] dated July 20, 2010, required the parties to file, within a period of twenty (20) days from receipt of said Resolution, their respective comments on the issue of whether Commonwealth Act No. 111, as amended by Republic Act No. 7278, is constitutional.

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[31] *Id.* at 553-556.

[32] *Rollo*, p. 76.

[33] *Id.* at 86-104.

[34] *Id.* at 129-130.

In compliance with the Court's resolution, the parties filed their respective Comments.

In its **Comment**[35] dated October 22, 2010, the COA argues that the constitutionality of Commonwealth Act No. 111, as amended, is not determinative of the resolution of the present controversy on the COA's audit jurisdiction over petitioner, and in fact, the controversy may be resolved on other grounds; thus, the requisites before a judicial inquiry may be made, as set forth in *Commissioner of Internal Revenue v. Court of Tax Appeals*,[36] have not been fully met.[37] Moreover, the COA maintains that behind every law lies the presumption of constitutionality.[38] The COA likewise argues that contrary to the BSP's position, repeal of a law by implication is not favored.[39] Lastly, the COA claims that there was no violation of Section 16, Article XII of the 1987 Constitution with the creation or declaration of the BSP as a government corporation. Citing *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*,[40] the COA further alleges:

> The true criterion, therefore, to determine whether a corporation is public or private is found in the totality of the relation of the corporation to the State. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private. x x x.[41]

For its part, in its **Comment**[42] filed on December 3, 2010, the BSP submits that its charter, Commonwealth Act No. 111,

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[35] *Id.* at 143-159.

[36] G.R. No. 44007, March 20, 1991, 195 SCRA 444.

[37] *Rollo,* pp. 147-148.

[38] *Id.* at 149.

[39] *Id.* at 152.

[40] G.R. No. 169752, September 25, 2007, 534 SCRA 112.

[41] *Id.* at 132.

[42] The BSP's Comment, filed on December 3, 2010, has yet to be incorporated in the *rollo.*

as amended by Republic Act No. 7278, is constitutional as it does not violate Section 16, Article XII of the Constitution. The BSP alleges that "while [it] is not a public corporation within the purview of COA's audit jurisdiction, neither is it a private corporation created by special law falling within the ambit of the constitutional prohibition x x x."[43] The BSP further alleges:

> Petitioner's purpose is embodied in Section 3 of C.A. No. 111, as amended by Section 1 of R.A. No. 7278, thus:
>
> x x x x x x x x x
>
> A reading of the foregoing provision shows that petitioner was created to advance the interest of the youth, specifically of young boys, and to mold them into becoming good citizens. Ultimately, the creation of petitioner redounds to the benefit, not only of those boys, but of the public good or welfare. Hence, it can be said that petitioner's purpose and functions are more of a public rather than a private character. Petitioner caters to all boys who wish to join the organization without any distinction. It does not limit its membership to a particular class of boys. Petitioner's members are trained in scoutcraft and taught patriotism, civic consciousness and responsibility, courage, self-reliance, discipline and kindred virtues, and moral values, preparing them to become model citizens and outstanding leaders of the country.[44]

The BSP reiterates its stand that the public character of its purpose and functions do not place it within the ambit of the audit jurisdiction of the COA as it lacks the government ownership or control that the Constitution requires before an entity may be subject of said jurisdiction.[45] It avers that it merely stated in its Reply that the withdrawal of government control is akin to privatization, but it does not necessarily mean that petitioner is a private corporation.[46] The BSP claims that it has a unique characteristic which "neither classifies it as a purely

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[43] *Id.* at 2.

[44] *Id.* at 3.

[45] *Id.* at 4.

[46] *Id.* at 6.

public nor a purely private corporation";[47] that it is not a quasi-public corporation; and that it may belong to a different class altogether.[48]

The BSP claims that assuming *arguendo* that it is a private corporation, its creation is not contrary to the purpose of Section 16, Article XII of the Constitution; and that the evil sought to be avoided by said provision is inexistent in the enactment of the BSP's charter,[49] as, (i) it was not created for any pecuniary purpose; (ii) those who will primarily benefit from its creation are not its officers but its entire membership consisting of boys being trained in scoutcraft all over the country; (iii) it caters to all boys who wish to join the organization without any distinction; and (iv) it does not limit its membership to a particular class or group of boys. Thus, the enactment of its charter confers no special privilege to particular individuals, families, or groups; nor does it bring about the danger of granting undue favors to certain groups to the prejudice of others or of the interest of the country, which are the evils sought to be prevented by the constitutional provision involved.[50]

Finally, the BSP states that the presumption of constitutionality of a legislative enactment prevails absent any clear showing of its repugnancy to the Constitution.[51]

The Ruling of the Court

After looking at the legislative history of its amended charter and carefully studying the applicable laws and the arguments of both parties, we find that the BSP is a public corporation and its funds are subject to the COA's audit jurisdiction.

The BSP Charter (Commonwealth Act No. 111, approved on October 31, 1936), entitled "*An Act to Create a Public*

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[47] *Id.* at 7.

[48] *Id.* at 8.

[49] *Id.*

[50] *Id.* at 9.

[51] *Id.* at 13, citing 16 Am Jur 2d 645 and 647.

Corporation to be Known as the Boy Scouts of the Philippines, and to Define its Powers and Purposes" created the BSP as a "public corporation" to serve the following public interest or purpose:

> Sec. 3. The purpose of this corporation shall be to promote through organization and cooperation with other agencies, the ability of boys to do useful things for themselves and others, to train them in scoutcraft, and to inculcate in them patriotism, civic consciousness and responsibility, courage, self-reliance, discipline and kindred virtues, and moral values, using the method which are in common use by boy scouts.

Presidential Decree No. 460, approved on May 17, 1974, amended Commonwealth Act No. 111 and provided substantial changes in the BSP organizational structure. Pertinent provisions are quoted below:

> Section II. Section 5 of the said Act is also amended to read as follows:
>
> The governing body of the said corporation shall consist of a National Executive Board composed of (a) the President of the Philippines or his representative; (b) the charter and life members of the Boy Scouts of the Philippines; (c) the Chairman of the Board of Trustees of the Philippine Scouting Foundation; (d) the Regional Chairman of the Scout Regions of the Philippines; (e) the Secretary of Education and Culture, the Secretary of Social Welfare, the Secretary of National Defense, the Secretary of Labor, the Secretary of Finance, the Secretary of Youth and Sports, and the Secretary of Local Government and Community Development; (f) an equal number of individuals from the private sector; (g) the National President of the Girl Scouts of the Philippines; (h) one Scout of Senior age from each Scout Region to represent the boy membership; and (i) three representatives of the cultural minorities. Except for the Regional Chairman who shall be elected by the Regional Scout Councils during their annual meetings, and the Scouts of their respective regions, all members of the National Executive Board shall be either by appointment or cooption, subject to ratification and confirmation by the Chief Scout, who shall be the Head of State. Vacancies in the Executive Board shall be filled by a majority vote of the remaining members, subject to ratification and confirmation by the Chief Scout. The by-laws may prescribe the number of members of the National Executive Board necessary to constitute

a quorum of the board, which number may be less than a majority of the whole number of the board. The National Executive Board shall have power to make and to amend the by-laws, and, by a two-thirds vote of the whole board at a meeting called for this purpose, may authorize and cause to be executed mortgages and liens upon the property of the corporation.

Subsequently, on March 24, 1992, Republic Act No. 7278 further amended Commonwealth Act No. 111 "by strengthening the volunteer and democratic character" of the BSP and reducing government representation in its governing body, as follows:

Section 1. Sections 2 and 3 of Commonwealth Act. No. 111, as amended, is hereby amended to read as follows:

"Sec. 2. The said corporation shall have the powers of perpetual succession, to sue and be sued; to enter into contracts; to acquire, own, lease, convey and dispose of such real and personal estate, land grants, rights and choses in action as shall be necessary for corporate purposes, and to accept and receive funds, real and personal property by gift, devise, bequest or other means, to conduct fund-raising activities; to adopt and use a seal, and the same to alter and destroy; to have offices and conduct its business and affairs in Metropolitan Manila and in the regions, provinces, cities, municipalities, and barangays of the Philippines, to make and adopt by-laws, rules and regulations not inconsistent with this Act and the laws of the Philippines, and generally to do all such acts and things, including the establishment of regulations for the election of associates and successors, as may be necessary to carry into effect the provisions of this Act and promote the purposes of said corporation: Provided, That said corporation shall have no power to issue certificates of stock or to declare or pay dividends, its objectives and purposes being solely of benevolent character and not for pecuniary profit of its members.

"Sec. 3. **The purpose of this corporation shall be to promote through organization and cooperation with other agencies, the ability of boys to do useful things for themselves and others, to train them in scoutcraft, and to inculcate in them patriotism, civic consciousness and responsibility, courage, self-reliance, discipline and kindred virtues, and moral values, using the method which are in common use by boy scouts**."

Sec. 2. Section 4 of Commonwealth Act No. 111, as amended, is hereby repealed and in lieu thereof, Section 4 shall read as follows:

"Sec. 4. The President of the Philippines shall be the Chief Scout of the Boy Scouts of the Philippines."

Sec. 3. Sections 5, 6, 7 and 8 of Commonwealth Act No. 111, as amended, are hereby amended to read as follows:

"Sec. 5. **The governing body of the said corporation shall consist of a National Executive Board**, the members of which shall be Filipino citizens of good moral character. **The Board shall be composed of the following**:

"(a) One (1) charter member of the Boy Scouts of the Philippines who shall be elected by the members of the National Council at its meeting called for this purpose;

"(b) The regional chairmen of the scout regions who shall be elected by the representatives of all the local scout councils of the region during its meeting called for this purpose: Provided, That a candidate for regional chairman need not be the chairman of a local scout council;

"(c) **The Secretary of Education, Culture and Sports**;

"(d) The National President of the Girl Scouts of the Philippines;

"(e) One (1) senior scout, each from Luzon, Visayas and Mindanao areas, to be elected by the senior scout delegates of the local scout councils to the scout youth forums in their respective areas, in its meeting called for this purpose, to represent the boy scout membership;

"(f) Twelve (12) regular members to be elected by the members of the National Council in its meeting called for this purpose;

"(g) At least ten (10) but not more than fifteen (15) additional members from the private sector who shall be elected by the members of the National Executive Board referred to in the immediately preceding paragraphs (a), (b), (c), (d), (e) and (f) at the organizational meeting of the newly reconstituted National Executive Board which shall be held immediately after the meeting of the National Council wherein the twelve (12) regular members and the one (1) charter member were elected.

x x x x x x x x x

"Sec. 8. Any donation or contribution which from time to time may be made to the Boy Scouts of the Philippines by the Government or any of its subdivisions, branches, offices, agencies or instrumentalities or by a foreign government or by private, entities

and individuals shall be expended by the National Executive Board in pursuance of this Act.

The BSP as a Public Corporation under Par. 2, Art. 2 of the Civil Code

There are three classes of juridical persons under Article 44 of the Civil Code and the BSP, as presently constituted under Republic Act No. 7278, **falls under the second classification**. Article 44 reads:

Art. 44. The following are juridical persons:

(1) The State and its political subdivisions;

(2) **Other corporations, institutions and entities for public interest or purpose created by law; their personality begins as soon as they have been constituted according to law**;

(3) Corporations, partnerships and associations for **private interest or purpose** to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member. (Emphases supplied.)

The BSP, which is a corporation created for a public interest or purpose, is subject to the law creating it under Article 45 of the Civil Code, which provides:

Art. 45. Juridical persons mentioned in Nos. 1 and 2 of the preceding article are governed by the laws creating or recognizing them.

Private corporations are regulated by laws of general application on the subject.

Partnerships and associations for private interest or purpose are governed by the provisions of this Code concerning partnerships. (Emphasis and underscoring supplied.)

The purpose of the BSP as stated in its amended charter shows that it was created in order to implement a State policy declared in Article II, Section 13 of the Constitution, which reads:

ARTICLE II - DECLARATION OF PRINCIPLES AND STATE POLICIES

Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Evidently, the BSP, which was created by a special law to serve a public purpose in pursuit of a constitutional mandate, comes within the class of "public corporations" defined by paragraph 2, Article 44 of the Civil Code and governed by the law which creates it, pursuant to Article 45 of the same Code.

The BSP's Classification Under the Administrative Code of 1987

The public, rather than private, character of the BSP is recognized by the fact that, along with the Girl Scouts of the Philippines, it is classified as an **attached agency** of the DECS under Executive Order No. 292, or the **Administrative Code of 1987**, which states:

TITLE VI – EDUCATION, CULTURE AND SPORTS

Chapter 8 – Attached Agencies

SEC. 20. ***Attached Agencies***. – The following agencies are hereby attached to the Department:

x x x x x x x x x

(12) **Boy Scouts of the Philippines**;

(13) Girl Scouts of the Philippines.

The administrative relationship of an attached agency to the department is defined in the Administrative Code of 1987 as follows:

BOOK IV

THE EXECUTIVE BRANCH

Chapter 7 – ADMINISTRATIVE RELATIONSHIP

SEC. 38. *Definition of Administrative Relationship*. – Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

x x x x x x x x x

(3) ***Attachment***. – (a) This refers to the lateral relationship between the department or its equivalent and the attached agency or corporation **for purposes of policy and program coordination**. **The coordination may be accomplished by having the department represented in the governing board of the attached agency or corporation, either as chairman or as a member, with or without voting rights, if this is permitted by the charter;** having the attached corporation or agency comply with a system of periodic reporting which shall reflect the progress of programs and projects; and having the department or its equivalent provide general policies through its representative in the board, which shall serve as the framework for the internal policies of the attached corporation or agency. (Emphasis ours.)

As an attached agency, the BSP enjoys operational autonomy, as long as policy and program coordination is achieved by having **at least one representative of government in its governing board**, which in the case of the BSP is the DECS Secretary. In this sense, the BSP is not under government control or "supervision and control." Still this characteristic does not make the attached chartered agency a private corporation covered by the constitutional proscription in question.

Art. XII, Sec. 16 of the Constitution refers to "private corporations" created by government for proprietary or economic/business purposes

At the outset, it should be noted that the provision of Section 16 in issue is found in **Article XII** of the Constitution, entitled "**National Economy and Patrimony**." Section 1 of Article XII is quoted as follows:

SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

The scope and coverage of Section 16, Article XII of the Constitution can be seen from the aforementioned declaration of state policies and goals which pertains to **national economy** and **patrimony** and the **interests of the people in economic development**.

Section 16, Article XII deals with "**the formation, organization, or regulation of private corporations**,"[52] which should be done through a general law enacted by Congress, provides for an exception, that is: if the corporation is government owned or controlled; its creation is in the interest of the common good; and it meets the test of economic viability. The rationale behind Article XII, Section 16 of the 1987 Constitution was explained in *Feliciano v. Commission on Audit*,[53] in the following manner:

The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens. **The**

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[52] Record of the 1986 Constitutional Commission, Vol. 3, August 13, 1986, p. 260.

[53] 464 Phil. 439 (2004).

purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens.[54] (Emphasis added.)

It may be gleaned from the above discussion that Article XII, Section 16 bans the creation of "**private corporations**" by special law. The said constitutional provision should not be construed so as to prohibit the creation of **public corporations** or a corporate agency or instrumentality of the government intended to serve a public interest or purpose, which should not be measured on the basis of economic viability, but according to the public interest or purpose it serves as envisioned by **paragraph (2), of Article 44 of the Civil Code** and the pertinent provisions of the **Administrative Code of 1987**.

The BSP is a Public Corporation Not Subject to the Test of Government Ownership or Control and Economic Viability

The BSP is a public corporation or a government agency or instrumentality with juridical personality, which does not fall within the constitutional prohibition in Article XII, Section 16, notwithstanding the amendments to its charter. Not all corporations, which are **not** government owned or controlled, are *ipso facto* to be considered private corporations as there exists another distinct class of corporations or chartered institutions which are otherwise known as "public corporations." These corporations are treated by law as agencies or instrumentalities of the government which are not subject to the tests of ownership or control and economic viability but to different criteria relating to their public purposes/interests or constitutional policies and objectives and their administrative relationship to the government or any of its Departments or Offices.

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[54] *Id.* at 454, citing Bernas, *The 1987 Constitution of the Republic of the Philippines*: A Commentary 1181 (2003).

Classification of Corporations Under Section 16, Article XII of the Constitution on National Economy and Patrimony

The dissenting opinion of Associate Justice Antonio T. Carpio, citing a line of cases, insists that the Constitution recognizes only two classes of corporations: *private* corporations under a **general** law, and *government-owned or controlled corporations* created by **special** charters.

We strongly disagree. Section 16, Article XII should not be construed so as to prohibit Congress from creating public corporations. In fact, Congress has enacted numerous laws creating public corporations or government agencies or instrumentalities vested with corporate powers. Moreover, Section 16, Article XII, which relates to National Economy and Patrimony, could not have tied the hands of Congress in creating public corporations to serve any of the constitutional policies or objectives.

In his dissent, Justice Carpio contends that this *ponente* introduces "a totally different species of corporation, which is neither a private corporation nor a government owned or controlled corporation" and, in so doing, is missing the fact that the BSP, "which was created as a non-stock, non-profit corporation, can only be either a private corporation or a government owned or controlled corporation."

Note that in *Boy Scouts of the Philippines v. National Labor Relations Commission*, the BSP, under its former charter, was regarded as both a government owned or controlled corporation with original charter **and** a "public corporation." The said case pertinently stated:

While the BSP may be seen to be a mixed type of entity, combining aspects of both public and private entities, we believe that considering the character of its purposes and its functions, the statutory designation of the BSP as "**a public corporation**" **and** the substantial participation of the Government in the selection of members of the National Executive Board of the BSP, the BSP, as presently

constituted under its charter, is **a government-controlled corporation** within the meaning of Article IX (B) (2) (1) of the Constitution.

We are fortified in this conclusion when we note that the Administrative Code of 1987 designates the BSP as one of the attached agencies of the Department of Education, Culture and Sports ("DECS"). An "agency of the Government" is defined as referring to any of the various units of the Government including a department, bureau, office, instrumentality, government-owned or controlled corporation, or local government or distinct unit therein. "Government instrumentality" is in turn defined in the 1987 Administrative Code in the following manner:

> *Instrumentality* - refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.

The same Code describes a "chartered institution" in the following terms:

> *Chartered institution* - refers to any **agency organized or operating under a special charter**, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges, and the monetary authority of the State.

We believe that the BSP is appropriately regarded as "a government instrumentality" under the 1987 Administrative Code.

It thus appears that the BSP may be regarded as both a "government controlled corporation with an original charter" and as an "instrumentality" of the Government within the meaning of Article IX (B) (2) (1) of the Constitution. x x x.[55] (Emphases supplied.)

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[55] *Boy Scouts of the Philippines v. National Labor Relations Commission, supra* note 6 at 186-187.

The existence of public or government corporate or juridical entities or chartered institutions by legislative fiat distinct from private corporations and government owned or controlled corporation is best exemplified by the 1987 Administrative Code cited above, which we quote in part:

> Sec. 2. *General Terms Defined*. – Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:
>
> x x x x x x x x x
>
> (10) "**Instrumentality**" refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers,** administering special funds, and **enjoying operational autonomy, usually through a charter.** This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.
>
> x x x x x x x x x
>
> (12) "**Chartered institution**" refers to any agency organized or operating under a special charter, and vested by law with functions **relating to specific constitutional policies or objectives**. This term includes the state universities and colleges and the monetary authority of the State.
>
> (13) "**Government-owned or controlled corporation**" refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether **governmental or proprietary in nature**, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, **That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations**.

Assuming for the sake of argument that the BSP ceases to be owned or controlled by the government because of reduction of the number of representatives of the government in the BSP

Board, it does not follow that it also ceases to be a government instrumentality as it still retains all the characteristics of the latter as an attached agency of the DECS under the Administrative Code. Vesting corporate powers to an attached agency or instrumentality of the government is not constitutionally prohibited and is allowed by the above-mentioned provisions of the Civil Code and the 1987 Administrative Code.

Economic Viability and Ownership and Control Tests Inapplicable to Public Corporations

As presently constituted, the BSP still remains an **instrumentality** of the national government. It is a public corporation created by law for a public purpose, attached to the DECS pursuant to its Charter and the Administrative Code of 1987. It is not a private corporation which is required to be owned or controlled by the government and be economically viable to justify its existence under a special law.

The dissent of Justice Carpio also submits that by recognizing "a new class of public corporation(s)" created by special charter that will not be subject to the test of economic viability, the constitutional provision will be circumvented.

However, a review of the Record of the 1986 Constitutional Convention reveals the intent of the framers of the highest law of our land to distinguish between **government corporations performing governmental functions and corporations involved in business or proprietary functions**:

THE PRESIDENT. Commissioner Foz is recognized.

MR. FOZ. Madam President, I support the proposal to insert "ECONOMIC VIABILITY" as one of the grounds for organizing government corporations. x x x.

MR. OPLE. Madam President, the reason for this concern is really that when the government creates a corporation, there is a sense in which this corporation becomes exempt from the test of economic

performance. We know what happened in the past. If a government corporation loses, then it makes its claim upon the taxpayers' money through new equity infusions from the government and what is always invoked is the common good. x x x

Therefore, when we insert the phrase "ECONOMIC VIABILITY" together with the "common good," this becomes a restraint on future enthusiasts for state capitalism to excuse themselves from the responsibility of meeting the market test so that they become viable. x x x.

x x x x x x x x x

THE PRESIDENT. Commissioner Quesada is recognized.

MS. QUESADA. Madam President, may we be clarified by the committee on what is meant by economic viability?

THE PRESIDENT. Please proceed.

MR. MONSOD. Economic viability normally is determined by cost-benefit ratio that takes into consideration all benefits, including economic external as well as internal benefits. These are what they call externalities in economics, so that these are not strictly financial criteria. Economic viability involves what we call economic returns or benefits of the country that are not quantifiable in financial terms. x x x.

x x x x x x x x x

MS. QUESADA. So, would this particular formulation now really limit the entry of government corporations into activities engaged in by corporations?

MR. MONSOD. **Yes, because it is also consistent with the economic philosophy that this Commission approved – that there should be minimum government participation and intervention in the economy**.

MS. QUESDA (sic). Sometimes this Commission would just refer to Congress to provide the particular requirements when the government

would get into corporations. But this time around, we specifically mentioned economic viability. x x x.

MR. VILLEGAS. Commissioner Ople will restate the reason for his introducing that amendment.

MR. OPLE. I am obliged to repeat what I said earlier in moving for this particular amendment jointly with Commissioner Foz. During the past three decades, there had been a proliferation of government corporations, very few of which have succeeded, and many of which are now earmarked by the Presidential Reorganization Commission for liquidation because they failed the economic test. x x x.

x x x x x x x x x

MS. QUESADA. But would not the Commissioner say that the reason why many of the government-owned or controlled corporations failed to come up with the economic test is due to the management of these corporations, and not the idea itself of government corporations? It is a problem of efficiency and effectiveness of management of these corporations which could be remedied, not by eliminating government corporations or the idea of getting into state-owned corporations, but improving management which our technocrats should be able to do, given the training and the experience.

MR. OPLE. That is part of the economic viability, Madam President.

MS. QUESADA. So, is the Commissioner saying then that the Filipinos will benefit more if these government-controlled corporations were given to private hands, and that there will be more goods and services that will be affordable and within the reach of the ordinary citizens?

MR. OPLE. Yes. There is nothing here, Madam President, that will prevent the formation of a government corporation in accordance with a special charter given by Congress. However, we are raising the standard a little bit so that, in the future, corporations established by the government will meet the test of the common good but within that framework we should also build a certain standard of economic viability.

x x x x x x x x x

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. This is an inquiry to the committee. With regard to corporations created by a special charter for government-owned or controlled corporations, will these be in the pioneer fields or in places where the private enterprise does not or cannot enter? Or is this so general that these government corporations can compete with private corporations organized under a general law?

MR. MONSOD. Madam President, x x x. **There are two types of government corporations –** those that are involved in **performing governmental functions**, like garbage disposal, Manila waterworks, and so on; and those government corporations that are **involved in business functions**. As we said earlier, there are **two criteria that should be followed for corporations that want to go into business. First** is for government corporations to first prove that they can be efficient in the areas of their proper functions. This is one of the problems now because they go into all kinds of activities but are not even efficient in their proper functions. **Secondly**, they should not go into activities that the private sector can do better.

MR. PADILLA. There is no question about corporations performing governmental functions or functions that are impressed with public interest. But the question is with regard to matters that are covered, perhaps not exhaustively, by private enterprise. It seems that under this provision the only qualification is economic viability and common good, but shall government, through government-controlled corporations, compete with private enterprise?

MR. MONSOD. No, Madam President. As we said, the government should not engage in activities that private enterprise is engaged in and can do better. x x x.[56] (Emphases supplied.)

Thus, the test of economic viability clearly does not apply to public corporations dealing with governmental functions, to which category the BSP belongs. The discussion above conveys the constitutional intent not to apply this constitutional

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[56] Record of the 1986 Constitutional Commission, Vol. 3, August 22, 1986, pp. 623-626.

ban on the creation of public corporations where the economic viability test would be irrelevant. The said test would only apply if the corporation is engaged in some economic activity or business function for the government.

It is undisputed that the BSP performs functions that are impressed with public interest. In fact, during the consideration of the Senate Bill that eventually became Republic Act No. 7278, which amended the BSP Charter, one of the bill's sponsors, Senator Joey Lina, described the BSP as follows:

> **Senator Lina.** Yes, I can only think of two organizations involving the masses of our youth, Mr. President, that should be given this kind of a privilege – the Boy Scouts of the Philippines and the Girl Scouts of the Philippines. Outside of these two groups, I do not think there are other groups similarly situated.
>
> **The Boy Scouts of the Philippines has a long history of providing value formation to our young, and considering how huge the population of the young people is, at this point in time, and also considering the importance of having an organization such as this that will inculcate moral uprightness among the young people, and further considering that the development of these young people at that tender age of seven to sixteen is vital in the development of the country producing good citizens**, I believe that we can make an exception of the Boy Scouting movement of the Philippines from this general prohibition against providing tax exemption and privileges.[57]

Furthermore, this Court cannot agree with the dissenting opinion which equates the changes introduced by Republic Act No. 7278 to the BSP Charter as clear manifestation of the intent of Congress "to return the BSP to the private sector." It was not the intent of Congress in enacting Republic Act No. 7278 to give up all interests in this basic youth organization, which has been its partner in forming responsible citizens for decades.

In fact, as may be seen in the deliberation of the House Bills that eventually resulted to Republic Act No. 7278, Congress

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[57] Record of the Senate, Monday, November 5, 1990, p. 1533.

worked closely with the BSP to rejuvenate the organization, to bring it back to its former glory reached under its original charter, Commonwealth Act No. 111, and to correct the perceived ills introduced by the amendments to its Charter under Presidential Decree No. 460. The BSP suffered from low morale and decrease in number because the Secretaries of the different departments in government who were too busy to attend the meetings of the BSP's National Executive Board ("the Board") sent representatives who, as it turned out, changed from meeting to meeting. Thus, the Scouting Councils established in the provinces and cities were not in touch with what was happening on the national level, but they were left to implement what was decided by the Board.[58]

A portion of the legislators' discussion is quoted below to clearly show their intent:

HON. DEL MAR. x x x **I need not mention to you the value and the tremendous good that the Boy Scout Movement has done not only for the youth in particular but for the country in general. And that is why, if we look around, our past and present national leaders, prominent men in the various fields of endeavor, public servants in government offices, and civic leaders in the communities all over the land, and not only in our country but all over the world many if not most of them have at one time or another been beneficiaries of the Scouting Movement**. And so, it is along this line, Mr. Chairman, that we would like to have the early approval of this measure if only to pay back what we owe much to the Scouting Movement. Now, going to the meat of the matter, Mr. Chairman, if I may just – the Scouting Movement was enacted into law in October 31, 1936 under Commonwealth Act No. 111. x x x [W]e were acknowledged as the third biggest scouting organization in the world x x x. And to our mind, Mr. Chairman, this erratic growth and this decrease in membership [number] is because of the bad policy measures that were enunciated with the enactment or promulgation by the President before of Presidential Decree No. 460 which we feel is the culprit of the ills that is flagging the Boy Scout Movement today. And so, this is specifically what we are attacking, Mr. Chairman, the disenfranchisement of the National Council in the election of the

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[58] Committee on Government Enterprises, February 13, 1991, pp. 8-11.

national board. x x x. And so, this is what we would like to be appraised of by the officers of the Boy [Scouts] of the Philippines whom we are also confident, have the best interest of the Boy Scout Movement at heart and it is in this spirit, Mr. Chairman, that we see no impediment towards working together, the Boy Scout of the Philippines officers working together with the House of Representatives in coming out with a measure that will put back the vigor and enthusiasm of the Boy Scout Movement. x x x.[59] (Emphasis ours.)

The following is another excerpt from the discussion on the House version of the bill, in the Committee on Government Enterprises:

HON. AQUINO: x x x Well, obviously, the two bills as well as the previous laws that have created the Boy Scouts of the Philippines did not provide for any direct government support by way of appropriation from the national budget to support the activities of this organization. The point here is, and at the same time they have been subjected to a governmental intervention, which to their mind has been inimical to the objectives and to the institution per se, that is why they are seeking legislative fiat to restore back the original mandate that they had under Commonwealth Act 111. **Such having been the experience in the hands of government, meaning, there has been negative interference on their part and inasmuch as their mandate is coming from a legislative fiat, then shouldn't it be, this rhetorical question, shouldn't it be better for this organization to seek a mandate from, let's say, the government the Corporation Code of the Philippines and register with the SEC as non-profit non-stock corporation so that government intervention could be very very minimal**. Maybe that's a rhetorical question, they may or they may not answer, ano. I don't know what would be the benefit of a charter or a mandate being provided for by way of legislation versus a registration with the SEC under the Corporation Code of the Philippines inasmuch as they don't get anything from the government anyway insofar as direct funding. In fact, the only thing that they got from government was intervention in their affairs. Maybe we can solicit some commentary comments from the resource persons. Incidentally, don't take that as an objection, I'm not objecting. I'm all for the objectives of these two bills. It just

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[59] *Id.* at 5-8.

occurred to me that since you have had very bad experience in the hands of government and you will always be open to such possible intervention even in the future as long as you have a legislative mandate or your mandate or your charter coming from legislative action.

x x x x x x x x x

MR. ESCUDERO: **Mr. Chairman, there may be a disadvantage if the Boy Scouts of the Philippines will be required to register with the SEC.** If we are registered with the SEC, there could be a danger of proliferation of scout organization. Anybody can organize and then register with the SEC. If there will be a proliferation of this, then the organization will lose control of the entire organization. Another disadvantage, Mr. Chairman, anybody can file a complaint in the SEC against the Boy Scouts of the Philippines and the SEC may suspend the operation or freeze the assets of the organization and hamper the operation of the organization. I don't know, Mr. Chairman, how you look at it but there could be a danger for anybody filing a complaint against the organization in the SEC and the SEC might suspend the registration permit of the organization and we will not be able to operate.

HON. AQUINO: Well, that I think would be a problem that will not be exclusive to corporations registered with the SEC because even if you are government corporation, court action may be taken against you in other judicial bodies because the SEC is simply another quasi-judicial body. **But, I think, the first point would be very interesting, the first point that you raised. In effect, what you are saying is that with the legislative mandate creating your charter, in effect, you have been given some sort of a franchise with this movement.**

MR. ESCUDERO: Yes.

HON. AQUINO: Exclusive franchise of that movement?

MR. ESCUDERO: Yes.

HON. AQUINO: Well, that's very well taken so I will proceed with other issues, Mr. Chairman. x x x.[60] (Emphases added.)

Therefore, even though the amended BSP charter did away with most of the governmental presence in the BSP Board,

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[60] *Id.* at 35-37.

this was done to more strongly promote the BSP's objectives, which were not supported under Presidential Decree No. 460. The BSP objectives, as pointed out earlier, are consistent with the **public purpose** of the promotion of the well-being of the youth, the future leaders of the country. The amendments were **not** done with the view of changing the character of the BSP into a privatized corporation. The BSP remains an agency attached to a department of the government, the DECS, and it was not at all stripped of its public character.

The ownership and control test is likewise irrelevant for a public corporation like the BSP. To reiterate, the relationship of the BSP, an attached agency, to the government, through the DECS, is defined in the Revised Administrative Code of 1987. The BSP meets the minimum statutory requirement of an attached government agency as the DECS Secretary sits at the BSP Board *ex officio,* thus facilitating the policy and program coordination between the BSP and the DECS.

Requisites for Declaration of Unconstitutionality Not Met in this Case

The dissenting opinion of Justice Carpio improperly raised the issue of unconstitutionality of certain provisions of the BSP Charter. Even if the parties were asked to Comment on the validity of the BSP charter **by the Court**, this alone does not comply with the requisites for judicial review, which were clearly set forth in a recent case:

> When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: **(1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case**.[61] (Emphasis added.)

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[61] *Hon. Luis Mario M. General v. Hon. Alejandro S. Urro*, G.R. No. 191560, March 29, 2011, citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632 (2000).

Thus, when it comes to the exercise of the power of judicial review, the constitutional issue should be the very *lis mota*, or threshold issue, of the case, and that it should be raised by either of the parties. These requirements would be ignored under the dissent's rather overreaching view of how this case should have been decided. True, it was the Court that asked the parties to comment, but the Court cannot be the one to raise a constitutional issue. Thus, the Court chooses to once more exhibit restraint in the exercise of its power to pass upon the validity of a law.

Re: the COA's Jurisdiction

Regarding the COA's jurisdiction over the BSP, Section 8 of its amended charter allows the BSP to receive contributions or donations from the government. Section 8 reads:

> Section 8. **Any donation or contribution which from time to time may be made to the Boy Scouts of the Philippines by the Government or any of its subdivisions, branches, offices, agencies or instrumentalities shall be expended by the Executive Board in pursuance of this Act.**

The sources of funds to maintain the BSP were identified before the House Committee on Government Enterprises while the bill was being deliberated, and the pertinent portion of the discussion is quoted below:

> MR. ESCUDERO. Yes, Mr. Chairman. The question is the sources of funds of the organization. First, Mr. Chairman, the Boy Scouts of the Philippines do not receive annual allotment from the government. The organization has to raise its own funds through fund drives and fund campaigns or fund raising activities. Aside from this, we have some revenue producing projects in the organization that gives us funds to support the operation. x x x From time to time, Mr. Chairman, when we have special activities we request for assistance or financial assistance from government agencies, from private business and corporations, but this is only during special activities that the Boy Scouts of the Philippines would conduct during the year. Otherwise, we have to raise our own funds to support the organization.[62]

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[62] Committee on Government Enterprises, February 13, 1991, p. 16.

The nature of the funds of the BSP and the COA's audit jurisdiction were likewise brought up in said congressional deliberations, to wit:

HON. AQUINO: x x x Insofar as this organization being a government created organization, in fact, a government corporation classified as such, are your funds or your finances subjected to the COA audit?

MR. ESCUDERO: Mr. Chairman, we are not. Our funds is not subjected. We don't fall under the jurisdiction of the COA.

HON. AQUINO: All right, but before were you?

MR. ESCUDERO: No, Mr. Chairman.

MR. JESUS: May I? As historical backgrounder, Commonwealth Act 111 was written by then Secretary Jorge Vargas and before and up to the middle of the Martial Law years, the BSP was receiving a subsidy in the form of an annual… a one draw from the Sweepstakes. And, this was the case also with the Girl Scouts at the Anti-TB, but then this was… and **the Boy Scouts then because of this funding partly from government was being subjected to audit in the contributions being made in the part of the Sweepstakes.** But this was removed later during the Martial Law years with the creation of the Human Settlements Commission. So the situation right now is that the Boy Scouts does not receive any funding from government, but then in the case of the local councils and this legislative charter, so to speak, enables the local councils even the national headquarters in view of the provisions in the existing law to receive donations from the government or any of its instrumentalities, which would be difficult if the Boy Scouts is registered as a private corporation with the Securities and Exchange Commission. Government bodies would be estopped from making donations to the Boy Scouts, which at present is not the case because there is the Boy Scouts charter, this Commonwealth Act 111 as amended by PD 463.

x x x x x x x x x

HON. AMATONG: Mr. Chairman, in connection with that.

THE CHAIRMAN: Yeah, Gentleman from Zamboanga.

HON. AMATONG: There is no auditing being made because there's no money put in the organization, but how about donated funds to

this organization? What are the remedies of the donors of how will they know how their money are being spent?

MR. ESCUDERO: May I answer, Mr. Chairman?

THE CHAIRMAN: Yes, gentleman.

MR. ESCUDERO: The Boy Scouts of the Philippines has an external auditor and by the charter we are required to submit a financial report at the end of each year to the National Executive Board. So all the funds donated or otherwise is accounted for at the end of the year by our external auditor. In this case the SGV.[63]

Historically, therefore, the BSP had been subjected to government audit in so far as public funds had been infused thereto. However, this practice should not preclude the exercise of the audit jurisdiction of COA, clearly set forth under the Constitution, which pertinently provides:

Section 2. (1) **The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters,** and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations with original charters and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law of the granting institution to submit to such audit as a condition of subsidy or equity. x x x.[64]

Since the BSP, under its amended charter, continues to be a public corporation or a government instrumentality, we come to the inevitable conclusion that it is subject to the exercise by

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[63] *Id.* at 37-39.

[64] 1987 Constitution, Article IX (D).

the COA of its audit jurisdiction in the manner consistent with the provisions of the BSP Charter.

WHEREFORE, premises considered, the instant petition for prohibition is *DISMISSED*.

SO ORDERED.

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

Carpio, J., see dissenting opinion.

Carpio Morales, Perez, and *Sereno, JJ.*, join *J.* Carpio's dissent.

DISSENTING OPINION

CARPIO, *J.*:

I dissent.

The Boy Scouts of the Philippines (BSP) is neither a government-owned or controlled corporation nor a government instrumentality subject to the Commission on Audit's (COA) jurisdiction. The BSP is a private, non-stock, and non-profit corporation beyond the COA's audit jurisdiction.

I.
COA's Audit Jurisdiction

Section 2(1), Article IX-D of the Constitution provides for COA's audit jurisdiction, as follows:

> SECTION 2. (1) The Commission on Audit shall have the power, authority and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such

non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

Based on this Constitutional provision, the COA exercises jurisdiction on a pre-audit basis over the (1) Government, (2) any of its subdivisions, (3) agencies, (4) instrumentalities, and (5) GOCCs with original charters.

The COA also has jurisdiction on a post-audit basis over (1) constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; (2) autonomous state colleges and universities; (3) other GOCCs[1] and their subsidiaries; and (4) non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity.

Hence, if an entity is properly identified and categorized as among those enumerated in Section 2(1), Article IX-D of the Constitution, then the COA can indisputably "examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property" of that particular entity.

II.
History of the BSP

The Boy Scouts of the Philippines began in 1923 with the establishment of the Philippine Council of the Boy Scouts of

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[1] These are GOCCs without original charters which refer to corporations created under the Corporation Code but are owned or controlled by the government. (*Feliciano v. Commission on Audit,* 464 Phil. 439 [2004])

America, when the Philippines was an American possession at the time.[2]

On 31 October 1936, the Philippine National Assembly enacted Commonwealth Act No. 111, or *An Act to Create a Public Corporation to be Known as the Boy Scouts of the Philippines, and to Define its Powers and Purposes*, the pertinent provisions of which read:

Section 1. J. E. H. Stevenot, A. N. Luz, C. P. Romulo, Vicente Lim, Manuel Camus, Jorge B. Vargas, and G. A. Daza; all of Manila, Philippines, their associates and successors, are hereby created a body corporate and politic in deed and in law, by the name, style and title of "Boy Scouts of the Philippines" (hereinafter called the corporation). x x x

Section 3. The purpose of this corporation shall be to promote, through organization, and cooperation with other agencies, the ability of boys to do things for themselves and others, to train them in scoutcraft, and to teach them patriotism, courage, self-reliance, and kindred virtues, using the methods which are now in common use by boy scouts.

Section 4. Until such time as the corporation shall have acquired by purchase, gift or other equitable arrangement from and with the Boy Scouts of America all of the existing assets and properties of the aforesaid Boy Scouts of America in the Philippines, it shall carry on its operations in accordance with such arrangements as it may make with said Boy Scouts of America; and the corporation created by this Act shall defray and provide for any debts or liabilities to the discharge of which said assets of the Boy Scouts of America shall be applicable, but said corporation shall have no power to issue certificates of stock or to declare or pay dividends, its objects and purposes being solely of a benevolent character and not for pecuniary profit by its members.

Section 5. The governing body of the said corporation shall consist of an executive board composed of residents of the Philippines. The number, qualifications, and terms of office of members of the executive board shall be prescribed by the by-laws. x x x

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[2] See http://www.mbcenter.org/pub/pdf/notes_history101.pdf (accessed 7 June 2011). See also http://scouts.org.ph/about-scouting/birth-of-bsp/ (accessed 7 June 2011).

On 17 May 1974, then President Ferdinand E. Marcos issued Presidential Decree No. 460, *Amending Certain Provisions of Commonwealth Act No. 111, Otherwise Known as the National Charter of the Boy Scouts of the Philippines.* One of its Whereas clauses reads:

> WHEREAS, recent events have shown that it has become necessary to effect reforms in the organization's structure in order to revitalize and strengthen its operational capabilities, enhance its effectiveness as an instrument to promote the youth development program of the nation, and insure the full and active cooperation, involvement and support of all sectors of the community, public and private; x x x

One of the amendments introduced by PD 460 pertained to the composition of the BSP's governing body. PD 460 reorganized and restructured[3] the BSP's executive board, thus:

> Section II. Section 5 of the said Act is also amended to read as follows:
>
> "The governing body of the said corporation shall consist of a National Executive Board composed of (a) the President of the Philippines or his representative; (b) the charter and life members of the Boy Scouts of the Philippines; (c) the Chairman of the Board of Trustees of the Philippine Scouting Foundation; (d) the Regional Chairman of the Scout Regions of the Philippines; (e) the Secretary of Education and Culture, the Secretary of Social Welfare, the Secretary of Labor, the Secretary of Finance, the Secretary of Youth and Sports, and the Secretary of Local Government and Community Development; (f) an equal number of individuals from the private sector; (g) the National President of the Girl Scouts of the Philippines; (h) one Scout of Senior age from each Scout Region to represent the boy membership;

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[3] Section V. The same Act is further amended by adding the following section immediately after Section 10:

"Until such time as the reorganization and restructuring of the Executive Board, in accordance with Section 5 as amended is effected, the Honorable Carlos P. Romulo, Chairman of the Golden Jubilee Board and one of the founders of the Organization and a charter member thereof, is hereby appointed Interim Chairman of the Board and President of the Organization and authorized to organize an interim body to conduct the affairs of the Boy Scouts of the Philippines and to take the necessary steps to effect such reorganization within six (6) months from date of this decree."

and (i) three representatives of the cultural minorities. **Except for the Regional Chairman who shall be elected by the Regional Scout Councils during their annual meetings, and the Scouts of their respective regions, all members of the National Executive Board shall be either by appointment or cooption, subject to ratification and confirmation by the Chief Scout, who shall be the Head of the State. Vacancies in the Executive Board shall be filled by a majority vote of the remaining members, subject to ratification and confirmation by the Chief Scout.** The by-laws may prescribe the number of members of the National Executive Board necessary to constitute a quorum of the board, which number may be less than a majority of the whole number of the board. The National Executive Board shall have power to make and to amend the by-laws, and, by a two-thirds vote of the whole board at a meeting called for this purpose, may authorize and cause to be executed mortgages and liens upon the property of the corporation.

x x x x x x x x x" (Emphasis supplied)

On 6 December 1991, then President Corazon C. Aquino, pursuant to her delegated legislative authority under Section 22 of Proclamation No. 50, issued Executive Order No. 495 converting the BSP, together with the Philippine Shippers' Council and the Girl Scouts of the Philippines, into a private corporation. However, on 4 March 1992, President Aquino issued Executive Order No. 509 revoking the dissolution and conversion of the BSP into a private corporation, and restored Commonwealth Act No. 111 and PD 460 prior to their repeal under EO 495.

On 24 March 1992, Republic Act No. 7278, further amending Commonwealth Act No. 111, as amended by PD 460, was enacted. Aimed at strengthening the volunteer and democratic character of the BSP, RA 7278 amended the composition of BSP's governing body by drastically reducing the number of Cabinet secretaries in the National Executive Board, to wit:

SEC. 3. Sections 5, 6, 7 and 8 of Commonwealth Act No. 111, as amended, are hereby amended to read as follows:

"SEC. 5. The governing body of the said corporation shall consist of a National Executive Board, the members of which shall be Filipino

citizens of good moral character. The Board shall be composed of the following:

"(a) One (1) charter member of the Boy Scouts of the Philippines who shall be elected by the members of the National Council at its meeting called for this purpose;

"(b) The regional chairmen of the scouts regions who shall be elected by the representatives of all the local scouts councils of the region during its meeting called for this purpose: Provided, That a candidate for regional chairman need not be the chairman of a local scout council;

"(c) The Secretary of Education, Culture and Sports;

"(d) The National President of the Girl Scouts of the Philippines;

"(e) One (1) senior scout, each from Luzon, Visayas and Mindanao areas, to be elected by the senior scout delegates of the local scout councils to the scout youth forums in their respective areas, in its meeting called for this purpose, to represent the boy scout membership;

"(f) Twelve (12) regular members to be elected by the members of the National Council in its meeting called for this purpose;

"(g) At least ten (10) but not more than fifteen (15) additional members from the private sector who shall be elected by the members of the National Executive Board referred to in the immediately preceding paragraphs (a), (b), (c), (d), (e) and (f) at the organizational meeting of the newly reconstituted National Executive Board which shall be held immediately after the meeting of the National Council wherein the twelve (12) regular members and the one (1) charter member were elected.

x x x x x x x x x"

III.
The ruling in BSP v. NLRC

The COA relies on the Court's ruling in *Boy Scouts of the Philippines v. National Labor Relations Commission*,[4] promulgated on 22 April 1991, declaring the BSP both a GOCC

[4] G.R. No. 80767, 22 April 1991, 196 SCRA 176.

and a government instrumentality[5] within the meaning of Section 2(1) of Article IX-B of the Constitution[6] based on the following criteria:

> Firstly, BSP's functions as set out in its statutory charter do have a public aspect. BSP's functions do relate to the fostering of the public virtues of citizenship and patriotism and the general improvement of the moral spirit and fiber of our youth.
>
> x x x x x x x x x
>
> The second aspect that the Court must take into account relates to the governance of the BSP. The composition of the National Executive Board of the BSP includes x x x seven (7) Secretaries of Executive Departments. x x x We must note at the same time that the appointments of members of the National Executive Board, except only the appointments of the Regional Chairman and Scouts of Senior age from the various Scout Regions, are subject to ratification and confirmation by the Chief Scout, who is the President of the Philippines. x x x It does appear therefore that **there is substantial governmental (*i.e.*, Presidential) participation or intervention in the choice of the majority of the members of the National Executive Board of the BSP.**
>
> The third aspect relates to the character of the assets and funds of the BSP. The original assets of the BSP were acquired by purchase or gift or other equitable arrangement with the Boy Scouts of America, of which the BSP was part before the establishment of the Commonwealth of the Philippines. x x x **In this respect, the BSP appears similar to private non-stock, non-profit corporations, although its charter expressly envisages donations and**

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[5] Section 2(10) of the Administrative Code of 1987 defines an instrumentality as "any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations."

[6] Sec. 2(1). The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

contributions to it from the Government and any of its agencies and instrumentalities.[7] (Emphasis supplied)

IV.
Republic Act No. 7278 reduced the number of Cabinet secretaries in the BSP governing body.

When PD 460, amending Commonwealth Act No. 111, was issued by then President Marcos, the President of the Philippines and six Cabinet Secretaries were among the members of the BSP's National Executive Board. The President even had the final say on the private sector representation in the BSP's governing body.[8] The leadership of the BSP was virtually under the Office of the President.

With the enactment of RA 7278, only one Cabinet Secretary, that is, the Secretary of Education, remains a member of the BSP's National Executive Board. The BSP relies on this drastic change in the composition of its governing body for its claim that the BSP is not a GOCC subject to COA's audit jurisdiction. According to the BSP, **"RA 7278 took out the element of government control, which is akin to privatization. It follows then that the finding in *BSP v. NLRC* that the BSP is a GOCC with original charter no longer holds water."** RA 7278 was enacted after *BSP v. NLRC*.

V.
The BSP is not a GOCC.

1. Control test

In *Feliciano v. Commission on Audit*,[9] the Court declared that the determining factor of COA's audit jurisdiction is **government ownership or control** of the corporation. Citing *Philippine Veterans Bank Employees Union-NUBE v. Philippine*

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[7] *Supra* at 184-186.

[8] http://www.mbcenter.org/history/p9_martiallaw.php (accessed 7 June 2011).

[9] 464 Phil. 439 (2004).

Veterans Bank,[10] the Court held in *Feliciano* that the **criterion of ownership and control is more important than the issue of original charter**, thus:

> This point is important because the Constitution provides in its Article IX-B, Section 2(1) that "the Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." **As the Bank is not owned or controlled by the Government although it does have an original charter in the form of R.A. No. 3518, it clearly does not fall under the Civil Service and should be regarded as an ordinary commercial corporation**. Section 28 of the said law so provides. The consequence is that the relations of the Bank with its employees should be governed by the labor laws, under which in fact they have already been paid some of their claims.[11] (Emphasis supplied)

Employing the test laid down in *Feliciano* in determining COA's jurisdiction, we find that the BSP is not a GOCC.

A. The government does not own the BSP.

Under Section 2(13) of the Revised Administrative Code,[12] a GOCC refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock.

Under the above definition, a GOCC must be **owned** or **controlled** by the government, and in the case of a stock corporation, at least a majority of its capital stock must be owned by the government. In the case of a non-stock corporation, by analogy, at least a majority of the members must be

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[10] G.R. Nos. 67125 and 82337, 24 August 1990, 189 SCRA 14, 30.

[11] *Feliciano v. Commission on Audit, supra* at 462.

[12] Executive Order No. 292. Effective on 25 July 1987.

government officials holding such membership by appointment or designation by the government.[13]

In this case, the BSP is a non-stock and non-profit organization composed **almost entirely of members coming from the private sector**, more particularly boys ranging from ages four (known as KID Scouts) to seventeen (known as SENIOR Scouts). The BSP is one of the largest Scout organizations in the world today (after Gerakan Pramuka of Indonesia and the Boy Scouts of America, first and second, respectively) and is one of the world's National Scout Associations having the highest penetration rate (Scout density), with one Scout out of two boys of Scouting age enrolled in the Scouting program.[14] Since the BSP is composed almost entirely of members and officers from the private sector, the BSP is clearly not owned by the government.

B. The government does not control the BSP.

Prior to RA 7278, the President of the Philippines and six Cabinet Secretaries were among the members of the National Executive Board. According to Senator Jose A. Lina during the Senate deliberations on RA 7278, "the [voluntary] character and the nongovernmental character of the Boy Scouts of the Philippines was altered" by the old law, thus necessitating its amendment. **More importantly, prior to RA 7278, the appointment of "all other members of the governing board, except the elected regional chairmen and senior scout representatives, were made subject to the ratification and confirmation of the President of the Philippines."**[15] There is therefore no doubt that prior to RA 7278, the government had effective control of the structure and membership of the National Executive Board. However, as clearly intended in RA

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[13] *Liban v. Gordon*, G.R. No. 175352, 15 July 2009, 593 SCRA 68, 88.

[14] See http://scouts.org.ph/about-scouting/bsps-pride/?replytocom=31 (accessed 7 June 2011).

[15] *Id.*

7278, the government lost control over the BSP to the private sector upon the effectivity of RA 7278.

In *Feliciano*,[16] we found that local water districts (LWDs) were GOCCs considering that, among other factors, "the government controls LWDs because under PD 198 the municipal or city mayor, or the provincial governor, appoints all the board directors of an LWD for a fixed term of six years. x x x LWDs have no private stockholders or members. The board of directors and other personnel of LWDs are government employees subject to civil service laws and anti-graft laws." In other words, where the government appoints at least a majority of the members of the board of directors of an entity, such entity is undoubtedly under the control of the government. Likewise, if the government has the power to fill up at least a majority of the vacancies in the governing body of an entity, then such an entity is definitely government controlled.[17]

The foregoing circumstances manifesting government control over an entity are wanting in BSP's case under RA 7278.

As pointed out by the BSP, under RA 7278 only one Cabinet Secretary remains a member of the National Executive Board, as opposed to the previous composition where the President of the Philippines and six cabinet secretaries were members of the same board. To repeat, the National Executive Board is presently composed of (1) a charter member of the BSP; (2) the regional chairmen of the scouts regions; (3) the Secretary of Education, Culture and Sports; (4) National President of the Girl Scouts of the Philippines; (5) a senior scout, one each from Luzon, Visayas and Mindanao; (6) twelve regular members to be elected by the members of the National Council; (7) at least ten but not more than fifteen additional members from the private sector. **Significantly, the lone cabinet member, who is the Education Secretary, merely**

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[16] *Supra* note 9.

[17] See *City of Baltimore Development Corp. v. Carmel Realty Associates,* 395 Md. 299, 910 A.2d 406 Md.,2006.

serves as an *ex-officio* member.[18] Meanwhile, the President of the Philippines is no longer a member of the National Executive Board and simply acts as the Chief Scout of the BSP. **Except for the Education Secretary, none of the other members of the National Executive Board is a government official or holds such position or membership through appointment or designation by the government**. Moreover, the government lacks the power to fill up vacancies in the National Executive Board of the BSP or remove any of its members. In fact, "vacancies in the National Executive Board shall be filled by a majority vote of the remaining members."[19] **This structural set-up and membership of BSP's governing body under RA 7278, where all except one come from the private sector, glaringly negate any form of government control over the BSP.**

Moreover, if the BSP is a GOCC, as what the COA insists, then it must be under the President's power of control. In *Rufino v. Endriga*,[20] which involved "the battle for Cultural Center of the Philippines' (CCP) leadership between the Rufino and Endriga groups," the Court explained exhaustively the President's power of control, thus:

> Under our system of government, all Executive departments, bureaus, and offices are under the control of the President of the Philippines. Section 17, Article VII of the 1987 Constitution provides:
>
> > The President shall have **control of all the executive departments, bureaus, and offices.** He shall ensure that the laws be faithfully executed. (Emphasis supplied)
>
> The presidential power of control over the Executive branch of government extends to all executive employees from the Department

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[18] As stated by Senator Jose Lina during the Senate deliberations before the passage of RA 7278, "the *ex-officio* members are the Secretary of the Department of Education, Culture and Sports and the President of the Girl Scouts of the Philippines." (Record of the Senate, Vol. II, No. 44, p. 1532).

[19] Section 5, RA 7278.

[20] G.R. No. 139554, 21 July 2006, 496 SCRA 13.

Secretary to the lowliest clerk. This constitutional power of the President is self-executing and does not require any implementing law. Congress cannot limit or curtail the President's power of control over the Executive branch.

x x x x x x x x x

The President's power of control applies to the acts or decisions of all officers in the Executive branch. This is true whether such officers are appointed by the President or by heads of departments, agencies, commissions, or boards. The power of control means the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of discretion.

In short, the President sits at the apex of the Executive branch, and exercises "control of all the executive departments, bureaus, and offices." There can be no instance under the Constitution where an officer of the Executive branch is outside the control of the President. The Executive branch is unitary since there is only one President vested with executive power exercising control over the entire Executive branch. Any office in the Executive branch that is not under the control of the President is a lost command whose existence is without any legal or constitutional basis.[21]

However, in this case, unlike in CCP's case,[22] there is absolutely nothing which demonstrates that the President of the Philippines exercises control over the acts or decisions of the BSP's National Executive Board or any of its members.[23] The President does not have the power to alter or modify or nullify or set aside what the BSP's National Executive Board does in the performance of its duties and to substitute the

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[21] *Id.* at 62-63, 64-65.

[22] CCP is under the supervision of the National Commission for Culture and the Arts, and it is attached to the Office of President. (http://en.wikipilipinas.org/index.php? title=Cultural_Center_of_the_Philippines#Arts_Resident_Companies_of_CCP)

[23] See *Carpio v. Executive Secretary*, G.R. No. 96409, 14 February 1992, 206 SCRA 290.

judgment of the former for that of the latter.[24] The title "Chief Scout" does not confer on the President any power of control over the affairs and management of the BSP. This absence of any form of presidential control reinforces the fact that the government does not control the BSP. In short, the President, while holding the title of "Chief Scout," does not control the BSP.

C. The funds of the BSP are private in nature.

The Court noted in *BSP v. NLRC* that the original assets of the BSP were acquired by purchase or gift or other equitable arrangement with the Boy Scouts of America, of which the BSP was part before the establishment of the Commonwealth of the Philippines. The BSP charter, however, does not indicate that such assets were public or statal in character or had originated from the government. No public capital was invested in the BSP.[25] **According to the BSP, its operating funds used for carrying out its purposes and programs are derived principally from membership dues paid by the Boy Scouts themselves and from property rentals. The BSP does not**

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[24] *Mondano v. Silvosa*, 97 Phil. 143, 147-148 (1955), where the Court stated: "In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."

[25] In *Feliciano*, *supra* note 9, where the Court held that the Local Water Districts are government-owned or controlled corporations, the seed capital assets of the Local Water Districts, such as waterworks and sewerage facilities, were public property which were managed, operated by or under the control of the city, municipality or province before the assets were transferred to the Local Water Districts. The Local Water Districts also receive subsidies and loans from the Local Water Utilities Administration. **There is no private capital invested in the Local Water Districts**. The capital assets and operating funds of the Local Water Districts all come from the government, either through transfer of assets, loans, subsidies or the income from such assets or funds.

have government assets and does not receive any appropriation from Congress. This was revealed during the deliberations in the House of Representatives on RA 7278, thus:

> MR. ESCUDERO. Yes, Mr. Chairman. The question is the sources of funds of the organization. **First, Mr. Chairman, the Boy Scouts of the Philippines do not receive annual allotment from the government. The organization has to raise its own funds through fund drives and fund campaigns or fund raising activities**. Aside from this, we have some revenue producing projects in the organization that gives us funds to support the operation. x x x[26]

Further, BSP's properties are being managed and operated by the BSP itself, not by the government or any of its agencies. Therefore, it is crystal-clear that the funds of the BSP come from private sources. As such, the BSP funds are necessarily beyond the jurisdiction of the COA, which exclusively audits public funds and assets.

D. Public purpose of BSP is not determinative of status.

Indeed, the BSP performs functions which may be classified as public in character, in the sense that it promotes "virtues of citizenship and patriotism and the general improvement of the moral spirit and fiber of our youth." However, this fact alone does not automatically make the BSP a GOCC. Significantly, the Court declared in *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*,[27] **"the fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good."**[28] The Court further held:

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[26] Quoted in Majority Opinion (Committee on Government Enterprises, 13 February 1991, p. 16).

[27] G.R. No. 169752, 25 September 2007, 534 SCRA 112.

[28] *Id.* at 131.

Authorities are of the view that the purpose alone of the corporation cannot be taken as a safe guide, for the fact is that almost all corporations are nowadays created to promote the interest, good, or convenience of the public. A bank, for example, is a private corporation; yet, it is created for a public benefit. Private schools and universities are likewise private corporations; and yet, they are rendering public service. Private hospitals and wards are charged with heavy social responsibilities. More so with all common carriers. On the other hand, there may exist a public corporation even if it is endowed with gifts or donations from private individuals.

The true criterion, therefore, to determine whether a corporation is public or private is found in the totality of the relation of the corporation to the State. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private. Applying the above test, provinces, chartered cities, and *barangays* can best exemplify public corporations. They are created by the State as its own device and agency for the accomplishment of parts of its own public works.[29] (Emphasis supplied)

2. Economic viability test

The Constitution recognizes only two classes of corporations.[30] The first refers to private corporations created under a general law.[31] The second refers to government-owned or controlled corporations created by special charters.[32] Section 16, Article XII of the Constitution provides:

Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of **private corporations. Government-owned or controlled corporations** may be created or established by special charters in the interest of the common good and **subject to the test of economic viability.** (Emphasis supplied)

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[29] *Id.* at 132.

[30] *Feliciano v. Commission on Audit, supra* note 9.

[31] *Id.*

[32] *Id.*

Contrary to this constitutional provision, the majority introduces a totally different species of corporation, which is neither a private corporation nor a government owned or controlled corporation. The majority gravely misses the fact that the BSP, which was created as a non-stock, non-profit corporation, can only be either a private corporation or a government owned or controlled corporation. The Legislature's usage in Commonwealth Act No. 111 of the term "public corporation"[33] to designate the BSP must never be construed as creating an entirely new type of corporation, neither private nor government owned or controlled. Otherwise, such an interpretation will unjustifiably and unlawfully expand the classes of corporations expressly recognized by the Constitution in Section 16, Article XII, putting the new class of corporation outside the coverage of Section 16. In short, such new class of public corporation **created by special charter** will not be subject to the **"test of economic viability,"** a blatant circumvention of the Constitution.

In *Manila International Airport Authority (MIAA) v. Court of Appeals*,[34] where the Court ruled that MIAA is a government instrumentality, the Court explained the importance of the "test of economic viability," in this wise:

> **The Constitution expressly authorizes the legislature to create "government-owned or controlled corporations" through special charters only if these entities are required to meet the twin conditions of common good and *economic viability*.** In other words, **Congress has no power to create government-owned or controlled corporations with special charters unless they are made to comply with the two conditions of common good and economic viability.** The test of economic viability applies only to government-owned or controlled corporations that perform economic or commercial activities and need to compete in the market place. Being essentially economic vehicles of the State for the common good — meaning for economic

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[33] Must not be confused with "public corporations" such as barangay, municipality, city and province, which are also known as political subdivisions.

[34] G.R. No. 155650, 20 July 2006, 495 SCRA 591.

development purposes — these government-owned or controlled corporations with special charters are usually organized as stock corporations just like ordinary private corporations.

x x x **The intent of the Constitution is to prevent the creation of government-owned or controlled corporations that cannot survive on their own in the market place and thus merely drain the public coffers.**

Commissioner Blas F. Ople, proponent of the test of economic viability, explained to the Constitutional Commission the purpose of this test, as follows:

> MR. OPLE: Madam President, the reason for this concern is really that when the government creates a corporation, there is a sense in which this corporation becomes exempt from the test of economic performance. We know what happened in the past. If a government corporation loses, then it makes its claim upon the taxpayers' money through new equity infusions from the government and what is always invoked is the common good. That is the reason why this year, out of a budget of ₱115 billion for the entire government, about ₱28 billion of this will go into equity infusions to support a few government financial institutions. And this is all taxpayers' money which could have been relocated to agrarian reform, to social services like health and education, to augment the salaries of grossly underpaid public employees. And yet this is all going down the drain.
>
> Therefore, when we insert the phrase "ECONOMIC VIABILITY" together with the "common good," this becomes a restraint on future enthusiasts for state capitalism to excuse themselves from the responsibility of meeting the market test so that they become viable. And so, Madam President, I reiterate, for the committee's consideration and I am glad that I am joined in this proposal by Commissioner Foz, the insertion of the standard of "ECONOMIC VIABILITY OR THE ECONOMIC TEST," together with the common good.

Father Joaquin G. Bernas, a leading member of the Constitutional Commission, explains in his textbook The 1987 Constitution of the Republic of the Philippines: A Commentary:

> The second sentence was added by the 1986 Constitutional Commission. The significant addition, however, is the phrase "in the interest of the common good and subject to the test of economic

> viability." The addition includes the ideas that they must show capacity to function efficiently in business and that they should not go into activities which the private sector can do better. Moreover, economic viability is more than financial viability but also includes capability to make profit and generate benefits not quantifiable in financial terms.[35] (Emphasis supplied)

Indisputably, a government owned or controlled corporation created by special charter must necessarily meet the test of economic viability. Otherwise, the creation by Congress of a government owned or controlled corporation not satisfying the test of economic viability clearly runs counter to the express mandate of Section 16, Article XII of the Constitution. **Congress has no power to create government-owned or controlled corporations with special charters unless they are made to comply with the two conditions of common good and economic viability.** To repeat, "government-owned or controlled corporations may be created or established by special charters x x x **subject to the test of economic viability**." Therefore, there can be no "public corporation" or government owned or controlled corporation that cannot be subject to the test of economic viability. In short, the majority's view that BSP is a "public corporation" which does not fall under either of the classifications of corporation recognized under Section 16, Article XII of the Constitution, and consequently not subject to the test of economic viability, is patently erroneous and baseless.

The term "public corporation" refers to a government owned or controlled corporation as referred to in Section 16, Article XII of the Constitution. However, in this case, the usage of the term "public corporation" in Commonwealth Act No. 111 to designate BSP is no longer controlling in determining the real nature of the BSP. **As amended by RA 7278**, Commonwealth Act No. 111 now refers to a corporation owned, managed and controlled by the private sector although the purpose of the corporation remains public.

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[35] *Id.* at 639-641.

The majority theorizes that public corporations are "treated by law as agencies or instrumentalities of the government which are not subject to the tests of ownership or control and economic viability but to different criteria relating to their public purposes/ interests or constitutional policies and objectives and their administrative relationship to the government or any of its Departments or Offices."

This theory finds no basis in law. As the Court emphatically stated in *Philippine Society for the Prevention of Cruelty to Animals*, **"the fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good."**[36] Neither does "administrative relationship to the government" indicate that an entity is an instrumentality within the purview of the COA's audit jurisdiction. Only corporations controlled and owned by the government, which are subject to the test of economic viability, and government instrumentalities, as defined by the Administrative Code, fall under COA's audit jurisdiction. The BSP is neither; hence, it is beyond the COA's audit jurisdiction.

VI.

Neither is the BSP a government instrumentality.

A government instrumentality is defined by the Revised Administrative Code as "any agency of the National Government, not integrated within the department framework vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter." In other words, to be considered a government instrumentality, an entity must be (1) **an agency of the National Government;** (2) outside the department framework of the National Government; (3) **vested with special functions or jurisdiction by law;** (4) endowed with some, if not all, corporate powers;

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[36] *Supra* note 27 at 131.

(5) **administering special funds;** and (6) enjoying operational autonomy.

The BSP is not an agency of the National Government because the BSP is not a unit of the National Government, like a "department, bureau, office, instrumentality or government owned or controlled corporation, or a local government or a distinct unit therein."[37] **There is also no dispute that the BSP does not administer special funds of the government.** While the BSP may receive donations or contributions from the government just like other non-government organizations, the same cannot be characterized as special funds. **Moreover, the BSP is not vested with special functions or jurisdiction *by law*. Hence, the BSP is not a government instrumentality.**

If the BSP is a government instrumentality, the following consequences are inevitable: (1) pursuant to Section 2(1), Article IX-D of the Constitution[38] it will be subject to COA's pre-audit, and not post-audit; (2) it will be subject to the Government Procurement Reform Act or Republic Act No. 9184; and (3) the BSP's officers and employees will be considered government personnel who are (a) subject to Civil Service laws;[39] (b) covered

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[37] Section 1(3) of the Administrative Code of 1987.

[38] Section 2, Article X of the Constitution pertinently provides:

Section 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or **instrumentalities,** including government-owned or controlled corporations with original charters, and on a post- audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. x x x (Emphasis supplied)

[39] Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees." Section 3(a) thereof provides:

by the Government Service Insurance System;[40] (c) subject to the Salary Standardization Law;[41] (d) required to file Statements of Assets, Liabilities and Networth;[42] (e) under the jurisdiction of the Ombudsman;[43] and (f) subject to the control of the President.

Under the Administrative Code of 1987, the BSP is an attached agency of the Department of Education for purposes of policy and program coordination. However, this was changed with

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Section 3. *Definition of Terms.* - As used in this Act, the term:

(a) "Government" includes the National Government, the local governments, and all other instrumentalities, agencies or branches of the Republic of the Philippines including government-owned or controlled corporations, and their subsidiaries.

[40] Section 2 of this law provides:

SEC. 2. *Definition of terms.*- Unless the context otherwise indicates, the following terms shall mean:

x x x x x x x x x

(c) *Employer* - The national government, its political subdivisions, branches, agencies or instrumentalities, including government-owned or controlled corporations, and financial institutions with original charters, the constitutional commissions and the judiciary;

[41] Republic Act No. 6758 entitled "An Act Prescribing A Revised Compensation and Position Classification System in the Government and for Other Puposes."

[42] Section 34 of Executive Order No. 292 or the Administrative Code of 1987 provides:

Sec. 34. Declaration of Assets, Liabilities and Net Worth. - A public officer or employee shall upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth.

[43] Section 13 of RA 6770 provides:

Section 13. *Mandate*. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

the enactment of RA 7278 which removed government control over the BSP. To repeat, the determining factor of COA's audit jurisdiction is government ownership or control. Conversely, without such ownership or control, the BSP is beyond the COA's audit jurisdiction. Surprisingly, the majority states that the BSP "**is not under government control**" although it is an "attached agency" to the Department of Education. Needless to say, the Department of Education and any agency or unit attached to it is under the control of the President pursuant to Section 17, Article VII of the Constitution, which mandates that "**the President shall have control of all the executive departments, bureaus, and offices.**" If a government office, unit, or instrumentality is subject to the control of the President, then it is obviously under government control.

VII.
The BSP is a private, non-stock and non-profit corporation performing public functions.

Scouting is a non-partisan, **non-governmental** worldwide youth movement geared towards the "development of young people in achieving their full physical, mental, social, intellectual and spiritual potentials as individuals, as responsible citizens and as members of their local, national and international communities."[44] Scouting complements the school and the family, filling the needs not met by either.[45] "It belongs to the category of non-formal education since, while it takes place outside the formal educational system, it is an organized institution with an educational aim and is addressed to a specific clientele."[46]

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[44] http://scout.org/en/about_scouting/educational_methods/an_educational_movement_for_young_people (accessed 7 June 2011)

[45] See http://scout.org/en/about_scouting/facts_figures/fact_sheets [Fact sheet - Scouting Is.pdf] (accessed 7 June 2011).

[46] http://scout.org/en/about_scouting/educational_methods/an_educational_movement_for_young_people (accessed 7 June 2011) See also *Boy Scouts of the Phil. v. Araos*, 102 Phil. 1080 (1958).

In *Boy Scouts of America v. Dale*,[47] which involved a suit for reinstatement and damages filed by an Assistant scoutmaster, who was expelled after he publicly declared he was homosexual, against Boy Scouts of America (BSA), the Supreme Court of the United States stated that **"the Boy Scouts is a private, not-for-profit organization engaged in instilling its system of values in young people."**

The fact that the BSP, like the BSA, is a private, non-stock, non-profit corporation is consistent with the clear intent of the Legislature in enacting RA 7278. The following exchanges during the deliberations in the Senate on RA 7278 reveal **the intent of the Legislature to restore the non-governmental and private character of the BSP**, thus:

SPONSORSHIP SPEECH OF SENATOR LINA

Senator Lina. Thank you, Mr. President.

The measure before us this evening, Senate Bill No. 132, seeks to strengthen the nature of Scouting, restore the democratic and nongovernmental process to the movement, and provide a framework of leadership which shall give direction and purpose to the two million boys and young men, ages seven to 17. Representatives of the vital group of our youth were here this afternoon, waiting that this bill be sponsored today.[48]

x x x x x x x x x

Senator Lina. Before I answer that question, Mr. President, originally, t**he boy scouting movement in this country is intrinsically democratic and its strength derives from the efforts of the nongovernmental sector. The Constitution of the movement declares that it is independent, voluntary, nonpolitical, nonsectarian, and nongovernmental.** The local and national leadership of the Boys Scout Movement, from its inception up to 1974, when it was amended by Presidential Decree No. 460, came from elected members of local councils, volunteers who have worked

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[47] 530 U.S. 640, 120 S.Ct. 2446, U.S.N.J., 2000.

[48] Record of the Senate, Vol. II, No. 43, p. 1502.

for many years of their lives for the development of young boys so that they will learn and heed the scout oath and law.

However, Mr. President, in May 1974, this character of the local boy scouting movement was altered because the old dispensation issued a Presidential Decree which included in the membership of the governing board the President of the Philippines and seven Members of the Cabinet. That was the major change in Commonwealth Act No. 111.

So, the President of the Philippines and seven Cabinet Members were included and institutionalized as members of the governing body of the Boy Scouts of the Philippines. So, the nonvoluntary [sic] character and the nongovernmental character of the Boy Scouts of the Philippines was altered. Not only that.

All other members of the governing board, except the elected regional chairmen and senior scout representatives were made subject to the ratification and confirmation of the President of the Philippines. So, *iyon po ang naging* major amendment *na inistrodyus ng* PD No. 460. And as a result of this, *marami po ang na*-discourage *sa* boy scouting movement, *sapagkat dati-rati talagang* democratic *iyan*, *walang* so much imposition from government and its officials. Also, as a result of PD No. 460, the voluntary character of the boy scouting movement was changed. *Halos naging gobyerno*, and imagine, the dictatorial character of that previous Government was transferred to the Boy Scouts of the Philippines, *kasi* the members of the governing board have to be subjected to confirmation by the President. So, *napulitika rin po iyong* boy scouting the movement.

Ngayon, ang ginagawa po natin, basically, is to remove this undemocratic feature of the law creating the Boy Scouts, and also to remove from the Constitution of the present Boy Scouts of the Philippines the other features that make the boy scouting movement now undemocractic.

Senator Guingona. The intent of this bill is to make more democratic the membership in the Boy Scouts of the Philippines.

Senator Lina. Well, **to lessen government direct interference**.[49]

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[49] Record of the Senate, Vol. II, No. 44, pp. 1529-1530.

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Senator Lina. x x x

Noong araw ay mas aktibo ang boy scouting movement. *Pero noong* 1974, when Presidential Decree was issued by the then President amending Commonwealth Act No. 111, *iyon pong* National Executive Board, the governing body, *ay napasukan ng halos pitong* Cabinet Members. *Dari-rati po, wala iyon. Iyon po lamang* Department of Education, Culture and Sports and *kasama sa* Boy Scouts of the Philippines. *Kung sino ang* Secretary, *iyon ang nagiging ex officio* or institutionalized member. *Pero, nang madagdagan ito ng miyembro mula sa* Department of National Defense, from the other departments, *pati* DSWD, *naging* government *halos ang* character *nito. Nawala na iyong* spirit of voluntarism. Since the Cabinet Members are busy doing other things, *hindi po ito nabigyan ng gaanong pansin kung kaya nag*-deteriorate *nang malaki ang* scouting movement of the Philippines. *Ngayon lamang po ito nare*-revive, because Secretary Carino is the President. Right now he is very much involved. He as president before he became the Secretary of Education, Culture and Sports. Under his leadership, things are shaping up. There is greater recruitment and more activities.

Senator Romulo. ***Kaya po, mahalaga ang*** **bill** ***na ito, sapagkat ibinabalik natin ito sa*** **private sector** *at nang sa ganoon, gaya noong nakaraan,* **this is more conducive to voluntarism and therefore, to the growth of the Boy Scout movement.**

Senator Lina. *Opo.*[50] (Emphasis supplied)

There is no question that RA 7278 was enacted precisely to remove government control and return the BSP to the private sector and to its non-governmental status. In other words, the government lost control over the BSP to the private sector upon the effectivity of RA 7278. The absence of government control or ownership, coupled with the private nature of BSP funds, makes the BSP a private corporation beyond the audit jurisdiction of the COA. Clearly, the attributes of BSP's

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[50] Record of the Senate,Vol. II, No. 46, p. 1592.

relationship with the State that point to its being a private non-stock corporation are overwhelming and irrefutable.[51]

VIII.
Constitutionality of BSP charter, as amended

Since the BSP is not a GOCC, can Congress create, organize and regulate the BSP by enacting its charter, or Commonwealth Act No. 111, as amended by PD 460 and further amended by RA 7278?

The answer is in the negative.

Section 7, Article XIV of the 1935 Constitution, as amended, was in force when the BSP was created by special charter on 31 October 1936. Section 7, Article XIV of the 1935 Constitution, as amended, reads:

> SEC. 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.

The subsequent 1973 and 1987 Constitutions contain similar provisions. Thus, Section 4, Article XIV of the 1973 Constitution provides:

> SEC. 4. The National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.

The 1987 Constitution substantially reiterated the above provision in Section 16, Article XII, to wit:

> SEC. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

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[51] See *Napata v. University of Maryland Medical System Corp*., 417 Md. 724, 12 A.3d 144 Md.,2011.

In *Feliciano*,[52] the Court discussed the significance of the above Constitutional provision in this wise:

> The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens. **The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens.**
>
> **In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law.** Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives.
>
> The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled. (Emphasis supplied)

While both BSP and COA submit that Commonwealth Act No. 111 and its amendatory laws do not violate Section 16, Article XII of the Constitution, the Court should reject such contention. Considering that the BSP is not a GOCC, it follows that the law creating and regulating the BSP clearly violates Section 16, Article XII of the Constitution which specifically states that "Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations," unless such corporations are owned or controlled by the Government or any of its subdivision or instrumentality.

In this case, the Court directed the parties to comment on the issue of the constitutionality of Commonwealth Act No. 111, as amended. This is precisely because the constitutionality of Commonwealth Act No. 111, as amended, is inextricably

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[52] *Supra* note 9 at 454-455.

linked to the issue of whether the BSP is subject to COA's audit jurisdiction, which in turn depends on whether the BSP is a private or a government owned or controlled corporation. Hence, this issue was properly addressed and exhaustively argued upon by the parties.

That the parties did not specifically raise the issue on the constitutionality of Commonwealth Act No. 111, as amended, does not preclude this Court from resolving such issue since it is absolutely indispensable for the complete disposition of this case. In fact, in exceptional cases, such as this, it is within the Court's discretion when a constitutional issue may be ruled upon. It is likewise the duty of this Court to pass upon the constitutionality of Commonwealth Act No. 111, as amended, since it clearly appears that **a determination of the constitutional question is necessary to decide this case.** In *People v. Vera*,[53] the Court held:

> It is true that, as a general rule, the question of constitutionality must be raised at the earliest opportunity, so that if not raised by the pleadings, ordinarily it may not be raised at the trial, and if not raised in the trial court, it will not considered on appeal. But we must state that the general rule admits of exceptions. **Courts, in the exercise of sounds (sic) discretion, may determine the time when a question affecting the constitutionality of a statute should be presented.** Thus, in criminal cases, although there is a very sharp conflict of authorities, it is said that the question may be raised for the first time at any stage of the proceedings, either in the trial court or on appeal. Even in civil cases, it has been held that **it is the duty of a court to pass on the constitutional question, though raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case.**

Unless, therefore, the constitutional question is thus timely raised and presented, it will be considered waived, except in extraordinary cases noted in *People and Hongkong & Shanghai Banking Corporation vs. Vera and Cu Unjieng, supra,* or **in exceptional cases where, the opinion of this court, the question may be said to be fairly involved**

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[53] 65 Phil. 56, 88 (1935).

upon the face of the undisputed record. (Emphasis supplied; citations omitted)

In *Robb v. People*,[54] the Court reiterated:

Unless, therefore, the constitutional question is thus timely raised and presented, it will be considered waived, except in extraordinary cases noted in *People and Hongkong & Shanghai Banking Corporation vs. Vera and Cu Unjieng, supra,* or **in exceptional cases where, the opinion of this court, the question may be said to be fairly involved upon the face of the undisputed record.** (Emphasis supplied)

In *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*,[55] this Court held that constitutional challenge can be made anytime:

That the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same. (Emphasis supplied)

The Constitution prohibits the creation of a private corporation through a special law. The Constitutional prohibition under Section 16, Article XII is clear, categorical, absolute, and admits of no exception. Since the BSP is a private corporation and not a government owned or controlled corporation, Sections 1,[56] 2,[57]

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[54] 68 Phil. 320, 326 (1939).

[55] G.R. No. 149719, 21 June 2007, 525 SCRA 198, 204.

[56] Section 1. J. E. H. Stevenot, A. N. Luz, C. P. Romulo, Vicente Lim, Manuel Camus, Jorge B. Vargas, and G. A. Daza; all of Manila, Philippines, their associates and successors, are hereby created a body corporate and politic in deed and in law, by the name, style and title of "Boy Scouts of the Philippines" (hereinafter called the corporation). The principal office of the corporation shall be in Metropolitan Manila, Philippines.

[57] Section 2. The said corporation shall have the powers of perpetual succession, to sue and be sued; to enter into contracts; to acquire, own, lease, convey and dispose of such real and personal estate, land grants, rights and choses in action as shall be necessary for corporate purposes, and to accept and receive funds, real and personal property by gift, devise, bequest or other means, to conduct fund-raising activities; to adopt and use

3,[58] 5,[59] 6,[60] 7,[61] 9,[62] and 11[63] of Commonwealth Act No. 111, as amended, are unconstitutional, and hence void, for

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a seal, and the same to alter and destroy; to have offices and conduct its business and affairs in Metropolitan Manila and in the regions, provinces, cities, municipalities, and barangays of the Philippines, to make and adopt by-laws, rules and regulations not inconsistent with this Act and the laws of the Philippines, and generally to do all such acts and things, including the establishment of regulations for the election of associates and successors, as may be necessary to carry into effect the provisions of this Act and promote the purpose of said corporation: Provided, That said corporation shall have no power to issue certificates of stock or to declare or pay dividends, its objectives and purposes being solely of benevolent character and not for pecuniary profit of its members.

[58] Section 3. The purpose of this corporation shall be to promote through organization and cooperation with other agencies, the ability of boys to do useful things for themselves and others, to train them in scoutcraft, and to inculcate in them patriotism, civic consciousness and responsibility, courage, self-reliance, discipline and kindred virtues, and moral values, using the method which are in common use by boy scouts.

[59] Section 5. The governing body of the said corporation shall consist of a National Executive Board, the members of which shall be Filipino citizens of good moral character. The Board shall be composed of the following:

(a) One (1) charter member of the Boy Scouts of the Philippines who shall be elected by the members of the National Council at its meeting called for this purpose;

(b) The regional chairmen of the scouts regions who shall be elected by the representatives of all the local scout councils of the region during its meeting called for this purpose: Provided, That a candidate for regional chairman need not be the chairman of a local scout council;

(c) The Secretary of Education, Culture and Sports;

(d) The National President of the Girl Scouts of the Philippines;

(e) One (1) senior scout, each from Luzon, Visayas and Mindanao areas, to be elected by the senior scout delegates of the local scout councils to the scout youth forums in their respective areas, in its meeting called for this purpose, to represent the boy scout membership;

(f) Twelve (12) regular members to be elected by the members of the National Council in its meeting called for this purpose;

(g) At least ten (10) but not more than fifteen (15) additional members from the private sector who shall be elected by the members of the National Executive Board referred to in the immediately preceding paragraphs (a),

contravening the Constitutional proscription against the creation, organization, and regulation of private corporations by Congress.

(b), (c), (d), (e) and (f) at the organizational meeting of the newly reconstituted National Executive Board which shall be held immediately after the meeting of the National Council wherein the twelve (12) regular members and the one (1) charter member were elected.

Thereafter, the National Executive Board as herein fully constituted shall elect from among themselves the following officers of the corporation:

(a) President;

(b) Senior Vice-President;

(c) One (1) Vice-President each from Luzon, Visayas and Mindanao areas; and

(d) Such other officers as the Board may deem necessary.

The numerical composition of the National Executive Board shall be provided for in the by-laws of the Boy Scouts of the Philippines: Provided, That said numerical composition shall be at least thirty (30) and not more than forty-five (45) for all elected, life and *ex officio* members.

The term of office of the members of the National Executive Board shall be one (1) year, except for the regular members to be elected by the National Council whose term of office shall be three (3) years: Provided, That for the first twelve (12) regular members to be elected by the National Council, the term of office shall be as follows: the members garnering the first four (4) highest number of votes shall serve for a term of three (3) years; the member garnering the second four (4) highest number of votes shall serve for a term of two (2) years; and the members garnering the last four (4) number of votes shall serve for a term of one (1) year.

Vacancies in the National Executive Board shall be filled by a majority vote of the remaining members and a member thus elected shall serve only for the unexpired term.

The by-laws may prescribe the number of members of the National Executive Board necessary to constitute a quorum of the Board, which number shall not be less than the majority of the entire membership of the Board.

The National Executive Board shall exercise the following powers and functions:

(a) To make and to amend the by-laws subject to the ratification by a majority vote of the members present at a meeting of the National Council or at a special meeting called for this purpose;

(b) To authorize and caused to be executed mortgages and liens upon the property of the corporation by a two-thirds (2/3) vote of the whole Board at a meeting called for this purpose;

(c) To designate five (5) or more their number to constitute an executive or governing committee, of which a majority shall constitute a quorum, through a resolution passed by majority of the whole Board. Such Committee, to the extent provided in said resolution or in the by-laws of the corporation, shall have and exercise the powers of the National Executive Board in the management of the business affairs of the corporation, and may have the power to authorize the seal of the corporation to be affixed to all papers which may require it;

(d) To create standing committees and appoint the chairman and members thereof from among themselves by the affirmative vote of a majority of the whole Board. Such standing committees shall exercise such powers as may be authorized by the by-laws;

(e) To dispose in any manner a part or the whole property of the corporation with the consent in writing and pursuant to an affirmative vote of two-thirds (2/3) of the members of the National Council; and

(f) To hold regular meetings at least once every two (2) months at a time and place to be designated in the by-laws. Special meetings of the Board may be called upon such notice as may be prescribed in the by-laws.

[60] Section 6. The National Council shall be composed of the following members:

(a) The members of the National Executive Board;

(b) The charter members;

(c) The regional commissioners;

(d) The chairmen and commissioners of all local scout councils; and

(e) Other duly accredited delegates of local scout councils as may be provided in the by-laws.

The qualifications, terms of office, and the manner of electing the abovementioned members of the National Council shall be prescribed in the by-laws of the corporation.

The numerical composition of the National Council shall be provided for in the by-laws of the Boy Scouts of the Philippines: Provided, That all regions and all local councils shall be duly represented therein by at least two (2) duly accredited delegates, in addition to those who are members of the National Executive Board as provided for under Section 5 of this Act.

The annual meeting of the National Council shall be held at such time and place as shall be prescribed in the by-laws, at which meeting the annual reports of the officers of the National Executive Board shall be presented and the election of members to the National Executive Board.

Special meetings of the National Council may be called upon such notice as may be prescribed in the by-laws. One-third (1/3) of the members of the

The rest of the provisions, namely, Sections 4,[64] 8,[65] and

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National Council shall constitute a quorum to do business at any annual or special meeting. The National Council and the National Executive Board shall have the power to hold their meetings and keep the seal, books, documents, and papers of the corporation within or without the Metropolitan Manila.

The National President of the corporation shall preside over the meetings of the National Council.

Each local scout council represented in the annual or special meeting of the National Council shall be entitled to four (4) votes plus one (1) vote for every ten thousand (10,000) of their scout membership. The members of the National Executive Board and the life members shall each be entitled to one (1) vote.

[61] Section 7. The corporation created by this Act shall adopt and shall have the sole and exclusive right to use distinctive titles, emblems, descriptive or designing marks, words and phrases,badges, uniforms and insignia for the Boy Scouts of the Philippines in carrying out its program in accordance with the purposes of this Act, and which shall be published in the Official Gazette or in any newspaper of general circulation in the Philippines.

[62] Section 9. On or before the first of April of each year, the said corporation shall make and transmit to the President of the Philippines a report of its proceedings for the year ending December thirty-first preceding, including a full, complete, and itemized report of receipts and expenditures of whatever kind.

[63] Section 11. Until such time as the reorganization and restructuring of the Boy Scouts of the Philippines in accordance with this Act is effected, the incumbent officers and members of the National Executive Board and the present and past national presidents of the Boy Scouts of the Philippines shall continue to conduct the affairs of the Boy Scouts of the Philippines and to take the necessary steps to effect such reorganization until a new National Executive Board and a new set of national officers shall have been elected within six (6) months from the effectivity of this Act.

[64] Section 4. The President of the Philippines shall be the Chief Scout of the Boy Scouts of the Philippines.

[65] Section 8. Any donation or contribution which from time to time may be made to the Boy Scouts of the Philippines by the Government or any of its subdivisions, branches, offices, agencies or instrumentalities or by a foreign government or by private entities and individuals shall be expended by the National Executive Board in pursuance of this Act.

10[66] of Commonwealth Act No. 111, as amended, remain valid as these do not refer to BSP's creation as a corporation and

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The corporation shall be entitled to the following tax and duty privileges:

(a) Exemption from income tax pursuant to Section 26(e), (g) and (h) of the National Internal Revenue Code, as amended;

(b) Exemption from donor's tax pursuant to Section 94(a) (3) of the National Internal Revenue Code, as amended;

(c) Full deductibility of donations from the donor's gross income for purposes of computing taxable income; and

(d) Tax and/or duty exemption of donations from foreign countries as provided under the relevant laws such as, but not limited to, Section 105 of the Tariff and Customs Code of the Philippines, as amended, Section 103 of the National Internal Revenue Code, as amended.

Any other provisions of law to the contrary notwithstanding, there shall be no discrimination in tax treatment of the Boy and Girl Scouts of the Philippines.

[66] Section 10. From and after the passage of this Act, it shall be unlawful for any person within the jurisdiction of the Philippines to falsely and fraudulently call himself as, or represent himself to be, a member of, or an agent for, the Boy Scouts of the Philippines; and any person who violates any of the provisions of this Act shall be punished by *prision correccional* in its minimum period or a fine not exceeding Five thousand pesos (₱5,000.00) or both, at the discretion of the court.

It shall be unlawful for any person to manufacture, sell or distribute or cause to be manufactured, sold or distributed fraudulently or without the official knowledge and written consent or permission of the National Executive Board of the Boy Scouts of the Philippines badges, uniforms, insignia, or any other boy scout paraphernalia; or to use, apply, feature or portray said badges, uniforms, insignia or scouting paraphernalia or the photos or visuals of a boy scout or boy scouts in uniform, or the logo, seal, or corporate name of the Boy Scouts of the Philippines, in any print ad, radio or television commercial, billboard, collateral material or any form of advertisement; or to use the name of the Boy Scouts of the Philippines for any illegal purpose or personal gain. Any violation of any of the provisions of Section 7 and of this section shall be punished by *prision correccional* in its medium period to *prision mayor* in its minimum period or a fine of not less than Ten thousand pesos (₱10,000.00) nor more than One hundred thousand pesos (₱100,000.00), or both, at the discretion of the court: Provided, That, in case of corporations, partnerships, associations, societies or companies, the manager, administrator or the person in charge of the management or administration of the business shall be criminally responsible for any such violation. These penalties shall be without prejudice to the proper civil action for recovery of civil damages,

thus, do not violate the prohibition under Section 16, Article XII of the Constitution. Moreover, Section 5 of RA 7278, amending Commonwealth Act No. 111, provides for a separability clause.[67]

In sum, the BSP is a private corporation beyond the audit jurisdiction of the COA. Accordingly, the specific provisions in the BSP charter creating the BSP as a private corporation are void. Considering the Constitutional infirmity of its creation, BSP's recourse is either to incorporate under the Corporation Code of the Philippines or to exist as an unincorporated association.

ACCORDINGLY, I vote to *GRANT* the petition. The Boy Scouts of the Philippines is a private corporation beyond the audit jurisdiction of the Commission on Audit. Sections 1, 2, 3, 5, 6, 7, 9, and 11 of Commonwealth Act No. 111, as amended by Presidential Decree No. 460 and Republic Act No. 7278, are void for being violative of the prohibition in Section 16, Article XII of the Constitution.

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which may be instituted together with or independently of the criminal prosecution.

[67] Section 5. If any section or provision of this Act is held invalid, all the other provisions not affected thereby shall remain valid.

EN BANC

[G.R. No. 190259. June 7, 2011]

DATU ZALDY UY AMPATUAN, ANSARUDDIN ADIONG, REGIE SAHALI-GENERALE, *petitioners, vs.* **HON. RONALDO PUNO, in his capacity as Secretary of the Department of Interior and Local Government and alter-ego of President Gloria Macapagal-Arroyo, and anyone acting in his stead and on behalf of the President of the Philippines, ARMED FORCES OF THE PHILIPPINES (AFP), or any of their units operating in the Autonomous Region in Muslim Mindanao (ARMM), and PHILIPPINE NATIONAL POLICE, or any of their units operating in ARMM,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; EMERGENCY POWERS; PROCLAMATION 1946 (PLACING THE PROVINCES OF MAGUINDANAO, SULTAN KUDARAT AND COTOBATO CITY UNDER A STATE OF EMERGENCY) AND ADMINISTRATIVE ORDERS 273 AND 273-A (DELEGATING SUPERVISION OF THE ARMM TO THE DILG); NOT VIOLATIVE OF THE PRINCIPLE OF LOCAL AUTONOMY; NO TAKEOVER OF THE ADMINISTRATION OR OPERATIONS OF THE AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM) BY THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG).— The claim of petitioners that the subject proclamation and administrative orders violate the principle of local autonomy is anchored on the allegation that, through them, the President authorized the DILG Secretary to take over the operations of the ARMM and assume direct governmental powers over the region. But, in the first place, the DILG Secretary did not take over control of the powers of the ARMM. After law enforcement agents took respondent Governor of ARMM into custody for alleged complicity in the Maguindanao massacre, the ARMM Vice-Governor, petitioner Ansaruddin Adiong, assumed the vacated post on December

10, 2009 pursuant to the rule on succession found in Article VII, Section 12, of RA 9054. In turn, Acting Governor Adiong named the then Speaker of the ARMM Regional Assembly, petitioner Sahali-Generale, Acting ARMM Vice-Governor. In short, the DILG Secretary did not take over the administration or operations of the ARMM.

2. ID.; ID.; ID.; ID.; ID.; THE CALLING OUT OF THE ARMED FORCES TO PREVENT OR SUPPRESS LAWLESS VIOLENCE IN MAGUINDANAO, SULTAN KUDARAT AND COTOBATO IS A POWER THAT THE CONSTITUTION DIRECTLY VESTS IN THE PRESIDENT AND WHICH DOES NOT REQUIRE A CONGRESSIONAL AUTHORITY FOR THE PRESIDENT TO EXERCISE THE SAME.— Petitioners contend that the President unlawfully exercised emergency powers when she ordered the deployment of AFP and PNP personnel in the places mentioned in the proclamation. But such deployment is not by itself an exercise of emergency powers as understood under Section 23 (2), Article VI of the Constitution x x x. The President did not proclaim a national emergency, only a state of emergency in the three places mentioned. And she did not act pursuant to any law enacted by Congress that authorized her to exercise extraordinary powers. The calling out of the armed forces to prevent or suppress lawless violence in such places is a power that the Constitution directly vests in the President. She did not need a congressional authority to exercise the same.

3. ID.; ID.; ID.; ID.; ID.; ID.; THE PRESIDENT'S DETERMINATION OF THE NEED FOR CALLING OUT THE ARMED FORCES TO PREVENT AND SUPPRESS LAWLESS VIOLENCE IS ACCORDED RESPECT, UNLESS IT IS SHOWN THAT SUCH DETERMINATION WAS ATTENDED BY GRAVE ABUSE OF DISCRETION.— The President's call on the armed forces to prevent or suppress lawless violence springs from the power vested in her under Section 18, Article VII of the Constitution x x x. While it is true that the Court may inquire into the factual bases for the President's exercise of the above power, it would generally defer to her judgment on the matter. As the Court acknowledged in *Integrated Bar of the Philippines v. Hon. Zamora*, it is clearly to the President that the Constitution entrusts the determination of the need for calling out the armed forces to prevent and suppress

lawless violence. Unless it is shown that such determination was attended by grave abuse of discretion, the Court will accord respect to the President's judgment. x x x Here, petitioners failed to show that the declaration of a state of emergency in the Provinces of Maguindanao, Sultan Kudarat and Cotabato City, as well as the President's exercise of the "calling out" power had no factual basis. They simply alleged that, since not all areas under the ARMM were placed under a state of emergency, it follows that the take over of the entire ARMM by the DILG Secretary had no basis too.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE PRESIDENT'S PROCLAMATION OF STATE OF EMERGENCY IN THE PROVINCES OF MAGUINDANAO, SULTAN KUDARAT AND COTABATO CITY AND HER CALLING OUT OF THE ARMED FORCES TO PREVENT OR SUPPRESS LAWLESS VIOLENCE THEREIN, RESPECTED.— [T]he imminence of violence and anarchy at the time the President issued Proclamation 1946 was too grave to ignore and she had to act to prevent further bloodshed and hostilities in the places mentioned. Progress reports also indicated that there was movement in these places of both high-powered firearms and armed men sympathetic to the two clans. Thus, to pacify the people's fears and stabilize the situation, the President had to take preventive action. She called out the armed forces to control the proliferation of loose firearms and dismantle the armed groups that continuously threatened the peace and security in the affected places. Notably, the present administration of President Benigno Aquino III has not withdrawn the declaration of a state of emergency under Proclamation 1946. It has been reported that the declaration would not be lifted soon because there is still a need to disband private armies and confiscate loose firearms. Apparently, the presence of troops in those places is still necessary to ease fear and tension among the citizenry and prevent and suppress any violence that may still erupt, despite the passage of more than a year from the time of the Maguindanao massacre. Since petitioners are not able to demonstrate that the proclamation of state of emergency in the subject places and the calling out of the armed forces to prevent or suppress lawless violence there have clearly no factual bases, the Court must respect the President's actions.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
The Solicitor General for respondents.

D E C I S I O N

ABAD, *J.*:

On November 24, 2009, the day after the gruesome massacre of 57 men and women, including some news reporters, then President Gloria Macapagal-Arroyo issued Proclamation 1946,[1] placing "the Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato under a state of emergency." She directed the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) "to undertake such measures as may be allowed by the Constitution and by law to prevent and suppress all incidents of lawless violence" in the named places.

Three days later or on November 27, President Arroyo also issued Administrative Order 273 (AO 273)[2] "transferring" supervision of the Autonomous Region of Muslim Mindanao (ARMM) from the Office of the President to the Department of Interior and Local Government (DILG). But, due to issues raised over the terminology used in AO 273, the President issued Administrative Order 273-A (AO 273-A) amending the former, by "delegating" instead of "transferring" supervision of the ARMM to the DILG.[3]

Claiming that the President's issuances encroached on the ARMM's autonomy, petitioners Datu Zaldy Uy Ampatuan, Ansaruddin Adiong, and Regie Sahali-Generale, all ARMM officials,[4] filed this petition for prohibition under Rule 65. They

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[1] *Rollo*, p. 34.

[2] *Id.* at 36.

[3] *Id.* at 80.

[4] Ampatuan, Adiong and Sahali-Generale were, respectively, the Governor, Vice-Governor and Speaker of the Legislative Assembly of the ARMM at that time.

alleged that the proclamation and the orders empowered the DILG Secretary to take over ARMM's operations and seize the regional government's powers, in violation of the principle of local autonomy under Republic Act 9054 (also known as the Expanded ARMM Act) and the Constitution. The President gave the DILG Secretary the power to exercise, not merely administrative supervision, but control over the ARMM since the latter could suspend ARMM officials and replace them.[5]

Petitioner ARMM officials claimed that the President had no factual basis for declaring a state of emergency, especially in the Province of Sultan Kudarat and the City of Cotabato, where no critical violent incidents occurred. The deployment of troops and the taking over of the ARMM constitutes an invalid exercise of the President's emergency powers.[6] Petitioners asked that Proclamation 1946 as well as AOs 273 and 273-A be declared unconstitutional and that respondents DILG Secretary, the AFP, and the PNP be enjoined from implementing them.

In its comment for the respondents,[7] the Office of the Solicitor General (OSG) insisted that the President issued Proclamation 1946, not to deprive the ARMM of its autonomy, but to restore peace and order in subject places.[8] She issued the proclamation pursuant to her "calling out" power[9] as Commander-in-Chief under the first sentence of Section 18, Article VII of the Constitution. The determination of the need to exercise this power rests solely on her wisdom.[10] She must use her judgment based on intelligence reports and such best information as are available to her to call out the armed forces to suppress and prevent lawless violence wherever and whenever these reared their ugly heads.

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[5] *Rollo*, pp. 14-17.

[6] *Id.* at 20-22.

[7] *Id.* at 63.

[8] *Id.* at 85, 87, 95.

[9] *Id.* at 98.

[10] *Id.* at 76.

On the other hand, the President merely delegated through AOs 273 and 273-A her supervisory powers over the ARMM to the DILG Secretary who was her alter ego any way. These orders did not authorize a take over of the ARMM. They did not give him blanket authority to suspend or replace ARMM officials.[11] The delegation was necessary to facilitate the investigation of the mass killings.[12] Further, the assailed proclamation and administrative orders did not provide for the exercise of emergency powers.[13]

Although normalcy has in the meantime returned to the places subject of this petition, it might be relevant to rule on the issues raised in this petition since some acts done pursuant to Proclamation 1946 and AOs 273 and 273-A could impact on the administrative and criminal cases that the government subsequently filed against those believed affected by such proclamation and orders.

The Issues Presented

The issues presented in this case are:

1. Whether or not Proclamation 1946 and AOs 273 and 273-A violate the principle of local autonomy under Section 16, Article X of the Constitution, and Section 1, Article V of the Expanded ARMM Organic Act;

2. Whether or not President Arroyo invalidly exercised emergency powers when she called out the AFP and the PNP to prevent and suppress all incidents of lawless violence in Maguindanao, Sultan Kudarat, and Cotabato City; and

3. Whether or not the President had factual bases for her actions.

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[11] *Id.* at 95.

[12] *Id.* at 78.

[13] *Id.* at 110.

The Rulings of the Court

We dismiss the petition.

One. The claim of petitioners that the subject proclamation and administrative orders violate the principle of local autonomy is anchored on the allegation that, through them, the President authorized the DILG Secretary to take over the operations of the ARMM and assume direct governmental powers over the region.

But, in the first place, the DILG Secretary did not take over control of the powers of the ARMM. After law enforcement agents took respondent Governor of ARMM into custody for alleged complicity in the Maguindanao massacre, the ARMM Vice-Governor, petitioner Ansaruddin Adiong, assumed the vacated post on December 10, 2009 pursuant to the rule on succession found in Article VII, Section 12,[14] of RA 9054. In turn, Acting Governor Adiong named the then Speaker of the ARMM Regional Assembly, petitioner Sahali-Generale, Acting ARMM Vice-Governor.[15] In short, the DILG Secretary did not take over the administration or operations of the ARMM.

Two. Petitioners contend that the President unlawfully exercised emergency powers when she ordered the deployment of AFP and PNP personnel in the places mentioned in the proclamation.[16] But such deployment is not by itself an exercise

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[14] SEC. 12. *Succession to Regional Governorship in Cases of Temporary Incapacity*. – In case of temporary incapacity of the regional Governor to perform his duties on account of physical or legal causes, or when he is on official leave of absence or on travel outside the territorial jurisdiction of the Republic of the Philippines, the Regional Vice-Governor, or if there be none or in case of his permanent or temporary incapacity or refusal to assume office, the Speaker of the Regional Assembly shall exercise the powers, duties and functions of the Regional Governor as prescribed by law enacted by the Regional Assembly or in the absence thereof, by the pertinent provisions of Republic Act 7160 or the Local Government Code of 1991.

[15] http://services.inquirer.net/print/print.php?article_id=20100707-279759.

[16] *Rollo*, p. 22.

of emergency powers as understood under Section 23 (2), Article VI of the Constitution, which provides:

SECTION 23. x x x (2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

The President did not proclaim a national emergency, only a state of emergency in the three places mentioned. And she did not act pursuant to any law enacted by Congress that authorized her to exercise extraordinary powers. The calling out of the armed forces to prevent or suppress lawless violence in such places is a power that the Constitution directly vests in the President. She did not need a congressional authority to exercise the same.

Three. The President's call on the armed forces to prevent or suppress lawless violence springs from the power vested in her under Section 18, Article VII of the Constitution, which provides.[17]

SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. x x x

While it is true that the Court may inquire into the factual bases for the President's exercise of the above power,[18] it would generally defer to her judgment on the matter. As the Court acknowledged in *Integrated Bar of the Philippines v. Hon. Zamora*,[19] it is clearly to the President that the Constitution

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[17] See *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482, 509-510 (2004).

[18] *Lacson v. Sec. Perez*, 410 Phil. 78, 93 (2001).

[19] 392 Phil. 618, 635 (2000).

entrusts the determination of the need for calling out the armed forces to prevent and suppress lawless violence. Unless it is shown that such determination was attended by grave abuse of discretion, the Court will accord respect to the President's judgment. Thus, the Court said:

> **If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.**
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> **On the other hand, the President, as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call, on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property. Indeed, the decision to call out the military to prevent or suppress lawless violence must be done swiftly and decisively if it were to have any effect at all. x x x.**[20]

Here, petitioners failed to show that the declaration of a state of emergency in the Provinces of Maguindanao, Sultan Kudarat and Cotabato City, as well as the President's exercise of the "calling out" power had no factual basis. They simply alleged that, since not all areas under the ARMM were placed under a state of emergency, it follows that the take over of the entire ARMM by the DILG Secretary had no basis too.[21]

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[20] *Id.* at 643-644.

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

But, apart from the fact that there was no such take over to begin with, the OSG also clearly explained the factual bases for the President's decision to call out the armed forces, as follows:

The Ampatuan and Mangudadatu clans are prominent families engaged in the political control of Maguindanao. It is also a known fact that both families have an arsenal of armed followers who hold elective positions in various parts of the ARMM and the rest of Mindanao.

Considering the fact that the principal victims of the brutal bloodshed are members of the Mangudadatu family and the main perpetrators of the brutal killings are members and followers of the Ampatuan family, both the military and police had to prepare for and prevent reported retaliatory actions from the Mangudadatu clan and additional offensive measures from the Ampatuan clan.

x x x x x x x x x

The Ampatuan forces are estimated to be approximately two thousand four hundred (2,400) persons, equipped with about two thousand (2,000) firearms, about four hundred (400) of which have been accounted for. x x x

As for the Mangudadatus, they have an estimated one thousand eight hundred (1,800) personnel, with about two hundred (200) firearms. x x x

Apart from their own personal forces, both clans have Special Civilian Auxiliary Army (SCAA) personnel who support them: about five hundred (500) for the Ampatuans and three hundred (300) for the Mangudadatus.

What could be worse than the armed clash of two warring clans and their armed supporters, especially in light of intelligence reports on the potential involvement of rebel armed groups (RAGs).

One RAG was reported to have planned an attack on the forces of Datu Andal Ampatuan, Sr. to show support and sympathy for the victims. The said attack shall worsen the age-old territorial dispute between the said RAG and the Ampatuan family.

x x x x x x x x x

On the other hand, RAG faction which is based in Sultan Kudarat was reported to have received three million pesos

(₱3,000,000.00) from Datu Andal Ampatuan, Sr. for the procurement of ammunition. The said faction is a force to reckon with because the group is well capable of launching a series of violent activities to divert the attention of the people and the authorities away from the multiple murder case. x x x

In addition, two other factions of a RAG are likely to support the Mangudadatu family. The Cotabato-based faction has the strength of about five hundred (500) persons and three hundred seventy-two (372) firearms while the Sultan Kudarat-based faction has the strength of about four hundred (400) persons and three hundred (300) firearms and was reported to be moving towards Maguindanao to support the Mangudadatu clan in its armed fight against the Ampatuans.[22]

In other words, the imminence of violence and anarchy at the time the President issued Proclamation 1946 was too grave to ignore and she had to act to prevent further bloodshed and hostilities in the places mentioned. Progress reports also indicated that there was movement in these places of both high-powered firearms and armed men sympathetic to the two clans.[23] Thus, to pacify the people's fears and stabilize the situation, the President had to take preventive action. She called out the armed forces to control the proliferation of loose firearms and dismantle the armed groups that continuously threatened the peace and security in the affected places.

Notably, the present administration of President Benigno Aquino III has not withdrawn the declaration of a state of emergency under Proclamation 1946. It has been reported[24]

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[22] *Id.* at 101-105.

[23] *Id.* at 105.

[24] http://www.abs-cbnnews.com/video/nation/regions/11/23/10/state-emergency-maguindanao-stays;

http://www.sunstar.com.ph/manila/local-news/aquino-state-emergency-maguindanao-stays;

http://www.bomboradyo.com/index.php/news/top-stories/29331-state-of-emergency-sa-c-mindanao-mananatili; http://www.zambotimes.com/archives/26011-State-of-emergency-in-Maguindanao-remains.html.

that the declaration would not be lifted soon because there is still a need to disband private armies and confiscate loose firearms. Apparently, the presence of troops in those places is still necessary to ease fear and tension among the citizenry and prevent and suppress any violence that may still erupt, despite the passage of more than a year from the time of the Maguindanao massacre.

Since petitioners are not able to demonstrate that the proclamation of state of emergency in the subject places and the calling out of the armed forces to prevent or suppress lawless violence there have clearly no factual bases, the Court must respect the President's actions.

WHEREFORE, the petition is *DISMISSED* for lack of merit.

SO ORDERED.

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

EN BANC

[G.R. No. 191618. June 7, 2011]

ATTY. ROMULO B. MACALINTAL, *petitioner, vs.* **PRESIDENTIAL ELECTORAL TRIBUNAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; PRESIDENTIAL ELECTORAL TRIBUNAL; CREATION THEREOF IS CONSTITUTIONAL.— We cannot agree with his insistence that the creation of the PET is unconstitutional. We reiterate that the abstraction of the Supreme Court acting as a *Presidential*

Electoral Tribunal from the unequivocal grant of jurisdiction in the last paragraph of Section 4, Article VII of the Constitution is sound and tenable. x x x. [D]espite the explicit reference of the Members of the Constitutional Commission to a *Presidential Electoral Tribunal*, with Fr. Joaquin Bernas categorically declaring that in crafting the last paragraph of Section 4, Article VII of the Constitution, they "constitutionalize[d] what was statutory," petitioner continues to insist that the last paragraph of Section 4, Article VII of the Constitution does not provide for the creation of the PET. Petitioner is adamant that "the fact that [the provision] does not expressly prohibit [the] creation [of the PET] is not an authority for the Supreme Court to create the same." Petitioner is going to town under the misplaced assumption that the text of the provision itself was the only basis for this Court to sustain the PET's constitutionality. We reiterate that the PET is authorized by the last paragraph of Section 4, Article VII of the Constitution and as supported by the discussions of the Members of the Constitutional Commission, which drafted the present Constitution. The explicit reference by the framers of our Constitution to constitutionalizing what was merely statutory before is not diluted by the absence of a phrase, line or word, mandating the Supreme Court to create a *Presidential Electoral Tribunal*. Suffice it to state that the Constitution, verbose as it already is, cannot contain the specific wording required by petitioner in order for him to accept the constitutionality of the PET.

2. ID.; ID.; JUDICIAL DEPARTMENT; SUPREME COURT; DOCTRINE OF NECESSARY IMPLICATION; THE ADDITIONAL JURISDICTION BESTOWED UPON THE SUPREME COURT BY THE CONSTITUTION TO DECIDE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS CONTESTS INCLUDES THE MEANS NECESSARY TO CARRY IT INTO EFFECT.— Judicial power granted to the Supreme Court by the same Constitution is plenary. And under the *doctrine of necessary implication*, the additional jurisdiction bestowed by the last paragraph of Section 4, Article VII of the Constitution to decide presidential and vice-presidential elections contests includes the means necessary to carry it into effect. Thus: x x x The conferment of additional jurisdiction to the Supreme Court, with the duty characterized as an "awesome" task, includes the means necessary to carry it into effect under the *doctrine of necessary implication*. We cannot overemphasize

that the abstraction of the PET from the explicit grant of power to the Supreme Court, given our abundant experience, is not unwarranted. A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting *en banc*. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, the grant of power does not contain any limitation on the Supreme Court's exercise thereof. The Supreme Court's *method* of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to "promulgate its rules for the purpose." The conferment of full authority to the Supreme Court, as a PET, is equivalent to the full authority conferred upon the electoral tribunals of the Senate and the House of Representatives, *i.e.*, the Senate Electoral Tribunal (SET) and the House of Representatives Electoral Tribunal (HRET), which we have affirmed on numerous occasions.

3. ID.; ID.; PRESIDENTIAL ELECTORAL TRIBUNAL; PERFORMS A JUDICIAL POWER WHEN IT RESOLVES A PRESIDENTIAL OR VICE-PRESIDENTIAL ELECTION CONTEST; ELABORATED.— [P]etitioner still claims that the PET exercises quasi-judicial power and, thus, its members violate the proscription in Section 12, Article VIII of the Constitution x x x. We dispose of this argument as we have done in our Decision, *viz.*: x x x It is also beyond cavil that when the Supreme Court, as PET, resolves a presidential or vice-presidential election contest, it performs what is essentially a judicial power. In the landmark case of *Angara v. Electoral Commission*, Justice Jose P. Laurel enucleated that "it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels." In fact, *Angara* pointed out that "[t]he Constitution is a definition of the powers of government." And yet, at that time, the 1935 Constitution did not contain the expanded definition of judicial power found in Article VIII, Section 1, paragraph 2 of the present Constitution. With the explicit provision, the present Constitution has allocated to the Supreme Court, in conjunction with latter's exercise of judicial power inherent in all courts, the task of deciding presidential and vice-presidential election contests, with full authority in

the exercise thereof. The power wielded by PET is a derivative of the plenary judicial power *allocated to courts of law*, expressly provided in the Constitution. On the whole, the Constitution draws a thin, but, nevertheless, distinct line between the PET and the Supreme Court. x x x We have previously declared that the PET is not simply an agency to which Members of the Court were designated. Once again, the PET, as intended by the framers of the Constitution, is to be an institution *independent, but not separate*, from the judicial department, *i.e.*, the Supreme Court. x x x.

4. ID.; ID.; ID.; RULING IN THE CASE OF *BIRAOGO V. THE PHILIPPINE TRUTH COMMISSION* (G.R. NO. 192935, DEC. 7, 2010), INAPPLICABLE.— [P]etitioner's application of our decision in *Biraogo v. Philippine Truth Commission* to the present case is an unmitigated quantum leap. The decision therein held that the PTC "finds justification under Section 17, Article VII of the Constitution." A plain reading of the constitutional provisions, *i.e.*, last paragraph of Section 4 and Section 17, both of Article VII on the Executive Branch, reveals that the two are differently worded and deal with separate powers of the Executive and the Judicial Branches of government. And as previously adverted to, the basis for the constitution of the PET was, in fact, mentioned in the deliberations of the Members of the Constitutional Commission during the drafting of the present Constitution.

R E S O L U T I O N

NACHURA, *J.*:

Before us is a Motion for Reconsideration filed by petitioner Atty. Romulo B. Macalintal of our Decision[1] in G.R. No. 191618 dated November 23, 2010, dismissing his petition and declaring the establishment of respondent Presidential Electoral Tribunal (PET) as constitutional.

Petitioner reiterates his arguments on the alleged unconstitutional creation of the PET:

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[1] *Rollo*, pp. 71-102.

1. He has standing to file the petition as a taxpayer and a concerned citizen.

2. He is not estopped from assailing the constitution of the PET simply by virtue of his appearance as counsel of former president Gloria Macapagal-Arroyo before respondent tribunal.

3. Section 4, Article VII of the Constitution does not provide for the creation of the PET.

4. The PET violates Section 12, Article VIII of the Constitution.

To bolster his arguments that the PET is an illegal and unauthorized progeny of Section 4, Article VII of the Constitution, petitioner invokes our ruling on the constitutionality of the Philippine Truth Commission (PTC).[2] Petitioner cites the concurring opinion of Justice Teresita J. Leonardo-de Castro that the PTC is a public office which cannot be created by the President, the power to do so being lodged exclusively with Congress. Thus, petitioner submits that if the President, as head of the Executive Department, cannot create the PTC, the Supreme Court, likewise, cannot create the PET in the absence of an act of legislature.

On the other hand, in its Comment to the Motion for Reconsideration, the Office of the Solicitor General maintains that:

1. Petitioner is without standing to file the petition.

2. Petitioner is estopped from assailing the jurisdiction of the PET.

3. The constitution of the PET is "on firm footing on the basis of the grant of authority to the [Supreme] Court to be the sole judge of all election contests for the President or Vice-President under paragraph 7, Section 4, Article VII of the 1987 Constitution."

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[2] Entitled "*Biraogo v. Philippine Truth Commission*" and "*Lagman v. Executive Secretary*," docketed as G.R. Nos. 192935 and 193036, respectively, and promulgated on December 7, 2010.

Except for the invocation of our decision in *Louis "Barok" C. Biraogo v. The Philippine Truth Commission of 2010*,[3] petitioner does not allege new arguments to warrant reconsideration of our Decision.

We cannot agree with his insistence that the creation of the PET is unconstitutional. We reiterate that the abstraction of the Supreme Court acting as a *Presidential Electoral Tribunal* from the unequivocal grant of jurisdiction in the last paragraph of Section 4, Article VII of the Constitution is sound and tenable. The provision reads:

> Sec. 4. x x x.
>
> The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

We mapped out the discussions of the Constitutional Commission on the foregoing provision and concluded therefrom that:

> The *mirabile dictu* of the grant of jurisdiction to this Court, albeit found in the Article on the executive branch of government, and the constitution of the PET, is evident in the discussions of the Constitutional Commission. On the exercise of this Court's judicial power as sole judge of presidential and vice-presidential election contests, and to promulgate its rules for this purpose, we find the proceedings in the Constitutional Commission most instructive:
>
> > MR. DAVIDE. On line 25, after the words "Vice-President," I propose to add AND MAY PROMULGATE ITS RULES FOR THE PURPOSE. This refers to the Supreme Court sitting *en banc*. **This is also to confer on the Supreme Court exclusive authority to enact the necessary rules while acting as sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.**
> >
> > MR. REGALADO. **My personal position is that the rule-making power of the Supreme Court with respect to its**

[3] G.R. No. 192935, December 7, 2010.

internal procedure is already implicit under the Article on the Judiciary; considering, however, that according to the Commissioner, the purpose of this is to indicate the sole power of the Supreme Court without intervention by the legislature in the promulgation of its rules on this particular point, I think I will personally recommend its acceptance to the Committee.

x x x x x x x x x

MR. NOLLEDO x x x.

With respect to Sections 10 and 11 on page 8, I understand that the Committee has also created an Electoral Tribunal in the Senate and a Commission on Appointments which may cover membership from both Houses. But my question is: It seems to me that the committee report does not indicate which body should promulgate the rules that shall govern the Electoral Tribunal and the Commission on Appointments. Who shall then promulgate the rules of these bodies?

MR. DAVIDE. **The Electoral Tribunal itself will establish and promulgate its rules because it is a body distinct and independent already from the House, and so with the Commission on Appointments also. It will have the authority to promulgate its own rules**.

On another point of discussion relative to the grant of judicial power, but equally cogent, we listen to former Chief Justice Roberto Concepcion:

MR. SUAREZ. Thank you.

Would the Commissioner not consider that violative of the doctrine of separation of powers?

MR. CONCEPCION. **I think Commissioner Bernas explained that this is a contest between two parties. This is a judicial power.**

MR. SUAREZ. We know, but practically the Committee is giving to the judiciary the right to declare who will be the President of our country, which to me is a political action.

MR. CONCEPCION. **There are legal rights which are enforceable under the law, and these are essentially justiciable questions.**

MR. SUAREZ. **If the election contest proved to be long, burdensome and tedious, practically all the time of the Supreme Court sitting *en banc* would be occupied with it considering that they will be going over millions and millions of ballots or election returns, Madam President.**

Echoing the same sentiment and affirming the grant of judicial power to the Supreme Court, Justice Florenz D. Regalado and Fr. Joaquin Bernas both opined:

MR. VILLACORTA. Thank you very much, Madam President.

I am not sure whether Commissioner Suarez has expressed his point. On page 2, the fourth paragraph of Section 4 provides:

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

May I seek clarification as to whether or not the matter of determining the outcome of the contests relating to the election returns and qualifications of the President or Vice-President is purely a political matter and, therefore, should not be left entirely to the judiciary. Will the above-quoted provision not impinge on the doctrine of separation of powers between the executive and the judicial departments of the government?

MR. REGALADO. **No, I really do not feel that would be a problem. This is a new provision incidentally. It was not in the 1935 Constitution nor in the 1973 Constitution.**

MR. VILLACORTA. That is right.

MR. REGALADO. **We feel that it will not be an intrusion into the separation of powers guaranteed to the judiciary because this is strictly an adversarial and judicial proceeding.**

MR. VILLACORTA. May I know the rationale of the Committee because this supersedes Republic Act 7950 which provides for the Presidential Electoral Tribunal?

FR. BERNAS. Precisely, **this is necessary**. **Election contests are, by their nature, judicial. Therefore, they are cognizable**

> **only by courts. If, for instance, we did not have a constitutional provision on an electoral tribunal for the Senate or an electoral tribunal for the House, normally, as composed, that cannot be given jurisdiction over contests.**
>
> So, the background of this is really the case of *Roxas v. Lopez*. The Gentleman will remember that in that election, Lopez was declared winner. He filed a protest before the Supreme Court because there was a republic act which created the Supreme Court as the Presidential Electoral Tribunal. The question in this case was whether new powers could be given the Supreme Court by law. In effect, the conflict was actually whether there was an attempt to create two Supreme Courts and the answer of the Supreme Court was: "No, this did not involve the creation of two Supreme Courts, but precisely we are giving new jurisdiction to the Supreme Court, as it is allowed by the Constitution. Congress may allocate various jurisdictions."
>
> Before the passage of that republic act, in case there was any contest between two presidential candidates or two vice-presidential candidates, no one had jurisdiction over it. **So, it became necessary to create a Presidential Electoral Tribunal. What we have done is to constitutionalize what was statutory but it is not an infringement on the separation of powers because the power being given to the Supreme Court is a judicial power.**

Unmistakable from the foregoing is that the exercise of our power to judge presidential and vice-presidential election contests, as well as the rule-making power adjunct thereto, is plenary; it is not as restrictive as petitioner would interpret it. In fact, former Chief Justice Hilario G. Davide, Jr., who proposed the insertion of the phrase, intended the Supreme Court to exercise exclusive authority to promulgate its rules of procedure for that purpose. To this, Justice Regalado forthwith assented and then emphasized that the sole power ought to be without intervention by the legislative department. Evidently, even the legislature cannot limit the judicial power to resolve presidential and vice-presidential election contests and our rule-making power connected thereto.

To foreclose all arguments of petitioner, we reiterate that the establishment of the PET simply constitutionalized what was statutory

before the 1987 Constitution. The experiential context of the PET in our country cannot be denied.[4]

Stubbornly, despite the explicit reference of the Members of the Constitutional Commission to a *Presidential Electoral Tribunal*, with Fr. Joaquin Bernas categorically declaring that in crafting the last paragraph of Section 4, Article VII of the Constitution, they "constitutionalize[d] what was statutory," petitioner continues to insist that the last paragraph of Section 4, Article VII of the Constitution does not provide for the creation of the PET. Petitioner is adamant that "the fact that [the provision] does not expressly prohibit [the] creation [of the PET] is not an authority for the Supreme Court to create the same."

Petitioner is going to town under the misplaced assumption that the text of the provision itself was the only basis for this Court to sustain the PET's constitutionality.

We reiterate that the PET is authorized by the last paragraph of Section 4, Article VII of the Constitution and as supported by the discussions of the Members of the Constitutional Commission, which drafted the present Constitution.

The explicit reference by the framers of our Constitution to constitutionalizing what was merely statutory before is not diluted by the absence of a phrase, line or word, mandating the Supreme Court to create a *Presidential Electoral Tribunal*.

Suffice it to state that the Constitution, verbose as it already is, cannot contain the specific wording required by petitioner in order for him to accept the constitutionality of the PET.

In our Decision, we clarified the structure of the PET:

Be that as it may, we hasten to clarify the structure of the PET as a legitimate progeny of Section 4, Article VII of the Constitution, composed of members of the Supreme Court, sitting *en banc*. The following exchange in the 1986 Constitutional Commission should provide enlightenment:

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[4] *Atty. Romulo B. Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, November 23, 2010.

MR. SUAREZ. Thank you. Let me proceed to line 23, page 2, wherein it is provided, and I quote:

The Supreme Court, sitting *en banc*[,] shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

Are we not giving enormous work to the Supreme Court especially when it is directed to sit *en banc* as the sole judge of all presidential and vice-presidential election contests?

MR. SUMULONG. That question will be referred to Commissioner Concepcion.

MR. CONCEPCION. **This function was discharged by the Supreme Court twice and the Supreme Court was able to dispose of each case in a period of one year as provided by law. Of course, that was probably during the late 1960s and early 1970s. I do not know how the present Supreme Court would react to such circumstances, but there is also the question of who else would hear the election protests.**

MR. SUAREZ. We are asking this question because between lines 23 to 25, there are no rules provided for the hearings and there is not time limit or duration for the election contest to be decided by the Supreme Court. Also, we will have to consider the historical background that when R.A. 1793, which organized the Presidential Electoral Tribunal, was promulgated on June 21, 1957, at least three famous election contests were presented and two of them ended up in withdrawal by the protestants out of sheer frustration because of the delay in the resolution of the cases. I am referring to the electoral protest that was lodged by former President Carlos P. Garcia against our "kabalen" former President Diosdado Macapagal in 1961 and the vice-presidential election contest filed by the late Senator Gerardo Roxas against Vice-President Fernando Lopez in 1965.

MR. CONCEPCION. I cannot answer for what the protestants had in mind. But when that protest of Senator Roxas was withdrawn, the results were already available. Senator Roxas did not want to have a decision adverse to him. The votes were being counted already, and he did not get what he expected so rather than have a decision adverse to his protest, he withdrew the case.

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MR. SUAREZ. **I see. So the Commission would not have any objection to vesting in the Supreme Court this matter of resolving presidential and vice-presidential contests?**

MR. CONCEPCION. Personally, I would not have any objection.

MR. SUAREZ. Thank you.

Would the Commissioner not consider that violative of the doctrine of separation of powers?

MR. CONCEPCION. I think Commissioner Bernas explained that this is a contest between two parties. This is a judicial power.

MR. SUAREZ. We know, but practically the Committee is giving to the judiciary the right to declare who will be the President of our country, which to me is a political action.

MR. CONCEPCION. There are legal rights which are enforceable under the law, and these are essentially justiciable questions.

MR. SUAREZ. **If the election contest proved to be long, burdensome and tedious, practically all the time of the Supreme Court sitting *en banc* would be occupied with it considering that they will be going over millions and millions of ballots or election returns, Madam President.**

MR. CONCEPCION. The time consumed or to be consumed in this contest for President is dependent upon they (sic) key number of teams of revisors. I have no experience insofar as contests in other offices are concerned.

MR. SUAREZ. Although there is a requirement here that the Supreme Court is mandated to sit *en banc*?

MR. CONCEPCION. Yes.

MR. SUAREZ. I see.

MR. CONCEPCION. **The steps involved in this contest are: First, the ballot boxes are opened before teams of three, generally, a representative each of the court, of the protestant and of the "protestee." It is all a questions of how many teams are organized. Of course, that can be expensive, but**

it would be expensive whatever court one would choose. There were times that the Supreme Court, with sometimes 50 teams at the same time working, would classify the objections, the kind of problems, and the court would only go over the objected votes on which the parties could not agree. So it is not as awesome as it would appear insofar as the Court is concerned. What is awesome is the cost of the revision of the ballots because each party would have to appoint one representative for every team, and that may take quite a big amount.

MR. SUAREZ. If we draw from the Commissioner's experience which he is sharing with us, what would be the reasonable period for the election contest to be decided?

MR. CONCEPCION. Insofar as the Supreme Court is concerned, the Supreme Court always manages to dispose of the case in one year.

MR. SUAREZ. In one year. Thank you for the clarification.[5]

Judicial power granted to the Supreme Court by the same Constitution is plenary. And under the *doctrine of necessary implication*, the additional jurisdiction bestowed by the last paragraph of Section 4, Article VII of the Constitution to decide presidential and vice-presidential elections contests includes the means necessary to carry it into effect. Thus:

Obvious from the foregoing is the intent to bestow independence to the Supreme Court as the PET, to undertake the Herculean task of deciding election protests involving presidential and vice-presidential candidates in accordance with the process outlined by former Chief Justice Roberto Concepcion. It was made in response to the concern aired by delegate Jose E. Suarez that the additional duty may prove too burdensome for the Supreme Court. This explicit grant of independence and of the plenary powers needed to discharge this burden justifies the budget allocation of the PET.

The conferment of additional jurisdiction to the Supreme Court, with the duty characterized as an "awesome" task, includes the means necessary to carry it into effect under the *doctrine of necessary*

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[5] *Id*.

implication. We cannot overemphasize that the abstraction of the PET from the explicit grant of power to the Supreme Court, given our abundant experience, is not unwarranted.

A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting *en banc*. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, the grant of power does not contain any limitation on the Supreme Court's exercise thereof. The Supreme Court's *method* of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to "promulgate its rules for the purpose."

The conferment of full authority to the Supreme Court, as a PET, is equivalent to the full authority conferred upon the electoral tribunals of the Senate and the House of Representatives, *i.e.*, the Senate Electoral Tribunal (SET) and the House of Representatives Electoral Tribunal (HRET), which we have affirmed on numerous occasions.[6]

Next, petitioner still claims that the PET exercises quasi-judicial power and, thus, its members violate the proscription in Section 12, Article VIII of the Constitution, which reads:

SEC. 12. The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

We dispose of this argument as we have done in our Decision, *viz.*:

The traditional grant of judicial power is found in Section 1, Article VIII of the Constitution which provides that the power "shall be vested in one Supreme Court and in such lower courts as may be established by law." Consistent with our presidential system of government, the function of "dealing with the settlement of disputes, controversies or conflicts involving rights, duties or prerogatives that are legally demandable and enforceable" is apportioned to courts of justice. With the advent of the 1987 Constitution, judicial power was expanded to include "the duty of the courts of justice to settle actual controversies

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[6] *Id*.

involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." The power was expanded, but it remained absolute.

The set up embodied in the Constitution and statutes **characterizes the resolution of electoral contests as essentially an exercise of judicial power**.

At the *barangay* and municipal levels, original and exclusive jurisdiction over election contests is vested in the municipal or metropolitan trial courts and the regional trial courts, respectively.

At the higher levels - city, provincial, and regional, as well as congressional and senatorial - exclusive and original jurisdiction is lodged in the COMELEC and in the House of Representatives and Senate Electoral Tribunals, **which are not, strictly and literally speaking, courts of law**. Although not courts of law, they are, nonetheless, empowered to resolve election contests which involve, in essence, an exercise of judicial power, because of the explicit constitutional empowerment found in Section 2(2), Article IX-C (for the COMELEC) and Section 17, Article VI (for the Senate and House Electoral Tribunals) of the Constitution. Besides, when the COMELEC, the HRET, and the SET decide election contests, their decisions are still subject to judicial review - *via* a petition for *certiorari* filed by the proper party - if there is a showing that the decision was rendered with grave abuse of discretion tantamount to lack or excess of jurisdiction.

It is also beyond cavil that when the Supreme Court, as PET, resolves a presidential or vice-presidential election contest, it performs what is essentially a judicial power. In the landmark case of *Angara v. Electoral Commission*, Justice Jose P. Laurel enucleated that "it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels." In fact, *Angara* pointed out that "[t]he Constitution is a definition of the powers of government." And yet, at that time, the 1935 Constitution did not contain the expanded definition of judicial power found in Article VIII, Section 1, paragraph 2 of the present Constitution.

With the explicit provision, the present Constitution has allocated to the Supreme Court, in conjunction with latter's exercise of judicial

power inherent in all courts, the task of deciding presidential and vice-presidential election contests, with full authority in the exercise thereof. The power wielded by PET is a derivative of the plenary judicial power *allocated to courts of law*, expressly provided in the Constitution. On the whole, the Constitution draws a thin, but, nevertheless, distinct line between the PET and the Supreme Court.

If the logic of petitioner is to be followed, all Members of the Court, sitting in the Senate and House Electoral Tribunals would violate the constitutional proscription found in Section 12, Article VIII. Surely, the petitioner will be among the first to acknowledge that this is not so. The Constitution which, in Section 17, Article VI, explicitly provides that three Supreme Court Justices shall sit in the Senate and House Electoral Tribunals, respectively, effectively exempts the Justices-Members thereof from the prohibition in Section 12, Article VIII. In the same vein, it is the Constitution itself, in Section 4, Article VII, which exempts the Members of the Court, constituting the PET, from the same prohibition.

We have previously declared that the PET is not simply an agency to which Members of the Court were designated. Once again, the PET, as intended by the framers of the Constitution, is to be an institution *independent, but not separate*, from the judicial department, *i.e.*, the Supreme Court. *McCulloch v. State of Maryland* proclaimed that "[a] power without the means to use it, is a nullity." The vehicle for the exercise of this power, as intended by the Constitution and specifically mentioned by the Constitutional Commissioners during the discussions on the grant of power to this Court, is the PET. Thus, a microscopic view, like the petitioner's, should not constrict an absolute and constitutional grant of judicial power.[7]

Finally, petitioner's application of our decision in *Biraogo v. Philippine Truth Commission*[8] to the present case is an unmitigated quantum leap.

The decision therein held that the PTC "finds justification under Section 17, Article VII of the Constitution." A plain reading of the constitutional provisions, *i.e.*, last paragraph of Section 4 and Section 17, both of Article VII on the Executive Branch,

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[7] *Id*.

[8] *Supra* note 3.

reveals that the two are differently worded and deal with separate powers of the Executive and the Judicial Branches of government. And as previously adverted to, the basis for the constitution of the PET was, in fact, mentioned in the deliberations of the Members of the Constitutional Commission during the drafting of the present Constitution.

WHEREFORE, the Motion for Reconsideration is *DENIED*. Our Decision in G.R. No. 191618 *STANDS*.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-10-2835. June 8, 2011]
(Formerly A.M. OCA IPI No. 08-2901-P)

DEVELOPMENT BANK OF THE PHILIPPINES, represented by Atty. Benilda A. Tejada, Chief Legal Counsel, *complainant, vs.* **CLERK OF COURT VII ATTY. JEOFFREY S. JOAQUINO, Office of the Clerk of Court, and SHERIFF IV CONSTANCIO V. ALIMURUNG, Branch 18, both of the Regional Trial Court, Cebu City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; CHARGES OF GROSS IGNORANCE OF THE RULES AND DERELICTION OF DUTY; PENALTY IMPOSED, MODIFIED.— In *Separa*, an administrative complaint was filed against respondents Branch

Clerk of Court and Sheriffs for usurpation of authority, falsification, and gross ignorance of the law for declaring the Gualbertos as the lawful owner of Lot 1991-A, when the judgment sought to be enforced was the decision in another trial court which merely dismissed the case. The amended writ of execution issued by the Branch Clerk of Court directed the implementation of a decision which had already been set aside by the appellate court and subsequently dismissed by the RTC. x x x The Supreme Court imposed a fine of Ten Thousand Pesos (₱10,000.00) on respondent Branch Clerk of Court for having issued the amended writ, which directed the execution of the judgment of another court. Considering the circumstances attendant to this case, and in the spirit of compassion, we resolve to lower the penalty imposed on respondent Joaquino based on the recent pronouncements of the Court. A penalty of a fine of TEN THOUSAND PESOS (₱10,000.00) is reasonable, considering the fact that he simply issued the writ of execution based on the March 6, 2008 Order of the RTC.

2. ID.; ID.; ID.; ID.; PLAYS A KEY ROLE IN THE COMPLEMENT OF THE COURT AND CANNOT BE PERMITTED TO SLACKEN ON HIS JOB UNDER ONE PRETEXT OR ANOTHER.— [R]espondent Joaquino is sternly warned that a repetition of the same or similar offense in the future shall merit his dismissal from the service. Clerks of court occupy a sensitive position in the judicial system, they are required to safeguard the integrity of the court and its proceedings, to earn and preserve respect therefor, to maintain loyalty thereto and to the judge as superior officer, to maintain the authenticity and correctness of court records, and to uphold the confidence of the public in the administration of justice. Clerks of court play a key role in the complement of the court and, thus, cannot be permitted to slacken on their jobs under one pretext or another.

APPEARANCES OF COUNSEL

Benilda A. Tejada for complainant.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is an earnest plea[1] of respondent Jeoffrey S. Joaquino (Joaquino), Clerk of Court of the Regional Trial Court (RTC), Branch 18, Cebu City, seeking reconsideration of the Resolutions[2] of the Court dated August 11, 2010 and February 7, 2011.

Development Bank of the Philippines (DBP) filed a verified letter- complaint before the Office of the Court Administrator, charging Clerk of Court Joaquino with grave misconduct, abuse of authority, and gross ignorance of the law; and Sheriff IV Constancio V. Alimurung (Alimurung) with grave misconduct and conduct prejudicial to the best interest of the service relative to Civil Case No. CEB-29383, entitled "*Spouses Florentino J. Palacio and Ellen Palacio, Palacio Shipping, Inc., and FJP Lines, Inc. v. Development Bank of the Philippines,*" for damages, judicial determination of amount of obligation, nullity/ annulment/reformation of instruments and agreements, bloated principal obligation, excessive interest rates and penalties, judicial accounting and application of payment, specific performance, extinguishment of obligations, and attorney's fees. A brief background of Civil Case No. CEB-29383 is quoted herein, *viz*.:

> The Development Bank of the Philippines (DBP) is the defendant in Civil Case No. CEB-29383, filed with the Regional Trial Court, Branch 21, Cebu City, presided by Judge Eric F. Menchavez. The civil action (*Annex A, Complaint*) was filed, on 15 September 2003, by the FJP Lines and the spouses Palacio against DBP for Damages, Judicial Determination of Amount of Obligation, Specific Performance, etc. DBP, through Atty. Tejada, its Chief Legal Counsel, filed its Answer (*Annex B, Ibid.*) with Specific Affirmative Defenses and interposed Compulsory Counterclaim.

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[1] *Rollo*, unpaged.

[2] *Id.*

The plaintiff moved for Partial Summary Judgment on the issue of insurance proceeds, but defendant opposed the same. On 6 September 2006, the trial court rendered a Partial Summary Judgment (*Annex C, Ibid.*); in favor of the plaintiff by directing defendant DBP to immediately release to FJP Lines the GSIS insurance proceeds due to M/V Don Martin Sr. 9. DBP asked for reconsideration but the same was denied in an Order (*Annex D, Ibid.*), dated 8 December 2006. Not persuaded, DBP filed a Notice of Appeal (*Annex E, Ibid.*).

On 19 December 2006, the plaintiff moved for execution pending appeal of the partial judgment. This was granted by the trial court in the Order of 29 January 2007 (*Annex F, Ibid.*). A motion for reconsideration was filed by DBP but the same was denied in the Order of 12 March 2007.

Respondent Joaquino issued, on 21 March 2007, a Writ of Execution (*Annex G, Ibid.*) to enforce the partial judgment. To avoid execution, DBP filed an Urgent Motion to Stay Discretionary Execution with Alternative Motion for the Approval of Supersedeas Bond. The trial court denied the motion in an Order, dated 26 March 2007. Aggrieved, DBP filed a Petition for *Certiorari* (docketed as CA-G.R. SP No. 02604) before the Court of Appeals, Cebu City Station, to assail the Orders, dated 29 January and 12 March 2007.

In the meantime, Sheriff IV Romeo C. Asombrado of the Regional Trial Court, Branch 21, Cebu City, in compliance with the Writ of Execution, dated 21 March 2007, demanded, on 23 March 2007, from DBP the immediate and full satisfaction of the partial judgment and served the corresponding Notice of Garnishment (*Annex H, Ibid.*).

In a Decision (*Annex I, Ibid.*), dated 20 July 2007, in CA-G.R. SP No. 02604, the Court of Appeals annulled and set aside the Orders, dated 29 January and 12 March 2007, as well as the writs and processes subsequently issued for the implementation of the said Orders. FJP Lines seasonably filed a motion of reconsideration, but the same was denied.

On 13 November 2007, FJP Lines moved to dismiss DBP's appeal, which motion was granted in an Order, dated 6 March 2008 (*Annex J, Ibid.*). Unconvinced, DBP sought the reconsideration (*Annex K, Ibid.*) of the said Order.

On 17 March 2008, respondent Joaquino issued another Writ of Execution to implement the Partial Judgment of 6 September 2006.

The same was served to defendant DBP by respondent Alimurung (*Annex L, Ibid.*).

In an Order (*Annex N, Ibid.*), dated 4 April 2008, Judge Menchavez inhibited himself from handling Civil Case No. CEB-29383 and ordered that the pending incident, relative to the issuance and implementation of the writ of execution, be addressed to the court where the case will be re-raffled. On the same day, pursuant to the 17 March 2008 Writ of Execution, respondent Alimurung served a copy of the Notice of Sheriff's Sale at Public Auction (*Annex O, Ibid.*) to DBP's Regional Marketing Center in Central Visayas, informing it that its proprietary shares in Cebu Country Club would be sold at public auction on 8 April 2008. In a Letter (*Annex P, Ibid.*), dated 8 April 2008, DBP manifested to respondent Alimurung its objection to the auction sale, considering that the partial judgment, dated 6 September 2006, sought to be implemented, was not yet final and executory. However, despite such notice, Sheriff Alimurung proceeded with the scheduled auction sale (*Annex Q, Ibid.*).

DBP filed a Supplemental Motion for Reconsideration of the Order, dated 6 March 2008 (which denied its Notice of Appeal) with an Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction to enjoin respondent Alimurung from proceeding with the enforcement of the Writ of Execution, dated 17 March 2008. During the hearing on the TRO, respondent Alimurung "boldly manifested in open court that he [was] bent on further implementing the Writ of Execution dated March 17, 2008 against DBP."

On 16 April 2008, respondent Alimurung again issued a Notice of Sheriff's Sale at Public Auction over several parcels of land belonging [to] DBP.

To prevent further damage, DBP, on 18 April 2008, filed before the Court of Appeals, Cebu City Station, a Petition for Injunction with Prayer for TRO/Injunction against Spouses Palacio, FJP Lines, and respondent Joaquino and Alimurung (docketed as CA-G.R. SP No. 03411).[3]

On August 11, 2010, the Court issued a Resolution,[4] the *fallo* of which reads:

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[3] *Id.*

[4] *Id.*

The Court **RESOLVES** to **ADOPT** and **APPROVE** the findings of fact, conclusions of law, and recommendation of the Office of the Court Administrator in the attached Report dated 27 January 2010 (Annex "A"). Accordingly, the Court further resolves to:

1. **RE-DOCKET** the instant administrative complaint as a regular administrative matter;

2. **FIND** respondent Jeoffrey S. Joaquino, Clerk of Court VII, OCC, RTC, Cebu City, **GUILTY** of gross ignorance of the Rules and dereliction of duty and accordingly impose on him the penalty of **SUSPENSION** for six (6) months without pay, with **WARNING** that a repetition of the same or similar offense in the future shall merit his dismissal from the service; and

3. **DISMISS** the complaint against respondent Constancio V. Alimurung, Sheriff IV, RTC, Br. 18, Cebu City, for lack of merit.

SO ORDERED.[5]

Respondent Joaquino filed a motion for reconsideration; while DBP filed a partial motion for reconsideration, assailing the dismissal of the complaint against Sheriff Alimurung. On February 7, 2011, the Court issued a Resolution[6] denying both motions with finality for lack of substantial merit.

On April 13, 2011, respondent Joaquino filed a second motion for reconsideration, raising the following grounds in support of his motion: (1) that he issued the questioned March 17, 2008 writ of execution based on his honest reliance on and obedience to the September 6, 2006 Order of the RTC, granting the partial summary judgment, and the March 6, 2008 Order of the RTC, declaring the partial summary judgment final and executory, and directing the issuance of a writ of execution; (2) that the penalty of six (6) months without pay is too harsh and severe for the violation charged against him, based on the penalty imposed in *Separa v. Atty. Maceda*.[7]

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[5] *Id.*

[6] *Id.*

[7] 431 Phil. 1 (2002).

Out of compassion, we take a second look at the penalty imposed on Clerk of Court Joaquino. A review of the penalty imposed on court employees who were administrably charged is justified, *viz*.:

In *Separa*, an administrative complaint was filed against respondents Branch Clerk of Court and Sheriffs for usurpation of authority, falsification, and gross ignorance of the law for declaring the Gualbertos as the lawful owner of Lot 1991-A, when the judgment sought to be enforced was the decision in another trial court which merely dismissed the case.[8] The amended writ of execution issued by the Branch Clerk of Court directed the implementation of a decision which had already been set aside by the appellate court and subsequently dismissed by the RTC. Hence, the amended writ was void for two reasons: (1) the amended writ went beyond the order granting execution; and (2) respondent Branch Clerk of Court was not clothed with authority to issue the amended writ.[9] The Supreme Court imposed a fine of Ten Thousand Pesos (₱10,000.00) on respondent Branch Clerk of Court for having issued the amended writ, which directed the execution of the judgment of another court.[10]

In *Leyrit v. Solas*,[11] the Branch Clerk of Court was held liable for simple misconduct. The Court imposed a fine equivalent to his three (3) months' salary to be deducted from his retirement benefits.

In *Aquino-Simbulan v. Bartolome*,[12] the presiding judge and the clerk of court (retired) were found guilty of gross negligence. Both were meted a fine in the amount of Forty Thousand Pesos (₱40,000.00), to be deducted from their retirement benefits.

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[8] *Id.* at 1.

[9] *Id.* at 2.

[10] *Id.* at 1.

[11] A.M. Nos. P-08-2567-68, October 30, 2009, 604 SCRA 668.

[12] A.M. No. MTJ-05-1588, June 5, 2009, 588 SCRA 259.

In *Heirs of Spouses Jose and Concepcion Olorga v. Beldia, Jr.*,[13] respondent judge was found liable for simple misconduct for his violation of Canons 1, 11, and 12 of the Code of Professional Responsibility. He was meted a fine of Fifteen Thousand Pesos (₱15,000.00).

In *Andres v. Majaducon*, respondent judge was held liable for abuse of authority and was fined Twenty Thousand Pesos (₱20,000.00).

In *Pastor C. Pinlac v. Oscar T. Llamas, Cash Clerk II, Regional Trial Court, Office of the Clerk of Court, San Carlos City, Pangasinan*,[14] then Cash Clerk II of the RTC was found guilty of grave misconduct and was accordingly meted a fine of ₱20,000.00.

Considering the circumstances attendant to this case, and in the spirit of compassion, we resolve to lower the penalty imposed on respondent Joaquino based on the recent pronouncements of the Court. A penalty of a fine of TEN THOUSAND PESOS (₱10,000.00) is reasonable, considering the fact that he simply issued the writ of execution based on the March 6, 2008 Order[15] of the RTC, which reads:

> WHEREFORE, defendant's [DBP's] notice of appeal filed on December 18, 2006 is dismissed. The assailed Partial Summary Judgment dated September 6, 2006 having become final and executory, let a writ of execution issue against the defendant.
>
> SO ORDERED.[16]

However, respondent Joaquino is sternly warned that a repetition of the same or similar offense in the future shall merit his dismissal from the service. Clerks of court occupy a sensitive position in the judicial system, they are required to

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[13] A.M. No. RTJ-08-2137, February 10, 2009, 578 SCRA 191.

[14] A.M. No. P-10-2781, November 24, 2010.

[15] *Rollo*, unpaged.

[16] *Id.*

safeguard the integrity of the court and its proceedings, to earn and preserve respect therefor, to maintain loyalty thereto and to the judge as superior officer, to maintain the authenticity and correctness of court records, and to uphold the confidence of the public in the administration of justice. Clerks of court play a key role in the complement of the court and, thus, cannot be permitted to slacken on their jobs under one pretext or another.[17]

WHEREFORE, in view of the foregoing, the penalty imposed on respondent Jeoffrey S. Joaquino, Clerk of Court VII, Office of the Clerk of Court, RTC, Cebu City, is hereby modified. Accordingly, he is hereby ordered to pay a *FINE* of *TEN THOUSAND PESOS (₱10,000.00)*, with a *WARNING* that a repetition of the same or similar offense in the future shall merit his dismissal from the service.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 161651. June 8, 2011]

ELVIRA LATEO *y* ELEAZAR, FRANCISCO ELCA *y* ARCAS, and BARTOLOME BALDEMOR *y* MADRIGAL, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURTS, INCLUDING THEIR ASSESSMENT OF

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[17] *Separa v. Atty. Maceda, supra* note 7, at 9.

THE CREDIBILITY OF WITNESSES, ARE ENTITLED TO GREAT WEIGHT AND RESPECT, PARTICULARLY WHEN THE APPELLATE COURT AFFIRMS THE FINDINGS; EXCEPTIONS, NOT PRESENT.— [T]he resolution of the issues raised by petitioners requires us to inquire into the sufficiency of the evidence presented, including the credibility of the witnesses, a course of action which this Court will not do, consistent with our repeated holding that this Court is not a trier of facts. Basic is the rule that factual findings of trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the CA affirms the findings. It is true that the rule admits of several exceptions, but none of the recognized exceptions is present in the case at bar.

2. **CRIMINAL LAW; ESTAFA THROUGH FALSE PRETENSES OR FRAUDULENT REPRESENTATION; ELEMENTS.—** Article 315(2)(a) of the Revised Penal Code lists the ways by which *estafa* may be committed, which includes: Art. 315. *Swindling (estafa).* – x x x. x x x 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud: (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits. The elements of the felony are as follows: 1. That there must be a false pretense, fraudulent act or fraudulent means. 2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud. 3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means. 4. That as a result thereof, the offended party suffered damage.

3. **ID.; ID.; ID.; TERM "FRAUD AND DECEIT," EXPLAINED; PRESENT.—** Elca was in no position to transfer ownership of the 5-hectare Bacoor property at the time petitioners offered it to Lucero. In *Alcantara v. Court of Appeals*, this Court, citing *People v. Balasa*, explained the meaning of *fraud* and *deceit*, *viz.*: [F]raud in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust,

or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. And deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. Indubitably, petitioners' parody that Elca owned 14 hectares in Bacoor, Cavite, and was offering a 5-hectare portion of it, in substitution of the Muntinlupa property, and demanding an additional ₱2,000,000.00 from Lucero, constituted fraud and deceit.

4. ID.; ATTEMPTED ESTAFA; COMMITTED WHERE ONLY THE INTENT TO CAUSE DAMAGE AND NOT THE DAMAGE ITSELF HAD BEEN SHOWN.— Petitioners commenced the commission of the crime of *estafa* but they failed to perform all the acts of execution which would produce the crime, not by reason of their own spontaneous desistance but because of their apprehension by the authorities before they could obtain the amount. Since only the intent to cause damage and not the damage itself had been shown, the RTC and the CA correctly convicted petitioners of attempted *estafa*.

5. ID.; ID.; PROPER PENALTY.— The penalty for estafa depends on the amount defrauded. Thus, if the crime of *estafa* had been consummated, Lucero would have been defrauded in the amount of ₱100,000.00. Hence, the applicable penalty under Article 315 of the Revised Penal Code (RPC) would have been *prision correccional* in its maximum period to *prision mayor* in its minimum period, with an additional one (1) year for every ₱10,000.00 in excess of the first ₱22,000.00; provided, that the total penalty should not exceed twenty years. Since what was established was only attempted *estafa*, then the applicable penalty would be that which is two degrees lower than that prescribed by law for the consummated felony pursuant to Article 51, in relation to Article 61(5), of the RPC. Accordingly, the imposable penalty would be *arresto mayor* in its medium period to *arresto mayor* in its maximum period, or an imprisonment

term ranging from two (2) months and one (1) day to six (6) months. And because the amount involved exceeded ₱22,000.00, one (1) year imprisonment for every ₱10,000.00 should be added, bringing the total to seven (7) years. However, we agree with the OSG that it would be inequitable to impose the additional incremental penalty of 7 years to the maximum period of penalty, considering that petitioners were charged and convicted merely of attempted and not consummated *estafa*. We, therefore, modify the penalty and sentence petitioners to imprisonment of four (4) months of *arresto mayor*.

APPEARANCES OF COUNSEL

Magsino Bautista Santiano & Associates Law Offices for petitioners.

The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

On appeal is the August 7, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 23240, which affirmed with modification the March 17, 1998 decision[2] of the Regional Trial Court (RTC) of Pasay City, Branch 109, convicting Elvira Lateo (Lateo), Francisco Elca (Elca), and Bartolome Baldemor (Baldemor) of attempted *estafa*.

On April 28, 1995, Lateo, Elca, and Baldemor (petitioners), along with Orlando Lalota (Lalota) and Nolasco de Guzman (De Guzman), were charged with *estafa* in an information, which reads:

That on or about April 27, 1995, in Pasay City, Metro Manila and within the jurisdiction of this Honorable Court, accused ELVIRA

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Perlita J. Tria Tirona and Jose Catral Mendoza (now a member of this Court), concurring; CA *rollo*, pp. 135-143.

[2] Records, Vol. IV, pp. 182-198.

LATEO *y* ELEAZAR, conspiring and confederating with FRANCISCO ELCA *y* ARCAS, BARTOLOME BALDEMOR *y* MADRIGAL, ORLANDO LALOTA and NOLASCO DE GUZMAN, and mutually helping one another, acting in common accord, by means of deceit, that is, by falsely representing themselves to be the true and [lawful] owner of a piece of land located in the province of Cavite, and possessing power, influence, qualification, property, credit, agency, business, or imaginary transactions and by means of other similar deceits, did then and there, willfully, unlawfully and feloniously induce ELEONOR LUCERO to part with her money in the amount of TWO MILLION (₱2,000,000.00) PESOS, Philippine Currency, as indeed she parted only with the amount of Two Hundred Thousand (₱200,000.00) PESOS, Philippine Currency, which said accused actually received in marked Philippine Currency, to the damage and prejudice of said ELEONOR LUCERO in the aforestated amount of Two Hundred Thousand Pesos (₱200,000.00) PESOS Philippine Currency.

CONTRARY TO LAW.[3]

When arraigned on May 31, 1995, petitioners, with the assistance of their counsel, entered their respective pleas of not guilty. Accused Lalota and De Guzman remained at large.

Trial on the merits then ensued. The prosecution's version of the facts is summarized by the CA in this wise:

Sometime in 1994, [petitioners] Lateo and Elca proposed that [Lucero] finance the titling of the 122 hectares of land located in Muntinlupa allegedly owned by [petitioner] Elca as the sole heir of Gregorio Elca. Title to the property had not been transferred to [petitioner] Elca's name because of a certain discrepancy between the Deed of Sale and TCT No. 77730. [Petitioner] Elca offered to assign to [Lucero] 70 hectares of said land. She was then introduced to [petitioner] Baldemor, Orlando Lalota and Nolasco de Guzman.

[Lucero] released to [petitioners] about ₱4.7 million in staggered amounts. [Petitioner] Elca told [Lucero] that certain portions of the property will first be put in the name of [petitioner] Lateo and would later be assigned to her. [Lucero] was given a Deed of Sale dated

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[3] Records, Vol. I, pp. 4-5.

March 27, 1987. [Petitioner] Elca likewise executed an irrevocable Special Power of Attorney in favor of [Lucero]. Later, she was presented certified true copies of three (3) titles, TCT Nos. 195550, 195551 and 195552 issued by the Register of Deeds of Makati City in the name of [petitioner] Lateo covering approximately twenty-seven (27) hectares of Plan A-7 of the Mutinlupa (sic) Estate, situated in Barrio Magdaong, Poblacion, Muntinlupa. However, [in] December 1994, when [Lucero] verified with the Registry of Deeds of Makati, she discovered that the aforesaid titles of the property were actually registered in the names of Marc Oliver R. Singson, Mary Jeanne S. Go and Feliza C. Torrigoza.

[Lucero] confronted [petitioners] and demanded from them [the] return of the money. She was told that they did not have any money to return. They instead offered a five (5) hectare property identified as Lot 10140 of Plan Sgs 04213-000441 located at Bacoor, Cavite allegedly owned by [petitioner] Elca. [Petitioner] Elca, however, demanded an additional ₱2 million for the transfer of title.

When [Lucero] verified with the Land Management Bureau (LMB), she discovered that [petitioner] Elca only had a pending application for the sales patent over a four (4)[-hectare] area of the subject land. These misrepresentations prompted her to file a complaint with the Task Force Kamagong, PACC, Manila.

On April 26, 1995, the task force conducted an entrapment at Furosato Restaurant. [Petitioners] were apprehended in possession of marked 100-peso bills amounting to ₱100,000.00, supposedly in exchange for the Deed of Assignment prepared by [Lucero] for their transaction.[4]

Petitioners' version, on the other hand, is summed up as follows:

Sometime in 1994, [Lucero], [petitioner] Lateo, Oscar Lalota met with [petitioner] Elca in Muntinlupa to discuss the proposal of [Lucero] to finance the titling of [petitioner] Elca's land.

On June 28, 1994, in a meeting called by [Lucero], she laid down the terms and conditions regarding her plans to finance the titling of [petitioner] Elca's land. She proposed that 22 out of the 122 hectares

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[4] *Supra* note 1, at 136-137.

of the land would be given to the old tenants of the property, the 30 hectares would be titled in the name of [petitioner] Elca as his retained share and the other 70 hectares would be her profit as financier of the transaction. [Lucero] would also pay ₱10.00 for every square meter of the 70 hectares or a total amount of ₱7 million. All the expenses for the titling and management of the land would be deducted from ₱7 million. The remaining balance would then be given to [petitioners].

[Lucero] assigned Oscar Lalota to work for the titling of the land and to prepare all documents necessary thereto. [Petitioner] Baldemor would act as overseer of the transaction as [Lucero's] attorney-in-fact. [Petitioner] Lateo would serve as secretary and assistant of [Lucero]. [Petitioner] Elca would guard the property to keep off squatters. He and his wife were instructed to sign all documents prepared by Oscar Lalota.

In December 1994, [Lucero] told [petitioner] Elca that upon verification from the Registry of Deeds of Makati City, she found out that all the documents submitted by Oscar Lalota pertaining to their transaction were falsified. Oscar Lalota disappeared after getting the money.

In order to recover her losses from the anomalous transaction, [Lucero] offered to purchase [petitioner] Elca's property in Cavite. [Petitioner] Elca agreed to sell 2 hectares of his property at a price of ₱100.00 per square meter. [Petitioner] Elca informed [Lucero] that the land was not yet titled although the documents had already been completed. [Lucero] agreed to pay in advance the amount of ₱200,000.00 for the immediate titling of the land.

On December 21, 1994, however, [Lucero] gave no advance payment. [Petitioner] Elca was made to return [in] January 1995. On that date still [Lucero] made no payment.

On [April] 25, 1995, [Lucero] promised to give the ₱200,000.00 advance payment at Furosato Restaurant [on] Roxas Boulevard, Pasay City. Having failed to contact his lawyer, on [April] 26, 1995, [petitioner] Elca went alone to Furosato Restaurant. Because of the absence of [petitioner] Lateo, [Lucero] postponed their meeting to [April] 27, 1995.

When [petitioner] Elca arrived at Furosato Restaurant on [April] 27, 1995, [Lucero] and her lawyer Atty. Velasquez, [petitioners] Lateo and Baldemor and Atty. Ambrosio were already there. Atty. Velasquez,

upon the order of [Lucero], produced a document entitled "Contract to Sell" outlining their agreement over the 2 hectares of land in Bacoor, Cavite. Atty. Ambrosio examined the contract to find out if it contains the terms and conditions agreed upon. Attys. Velasquez and Ambrosio made their own handwritten corrections in the contract including the change of the title from "Contract to Sell" to "Deed of Assignment," after which, both of them signed the document. [Petitioner] Elca and [Lucero] signed the document as parties while [petitioners] Lateo and Baldemor signed as witnesses.

After the signing of the Deed of Assignment, [Lucero] brought out the ₱200,000.00 as the promised payment for the land. While [petitioner] Baldemor was counting the money, Atty. Velasquez and [Lucero] went to the comfort room. Thereafter, several agents of the PACC approached them. They were arrested and brought to the NBI Headquarters.[5]

After trial, the RTC rendered a decision[6] dated March 17, 1998, *viz.*:

It should be noted that the transaction over the Cavite property was a continuation of and is somehow related to their first transaction. The same was offered to [Lucero] in lieu of the Muntinlupa property with Francisco Elca telling [Lucero] just to add another two million (₱2,000,000.00) pesos plus expenses for titling and the property can be transferred to her.

The second transaction which covers the Bacoor property was again an attempt to defraud [Lucero] when Francisco Elca again represented himself as the owner of the said property when in truth and in fact his right was merely derived from his application to purchase Friar Lands dated June 25, 1992 which at the time of the transaction was still being protested as shown by the Investigation Report of Rogelio N. Bruno, Special Investigator II, DENR, Land Management Bureau (Exhibit "LLLL") hence accused has no right and/or authority to deliver or transfer the ownership over said parcel of land to [Lucero].

In the case of *Celino vs. CA* 163 SCRA 97, it was held that "Estafa under Art. 315 (2) (a) of the Revised Penal Code is committed by means of using fictitious name or falsely pretending to possess power,

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[5] *Id.* at 137-139.

[6] *Supra* note 2.

influence, qualifications, property, credit, agency, business or imaginary transaction or by means of other similar deceits. Further, in the case of *Villaflor vs. CA* 192 SCRA 680, the Supreme Court held: what is material is the fact that appellant was guilty of fraudulent misrepresentation when knowing that the car was then owned by the Northern Motors, Inc., still he told the private complainant that the car was actually owned by him for purposes of and at the time he obtained the loan from the latter. Indubitably, the accused was in bad faith in obtaining the loan under such circumstance.

The attempt to defraud the complainant did not materialize due to the timely intervention of the Task Force Kamagong operatives.

Art. 6, par. 3 of the Revised Penal Code provides that "there is an attempt when the offender convinces (sic) the commission of a felony directly by overt acts and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance." The entrapment thus prevented the consummation of the transaction over the Cavite property.

x x x [I]n the case of *Koh Tieck Heng vs. People* 192 SCRA 533, the Court held [that] "although one of the essential elements of Estafa is damage or prejudice to the offended party, in the absence of proof thereof, the offender would x x x be guilty of attempted estafa." Appellant commenced the commission of the crime of estafa but he failed to perform all the acts of execution which would produce the crime not by reason of [their] spontaneous desistance but because of his apprehension of the authorities before they could obtain the amount. Since only the intent to cause damage and not the damage itself has been shown respondent court correctly convicted appellant of attempted estafa.

The culpability of x x x the accused is strengthened by the transfer of his rights over the same subject land in Cavite in favor of Leticia Ramirez (Exhibit "NNNN") thus clearly influencing his intention to defraud herein complainant as the same shows his lack of intent to transfer his rights and/or ownership to complainant.

The representations made by Francisco Elca that he owns the property in Bacoor, Cavite, his having offered the same again to the complainant in lieu of the aborted deal in the Muntinlupa property their constant follow-up of complainant's decision over the matter convincing the complainant to accept the offer and their persona[l] presence at the place of entrapment and their receipt of the ₱100,000.00

marked money which they even counted one after the other, thus making all of them positive of the presence of fluorescent powder. Those among others indicate strongly that all three accused Francisco Elca, Elvira Lateo and Bartolome Baldemor attempted to deceive and defraud complainant Eleanor Lucero.[7]

The RTC decreed that:

IN VIEW OF ALL THE FOREGOING, the Court finds all accused Francisco Elca, Elvira Lateo and Bartolome Baldemor guilty beyond reasonable doubt of attempted Estafa and is hereby sentenced to imprisonment of Ten (10) years and One (1) Day to Twelve (12) Years.

SO ORDERED.[8]

Petitioners filed a motion for reconsideration,[9] but the RTC denied it on December 28, 1998.[10]

Petitioners appealed to the CA, assigning in their brief the following errors allegedly committed by the trial court:

I. That with due respect to the Honorable Court, it is respectfully submitted that it erred in finding that THEY ARE GUILTY OF THE CRIME OF ATTEMPTED ESTAFA UNDER ARTICLE 315 PAR. 2(a) OF THE REVISED PENAL CODE.

II. That the basis of the findings of the Honorable Court that they (three accused) are guilty of attempted estafa is not in accordance with the evidence on record.

III. That the Honorable Court erred in the imposition of the appropriate penalty based on its findings assuming without admitting that they (three accused) are guilty of attempted estafa.[11]

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[7] *Id.* at 196-198.

[8] Records, Vol. IV, p. 198.

[9] *Id.* at 209-227.

[10] *Id.* at 255-256.

[11] CA *rollo*, pp. 69-79.

The CA was not at all persuaded by petitioners' arguments and sustained petitioners' conviction, although with modification as to the penalty imposed. The decretal portion of the CA Decision reads:

> WHEREFORE, premises considered, the assailed decision is hereby **AFFIRMED** with **MODIFICATION** as to the penalty imposed. [Petitioners] Elvira E. Lateo, Francisco A. Elca and Bartolome M. Baldemor are hereby sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.
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> Cost against [petitioners].
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> SO ORDERED.[12]

Petitioners filed a motion for reconsideration,[13] but their motion also suffered the same fate, as the CA denied it on January 12, 2004.[14]

Before us, petitioners insist that their conviction lacked factual and legal basis. They assail the RTC finding, which was sustained by the CA, that the transaction involving the Bacoor property was again an attempt to defraud Eleonor Lucero (Lucero). Petitioners deny that they deceived Lucero. They claim that Lucero was aware that the Bacoor property is not yet titled in the name of Elca; and that they went to Furosato restaurant upon Lucero's invitation and on Lucero's representation that she would hand to them the ₱200,000.00 needed to facilitate the issuance of title in Elca's name. Petitioners, therefore, plead for an acquittal. Finally, petitioners assail the penalty imposed by the CA for being erroneous.

The Office of the Solicitor General (OSG), on the other hand, asserts that the CA correctly sustained petitioners' conviction for attempted *estafa*. However, it recommends for further modification of the penalty to *six (6) months of arresto mayor*.

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[12] *Supra* note 1, at 143.

[13] CA *rollo*, pp. 144-150.

[14] *Id.* at 173.

Inarguably, the resolution of the issues raised by petitioners requires us to inquire into the sufficiency of the evidence presented, including the credibility of the witnesses, a course of action which this Court will not do, consistent with our repeated holding that this Court is not a trier of facts. Basic is the rule that factual findings of trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the CA affirms the findings.[15]

It is true that the rule admits of several exceptions,[16] but none of the recognized exceptions is present in the case at bar.

Article 315(2)(a) of the Revised Penal Code lists the ways by which *estafa* may be committed, which includes:

Art. 315. *Swindling (estafa)*. – x x x.

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

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[15] *Pucay v. People*, G.R. No. 167084, October 31, 2006, 506 SCRA 411, 420.

[16] (1) When the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Id.*)

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The elements of the felony are as follows:

1. That there must be a false pretense, fraudulent act or fraudulent means.
2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud.
3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means.
4. That as a result thereof, the offended party suffered damage.[17]

We agree with the finding of the trial court that the transaction involving the Bacoor property was a continuation of the transaction involving parcels of land in Muntinlupa, Metro Manila. When Lucero discovered that Elca's certificates of title over the Muntinlupa property were fake, Elca offered, as substitute, the 5-hectare portion of his purported 14-hectare lot in Bacoor, Cavite, but asked for an additional ₱2,000,000.00, in this wise:

Dear Ms. Lucero:

This is with reference to the advances we had obtained from you in the total amount of ₱4.7 million, more or less. It was agreed that the said advances shall be due and demandable upon the release of titles over my parcels of land situated in Muntinlupa, Metro Manila of which we are presently working out with appropriate government agencies. Your current demand fro[m] us to pay the aforesaid amount plus your unilaterally imposed interests is therefore premature and baseless.

However, with regards to your alternative demand that you be given a total of 5 hectares (2 has. upon signing of an agreement assigning

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[17] *Alcantara v. Court of Appeals*, 462 Phil. 72, 88-89 (2003).

my rights and additional 3 has. upon complete release of the remaining 14 hectares) please be informed that I am now amenable, provided that an additional ₱2.0 million will be paid to me to take care of my other personal commitments. These 5 hectares are situated in Malipay, Bacoor, Cavite with a portion of Lot 10140 of Plan Sgs-04213-000441-D. I am expecting the title of said property early next year. The current market [valuation] of real estate properties in that area is ₱450.00 per square meter and hence, the property will be more [than] sufficient to cover our obligates (sic).

Please be guided accordingly.

Very truly yours,

(Signed)
Francisco N. Elca
Bo. Katihan, Poblacion
Muntinlupa, Metro Manila[18]

As it turned out, Elca did not own 14 hectares in Bacoor, Cavite. He merely had an inchoate right over the Bacoor property, derived from his Application to Purchase Friar Lands, which covered only 7 hectares.[19] Elca's application was later amended to cover only 4 hectares, in view of the protest by Alfredo Salenga (Salenga).[20] Clearly, Elca was in no position to transfer ownership of the 5-hectare Bacoor property at the time petitioners offered it to Lucero.

In *Alcantara v. Court of Appeals*,[21] this Court, citing *People v. Balasa*,[22] explained the meaning of *fraud* and *deceit, viz.*:

[F]raud in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving

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[18] Exhibit "Q"; records, Vol. II, p. 176.

[19] Exhibit "18"; records, Vol. IV, p. 25.

[20] *See* Exhibit "LLLL"; *id.* at 343-346.

[21] *Supra* note 17, at 89.

[22] G.R. Nos. 106357 & 108601-02, September 3, 1998, 295 SCRA 49.

a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can device, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. And deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.

Indubitably, petitioners' parody that Elca owned 14 hectares in Bacoor, Cavite, and was offering a 5-hectare portion of it, in substitution of the Muntinlupa property, and demanding an additional ₱2,000,000.00 from Lucero, constituted fraud and deceit.

To reiterate, it is an oft-repeated principle that the factual findings of the trial courts, including their assessment of the witness' credibility, are entitled to great weight and respect by this Court, particularly when the CA affirms the findings.[23] Considering that there is nothing in the records that shows that the factual findings of the trial court and the appellate court were erroneous, we affirm their conclusion that petitioners attempted to defraud Lucero again.

Undoubtedly, petitioners commenced the commission of the crime of *estafa* but they failed to perform all the acts of execution which would produce the crime, not by reason of their own spontaneous desistance but because of their apprehension by the authorities before they could obtain the amount. Since only the intent to cause damage and not the damage itself had been shown,[24] the RTC and the CA correctly convicted petitioners of attempted *estafa*.

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[23] *Pucay v. People*, *supra* note 15, at 423.

[24] See *Koh Tieck Heng v. People*, G.R. Nos. 48535-36, December 21, 1990, 192 SCRA 533, 545.

On the penalty. The RTC sentenced petitioners to an imprisonment term of ten (10) years and one (1) day to twelve years. The CA modified it to six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

Petitioners and the OSG both argue that the penalty imposed by the CA was wrong, and plead for its modification.

The penalty for estafa depends on the amount defrauded. Thus, if the crime of *estafa* had been consummated, Lucero would have been defrauded in the amount of ₱100,000.00.[25] Hence, the applicable penalty under Article 315 of the Revised Penal Code (RPC) would have been *prision correccional* in its maximum period to *prision mayor* in its minimum period, with an additional one (1) year for every ₱10,000.00 in excess of the first ₱22,000.00; provided, that the total penalty should not exceed twenty years.

Since what was established was only attempted *estafa*, then the applicable penalty would be that which is two degrees lower than that prescribed by law for the consummated felony pursuant to Article 51,[26] in relation to Article 61(5),[27] of the RPC.

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[25] See Exhibits "VVV-2" to "VVV-581"; records, Vol. II, pp. 205-322.

[26] Art. 51. – *Penalty to be imposed upon principals of attempted crime.* – The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

[27] Art. 61. - *Rules for graduating penalties.*—For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

x x x x x x x x x

(5) When the law prescribes a penalty for a crime in some manner not specifically provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories.

Accordingly, the imposable penalty would be *arresto mayor* in its medium period to *arresto mayor* in its maximum period,[28] or an imprisonment term ranging from two (2) months and one (1) day to six (6) months. And because the amount involved exceeded ₱22,000.00, one (1) year imprisonment for every ₱10,000.00 should be added, bringing the total to seven (7) years.

However, we agree with the OSG that it would be inequitable to impose the additional incremental penalty of 7 years to the maximum period of penalty, considering that petitioners were charged and convicted merely of attempted and not consummated *estafa*. We, therefore, modify the penalty and sentence petitioners to imprisonment of four (4) months of *arresto mayor*.

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 23240 are *AFFIRMED*. Petitioners Elvira Lateo, Francisco Elca, and Bartolome Baldemor are found guilty beyond reasonable doubt of attempted *estafa*, and are hereby sentenced to suffer the penalty of four (4) months of *arresto mayor*.

SO ORDERED.

Carpio (Chairperson), Bersamin,[*] *Abad*, and *del Castillo,*[**] *JJ.*, concur.

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[28] See *Pecho v. Sandiganbayan*, G.R. No. 111399, November 14, 1994, 238 SCRA 116, 139.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle dated April 5, 2011.

[**] Additional member in lieu of Associate Justice Jose Catral Mendoza, per raffle dated April 5, 2011.

FIRST DIVISION

[G.R. No. 167000. June 8, 2011]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **GROUP MANAGEMENT CORPORATION (GMC) AND LAPU-LAPU DEVELOPMENT & HOUSING CORPORATION (LLDHC),** *respondents.*

[G.R. No. 169971. June 8, 2011]

GROUP MANAGEMENT CORPORATION (GMC), *petitioner, vs.* **LAPU-LAPU DEVELOPMENT & HOUSING CORPORATION (LLDHC) and GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT; EXPLAINED; RATIONALE FOR THE DOCTRINE; EXCEPTIONS.— It is well-settled that once a judgment attains finality, it becomes immutable and unalterable. It may not be changed, altered or modified in any way even if the modification were for the purpose of correcting an erroneous conclusion of fact or law. This is referred to as the "doctrine of finality of judgments," and this doctrine applies even to the highest court of the land. This Court explained its rationale in this wise: The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality. This Court has, on several occasions, ruled that the doctrine of finality of judgments admits of certain exceptions, namely: "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."

2. ID.; ID.; ID.; TO JUSTIFY THE ALTERATION OR MODIFICATION OF A FINAL JUDGMENT ON GROUND OF SUPERVENING EVENT, THE EVENT MUST HAVE TRANSPIRED AFTER THE JUDGMENT HAS BECOME FINAL AND EXECUTORY.— Both GSIS and LLDHC claim that the execution of the decision and orders in Civil Case No. 2203-L should be stayed because of the occurrence of "supervening events" which render the execution of the judgment "impossible, unfair, unjust and inequitable." However, in order for an event to be considered a supervening event to justify the alteration or modification of a final judgment, the event must have transpired **after the judgment has become final and executory,** to wit: Supervening events refer to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time.

3. ID.; ID.; ID.; ID.; THE RULING OF THE MANILA REGIONAL TRIAL COURT DOES NOT CONSTITUTE A SUPERVENING EVENT BECAUSE IT WAS ALREADY IN EXISTENCE EVEN BEFORE THE DECISION OF THE LAPU-LAPU REGIONAL TRIAL COURT ATTAINED FINALITY.— The Lapu-Lapu RTC Decision in Civil Case No. 2203-L was promulgated on **February 24, 1992**, while the Manila RTC Decision in Civil Case No. R-82-3429 was promulgated on **May 10, 1994**. As early as December 6, 1993, both GSIS's and LLDHC's appeals of the Lapu-Lapu RTC Decision were dismissed by the said RTC. Only GSIS moved to reconsider this dismissal, which was denied on July 6, 1994. Strictly speaking, the Lapu-Lapu RTC Decision should have attained finality at that stage; however, LLDHC filed with the Court of Appeals its Petition for Annulment of Judgment (CA-G.R. SP No. 34696) on July 27, 1994 and it used therein the Manila RTC Decision as its main ground for annulment of the Lapu-Lapu RTC decision. The Court of Appeals nonetheless dismissed LLDHC's Petition for Annulment of Judgment, in CA-G.R. SP No. 34696, and that became final and executory on January 28, 1995, after LLDHC interposed no appeal. The entry of judgment

in this case was issued on August 18, 1995. Moreover, the similar petition of LLDHC before this Court in G.R. No. 118633 was decided on September 6, 1996 and became final and executory on December 23, 1996. Therefore, the ruling by the Manila RTC is evidently not a supervening event. It was already in existence even before the decision in Civil Case No. 2203-L attained finality.

4. ID.; ID.; ID.; THE PREVAILING PARTY HAS THE CORRELATIVE RIGHT TO BENEFIT FROM THE FINALITY OF THE RESOLUTION OF ITS CASES; A FINAL JUDGMENT IS A VESTED INTEREST WHICH IT IS RIGHT AND EQUITABLE THAT THE GOVERNMENT SHOULD RECOGNIZE AND PROTECT AND OF WHICH THE INDIVIDUAL COULD NOT BE DEPRIVED ARBITRARILY WITHOUT JUSTICE.— Just as LLDHC and GSIS, as the losing parties, had the right to file their respective appeals within the prescribed period, GMC, as the winning party in Civil Case No. 2203-L, equally had the correlative right to benefit from the finality of the resolution of its case, to wit: A final judgment vests in the prevailing party a right recognized and protected by law under the due process clause of the Constitution. A final judgment is "a vested interest which it is right and equitable that the government should recognize and protect, and of which the individual could not be deprived arbitrarily without injustice." Since the Manila RTC decision does not constitute a supervening event, there is therefore neither reason nor justification to alter, modify or annul the Lapu-Lapu RTC Decision and Orders, which have long become final and executory. Thus, in the present case, GMC must not be deprived of its right to enjoy the fruits of a final verdict.

5. ID.; ID.; ID.; TO STAY EXECUTION OF A FINAL JUDGMENT, A SUPERVENING EVENT MUST CREATE A SUBSTANTIAL CHANGE IN THE RIGHTS OR RELATIONS OF THE PARTIES WHICH RENDER EXECUTION OF A FINAL JUDGMENT UNJUST, IMPOSSIBLE OR INEQUITABLE MAKING IT IMPERATIVE TO STAY IMMEDIATE EXECUTION IN THE INTEREST OF JUSTICE.— It is settled in jurisprudence that to stay execution of a final judgment, a supervening event "must create a substantial change in the rights or relations of the parties which would render execution of a final judgment

unjust, impossible or inequitable making it imperative to stay immediate execution in the interest of justice." However, what would be unjust and inequitable is for the Court to accord preference to the Manila RTC Decision on this occasion when in the past, the Court of Appeals and this Court have repeatedly, consistently, and with finality rejected LLDHC's moves to use the Manila RTC Decision as a ground to annul, and/or to bar the execution of, the Lapu-Lapu RTC Decision. x x x It bears repeating that the issue of whether or not the Manila RTC Decision could nullify or render unenforceable the Lapu-Lapu RTC Decision has been litigated many times over in different fora. It would be the height of inequity if the Court were to now reverse the Court of Appeals and its own final and executory rulings and allow GSIS to prevent the execution of the Lapu-Lapu RTC Decision on the same legal grounds previously discredited by the courts.

6. ID.; ID.; *RES JUDICATA*; DOCTRINE, EXPLAINED.— In *Republic of the Philippines (Civil Aeronautics Administration) v. Yu*, this Court expounded on the concept of *res judicata* and explained it in this wise: *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. x x x. The doctrine of *res judicata* makes a final judgment on the merits rendered by a court of competent jurisdiction conclusive as to the rights of the parties and their privies and amounts to an absolute bar to subsequent actions involving the same claim, demand, or cause of action. Even a finding of conclusiveness of judgment operates as estoppel with respect to matters in issue or points controverted, on the determination of which the finding or judgment was anchored.

7. ID.; ID.; ID.; ELEMENTS.— In *Villanueva v. Court of Appeals*, we enumerated the elements of *res judicata* as follows: a) The former judgment or order must be final; b) It must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the

trial of the case; c) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and d) There must be, between the first and second actions, identity of parties, of subject matter and of cause of action. This requisite is satisfied if the two (2) actions are substantially between the same parties.

8. ID.; ID.; ID.; TWO CONCEPTS THEREOF, DISCUSSED.— *Res judicata* has two concepts: (1) "bar by prior judgment" as enunciated in Rule 39, Section 47(b) of the 1997 Rules of Civil Procedure; and (2) "conclusiveness of judgment" in Rule 39, Section 47(c), which reads as follows: (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; and (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. In explaining the two concepts of *res judicata*, this Court held that: There is "bar by prior judgment" when, as between the first case where the judgment was rendered, and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. But where there is identity of parties and subject matter in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is "conclusiveness of judgment." Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action. The identity of causes of action is not required but merely identity of issues.

9. ID.; ID.; ID.; TEST OF IDENTITY OF CAUSES OF ACTION LIES NOT IN THE FORM OF AN ACTION BUT ON WHETHER THE SAME EVIDENCE WOULD SUPPORT AND ESTABLISH THE FORMER AND THE PRESENT CAUSES OF ACTION; APPLIED.— In *Peñalosa v. Tuason*, we laid down the test in determining whether or not the causes

of action in the first and second cases are identical: Would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action. *Res judicata* clearly exists in G.R. No. 167000 and in CA-G.R. SP No. 84382 because both GSIS's and LLDHC's actions put in issue the validity of the Lapu-Lapu RTC Decision and were based on the assumption that it has either been modified, altered or nullified by the Manila RTC Decision. x x x. Notwithstanding the difference in the forms of actions GSIS and LLDHC filed, the doctrine of *res judicata* still applies considering that the parties were litigating the same thing, *i.e.*, the 78 lots in Marigondon, Lapu-Lapu City, and more importantly, the same contentions and evidence were used in all causes of action. As this Court held in *Mendiola v. Court of Appeals*: The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment. x x x.

10. ID.; ID.; THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) CANNOT CLAIM IMMUNITY FROM THE ENFORCEMENT OF THE MONETARY JUDGMENT AGAINST IT ARISING FROM ITS FAILURE TO COMPLY WITH ITS PRIVATE AND CONTRACTUAL OBLIGATION WITH ANOTHER.— This Court, in *Rubia v. Government Service Insurance System*, held that the exemption of GSIS is not absolute and does not encompass all of its funds, to wit: x x x. Furthermore, the declared policy of the State in Section 39 of the GSIS Charter granting GSIS an exemption from tax, lien, attachment, levy, execution, and other legal processes should be read together with the grant of power to the GSIS to invest its "excess funds" under Section 36 of the same Act. Under Section 36, the GSIS is granted the ancillary power to invest in business and other ventures for the benefit of the employees, by using its excess funds for investment purposes. In the exercise of such function and power, the GSIS is allowed to assume a character similar to a private corporation. Thus, it may sue and be sued, as also, explicitly granted by its charter. Needless to say, where proper, under Section 36, the GSIS may be held liable for the contracts it has entered into in the course of its business investments. For GSIS cannot claim a special immunity from liability in regard to its business ventures

under said Section. Nor can it deny contracting parties, in our view, the right of redress and the enforcement of a claim, particularly as it arises from a purely contractual relationship, of a private character between an individual and the GSIS. x x x In this case, the monetary judgments against GSIS arose from its failure to comply with its private and contractual obligation to GMC. As such, GSIS cannot claim immunity from the enforcement of the final and executory judgment against it.

11. ID.; ACTIONS; FORUM SHOPPING; WHEN PRESENT; PURPOSE OF THE RULE AGAINST FORUM SHOPPING; BOTH THE RESPONDENTS LAPU-LAPU DEVELOPMENT & HOUSING CORPORATION (LLDHC) AND THE GSIS ARE GUILTY OF FORUM SHOPPING.— There is forum shopping when two or more actions or proceedings, other than appeal or *certiorari*, involving the same parties for the same cause of action, are instituted either simultaneously or successively to obtain a more favorable decision. This Court, in *Spouses De la Cruz v. Joaquin*, explained why forum shopping is disapproved of: Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice, and congests court dockets. Willful and deliberate violation of the rule against it is a ground for the summary dismissal of the case; it may also constitute direct contempt of court. It is undeniable that both LLDHC and GSIS are guilty of forum shopping, for having gone through several actions and proceedings from the lowest court to this Court in the hopes that they will obtain a decision favorable to them. In all those actions, only one issue was in contention: the ownership of the subject lots. In the process, the parties degraded the administration of justice, congested our court dockets, and abused our judicial system. Moreover, the simultaneous and successive actions filed below have resulted in conflicting decisions rendered by not only the trial courts but also by different divisions of the Court of Appeals. The very purpose of the rule against forum shopping was to stamp out the abominable practice of trifling with the administration of justice. It is evident from the history of this case that not only were the parties and the courts vexed, but more importantly, justice was delayed. As this Court held in the earlier case of LLDHC against GMC: "[The] insidious practice of repeatedly bringing essentially the same action – albeit disguised in various nomenclatures – before different courts at different times **is forum shopping no less**."

12. ID.; JUDGMENTS; FINAL AND EXECUTORY; THREE OPTIONS TO RESOLVE TWO CONFLICTING, FINAL AND EXECUTORY DECISIONS RENDERED BY TWO SEPARATE CO-EQUAL COURTS, DISCUSSED.— Although it is settled that the Lapu-Lapu RTC Decision was not in any way nullified by the Manila RTC Decision, it is this Court's duty to resolve the legal implications of having two conflicting, final, and executory decisions in existence. In *Collantes v. Court of Appeals*, this Court, faced with the similar issue of having two conflicting, final and executory decisions before it, offered three options to solve the dilemma: "the first is for the parties to assert their claims anew, the second is to determine which judgment came first, and the third is to determine which of the judgments had been rendered by a court of last resort." In *Collantes*, this Court applied the first option and resolved the conflicting issues anew. However, resorting to the first solution in the case at bar would entail disregarding not only the final and executory decisions of the Lapu-Lapu RTC and the Manila RTC, but also the final and executory decisions of the Court of Appeals and this Court. Moreover, it would negate two decades' worth of litigating. Thus, we find it more equitable and practicable to apply the second and third options consequently maintaining the finality of one of the conflicting judgments. The primary criterion under the second option is the time when the decision was rendered and became final and executory, such that earlier decisions should prevail over the current ones since final and executory decisions vest rights in the winning party. In the third solution, the main criterion is the determination of which court or tribunal rendered the decision. Decisions of this Court should be accorded more respect than those made by the lower courts.

13. ID.; ID.; ID.; ID.; APPLICATION; DECISIONS WHICH WERE RENDERED AND BECAME FINAL AND EXECUTORY EARLIER PREVAIL OVER CURRENT ONES; EXECUTION OF THE LAPU-LAPU RTC DECISION, PROPER.— Applying these criteria to the case at bar, the February 24, 1992 Decision of the Lapu-Lapu RTC in Civil Case No. 2203-L was not only promulgated first; it also attained finality on January 28, 1995, before the Manila RTC's May 10, 1994 Decision in Civil Case No. R-82-3429 became final on May 30, 1997. x x x. [T]he fact that the Manila RTC Decision was implemented and executed first does not

> negate the fact that the Lapu-Lapu RTC Decision was not only rendered earlier, but had also attained finality earlier. x x x. While this Court cannot blame the parties for exhausting all available remedies to obtain a favorable judgment, the issues involved in this case should have been resolved upon the finality of this Court's decision in G.R. No. 141407 x x x. In summary, this Court finds the execution of the Lapu-Lapu RTC Decision in Civil Case No. 2203-L to be in order. x x x.

APPEARANCES OF COUNSEL

*GSIS Law O*ffice for GSIS.
Raymundo Armovit for Group Management Corp.
Mario D. Ortiz for Lapu-Lapu Dev't. & Housing Corp.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

At bar are two consolidated Petitions for Review on *Certiorari* concerning 78 parcels of land located in Barrio Marigondon, Lapu-Lapu City. The parties in both cases have been in litigation over these lots for the last two decades in what seems to be an endless exercise of filing repetitious suits before the Court of Appeals and even this Court, questioning the various decisions and resolutions issued by the two separate trial courts involved. With this decision, it is intended that all legal disputes among the parties concerned, particularly over all the issues involved in these cases, will finally come to an end.

In the Petition in **G.R. No. 167000**, the Government Service Insurance System (GSIS) seeks to reverse and set aside the November 25, 2004 Decision[1] and January 20, 2005 Resolution[2] of the Twentieth Division of the Court of Appeals in CA-G.R.

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[1] *Rollo* (G.R. No. 167000), pp. 36-60; penned by Associate Justice Isaias P. Dicdican with Associate Justices Sesinado E. Villon and Ramon M. Bato, Jr., concurring.

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

SP No. 85096 and to annul and set aside the March 11, 2004[3] and May 7, 2004[4] Orders of the Regional Trial Court (RTC) of Lapu-Lapu City (Lapu-Lapu RTC) in **Civil Case No. 2203-L.**

In the Petition in **G.R. No. 169971,** Group Management Corporation (GMC) seeks to reverse and set aside the September 23, 2005 Decision[5] in CA-G.R. SP No. 84382 wherein the Special Nineteenth Division of the Court of Appeals annulled and set aside the March 11, 2004 Order of the Lapu-Lapu RTC in Civil Case No. 2203-L.

Both these cases stem from the same undisputed factual antecedents as follows:

Lapu-Lapu Development & Housing Corporation[6] (LLDHC) was the registered owner of seventy-eight (78) lots (subject lots), situated in Barrio Marigondon, Lapu-Lapu City.

On February 4, 1974, LLDHC and the GSIS entered into a Project and Loan Agreement for the development of the subject lots. GSIS agreed to extend a Twenty-Five Million Peso-loan (₱25,000,000.00) to LLDHC, and in return, LLDHC will develop, subdivide, and sell its lots to GSIS members. To secure the payment of the loan, LLDHC executed a real estate mortgage over the subject lots in favor of GSIS.

For LLDHC's failure to fulfill its obligations, GSIS foreclosed the mortgage. As the lone bidder in the public auction sale, GSIS acquired the subject lots, and eventually was able to consolidate its ownership over the subject lots with the corresponding transfer certificates of title (TCTs) issued in its name.

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[3] *Id.* at 691-693.

[4] *Id.* at 695-696.

[5] *Rollo* (G.R. No. 169971), pp. 583-601; penned by Associate Justice Vicente L. Yap with Associate Justices Arsenio J. Magpale and Enrico A. Lanzanas, concurring.

[6] *Rollo* (G.R. No. 167000), p. 361; formerly known as B.C. Sunga Realty, Inc.

On November 19, 1979, GMC offered to purchase on installments the subject lots from GSIS for a total price of One Million One Hundred Thousand Pesos (₱1,100,000.00), with the aggregate area specified as 423,177 square meters. GSIS accepted the offer and on February 26, 1980, executed a Deed of Conditional Sale over the subject lots. However, when GMC discovered that the total area of the subject lots was only 298,504 square meters, it wrote GSIS and proposed to proportionately reduce the purchase price to conform to the actual total area of the subject lots. GSIS approved this proposal and an Amendment to the Deed of Conditional Sale was executed to reflect the final sales agreement between GSIS and GMC.

On April 23, 1980, LLDHC filed a complaint for Annulment of Foreclosure with Writ of Mandatory Injunction against GSIS before the RTC of Manila (Manila RTC). This became **Civil Case No. R-82-3429**[7] and was assigned to Branch 38.

On November 3, 1989, GMC filed its own complaint against GSIS for Specific Performance with Damages before the Lapu-Lapu RTC. The complaint was docketed as **Civil Case No. 2203-L** and it sought to compel GSIS to execute a Final Deed of Sale over the subject lots since the purchase price had already been fully paid by GMC. GSIS, in defense, submitted to the court a Commission on Audit (COA) Memorandum dated April 3, 1989, purportedly disallowing in audit the sale of the subject lots for "apparent inherent irregularities," the sale price to GMC being lower than GSIS's purchase price at the public auction. LLDHC, having been allowed to intervene, filed a Motion to Dismiss GMC's complaint. When this motion was denied, LLDHC filed its Answer-in-Intervention and participated in the ensuing proceedings as an intervenor.

GMC, on February 1, 1992, filed its own Motion to Intervene with a Complaint-in-Intervention in Civil Case No. R-82-3429. This was dismissed on February 17, 1992 and finally denied

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[7] *Id.* at 701; originally docketed as Civil Case No. 131332, it was re-docketed as Civil Case No. R-82-3429 and assigned to Branch 38 of the RTC of Manila.

on March 23, 1992 by the Manila RTC on the ground that GMC can protect its interest in another proceeding.[8]

On February 24, 1992, after a full-blown trial, the Lapu-Lapu RTC rendered its Decision[9] in Civil Case No. 2203-L, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered ordering defendant to:
>
> 1. Execute the final deed of absolute sale and deliver the seventy-eight (78) certificates of title covering said seventy-eight (78) parcels of land to the [Group Management Corporation (GMC)];
>
> 2. Pay [GMC] actual damages, plus attorney's fees and expenses of litigation, in the amount of ₱285,638.88 and ₱100,000.00 exemplary damages;
>
> 3. [D]ismissing *in toto* intervenor's complaint-in-intervention for lack of evidence of legal standing and legal interest in the suit, as well as failure to substantiate any cause of action against either [GMC] or [GSIS].[10]

In deciding in favor of GMC, the Lapu-Lapu RTC held that there existed a valid and binding sales contract between GSIS and GMC, which GSIS could not continue to ignore without any justifiable reason especially since GMC had already fully complied with its obligations. [11]

The Lapu-Lapu RTC found GSIS's invocation of COA's alleged disapproval of the sale belated and self-serving. The Lapu-Lapu RTC said that COA, in disapproving GSIS's sale of the subject lots to GMC, violated its own circular which excludes the disposal by a government owned and/or controlled corporation of its "acquired assets" (*e.g.*, foreclosed assets or

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[8] *Id.* at 63-79.

[9] *Id.* at 79.

[10] *Id.*

[11] *Id.* at 68-69.

collaterals acquired in the regular course of business).[12] The Lapu-Lapu RTC also held that COA may not intrude into GSIS's charter-granted power to dispose of its acquired assets within five years from acquisition by "preventing/aborting the sale in question by refusing to pass it in audit."[13] Moreover, the Lapu-Lapu RTC held that the GSIS-proferred COA Memorandum was inadmissible in evidence not only because as a mere photocopy it failed to measure up to the "best evidence" rule under the Revised Rules of Court, but also because no one from COA, not even the auditor who supposedly prepared it, was ever presented to testify to the veracity of its contents or its due execution.[14]

In dismissing LLDHC's complaint-in-intervention, the Lapu-Lapu RTC held that LLDHC failed to prove its legal personality as a party-intervenor and all it was able to establish was a "suggestion of right for [GSIS] to renege [on] the sale for reasons peculiar to [GSIS] but not transmissible nor subject to invocation by [LLDHC]."[15]

LLDHC and GSIS filed their separate Notices of Appeal but these were dismissed by the Lapu-Lapu RTC on December 6, 1993.[16]

On May 10, 1994, the Manila RTC rendered a Decision[17] in Civil Case No. R-82-3429. The Manila RTC held that GSIS was unable to prove the alleged violations committed by LLDHC to warrant the foreclosure of the mortgage over the subject lots. Thus, the Manila RTC annulled the foreclosure made by GSIS and ordered LLDHC to pay GSIS the balance of its loan with interest, to wit:

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[12] *Id.* at 72.

[13] *Id.* at 73.

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

[15] *Id.* at 78.

[16] *Id.* at 352-353.

[17] *Id.* at 80-88.

WHEREFORE, judgment is hereby rendered:

1. ANNULLING the foreclosure by the defendant GSIS of the mortgage over the seventy-eight (78) parcels of land here involved:

2. CANCELLING the consolidated certificates of [title] issued in the name of GSIS and directing the Register of Deeds of Lapu-Lapu City to issue new certificates of [title] over those seventy-eight (78) parcels of land in the name of the plaintiff, in exactly the same condition as they were before the foreclosure;

3. ORDERING the plaintiff to pay the GSIS the amount of ₱9,200,000.00 with interest thereon at the rate of twelve (12%) percent per annum commencing from October 12, 1989 until fully paid; and

4. ORDERING defendant GSIS to execute a properly registrable release of discharge of mortgage over the parcels of land here involved after full payment of such amount by the plaintiff.

All claims and counterclaims by the parties as against each other are hereby dismissed.

No pronouncement as to costs.[18]

Armed with the Manila RTC decision, LLDHC, on July 27, 1994, filed before the Court of Appeals a Petition for Annulment of Judgment of the Lapu-Lapu RTC Decision in Civil Case No. 2203-L.[19] LLDHC alleged that the Manila RTC decision nullified the sale of the subject lots to GMC and consequently, the Lapu-Lapu RTC decision was also nullified.

This petition, docketed as **CA-G.R. SP No. 34696**, was dismissed by the Court of Appeals on December 29, 1994.[20] The Court of Appeals, in finding that the grounds LLDHC relied on were without merit, said:

In fine, there being no showing from the allegations of the petition that the respondent court is without jurisdiction over the subject matter and of the parties in Civil Case No. 2309 [2203-L], petitioner has no

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[18] *Id.* at 87-88.

[19] *Id.* at 370-380.

[20] *Id.* at 381-392.

cause of action for the annulment of judgment. The complaint must allege ultimate facts for the annulment of the decision (*Avendana v. Bautista*, 142 SCRA 41). We find none in this case.[21]

No appeal having been taken by LLDHC, the decision of the Court of Appeals in CA-G.R. SP No. 34696 became final and executory on January 28, 1995, as stated in the Entry of Final Judgment dated August 18, 1995.[22]

On February 2, 1995, LLDHC filed before this Court a Petition for *Certiorari*[23] docketed as **G.R. No. 118633**. LLDHC, in seeking to annul the February 24, 1992 Decision of the Lapu-Lapu RTC, again alleged that the Manila RTC Decision nullified the Lapu-Lapu RTC Decision.

Finding the petition a mere reproduction of the Petition for Annulment filed before the Court of Appeals in CA-G.R. SP No. 34696, this Court, in a Resolution[24] dated September 6, 1996, dismissed the petition in this wise:

> In a last ditch attempt to annul the February 24, 1992 Decision of the respondent court, this petition was brought before us on February 2, 1995.
>
> Dismissal of this petition is inevitable.
>
> The instant petition which is captioned, For: *Certiorari* With Preliminary Injunction, is actually another Petition for Annulment of Judgment of the February 24, 1992 Decision of the respondent Regional Trial Court of Lapu-lapu City, Branch 27 in Civil Case No. 2203-L. A close perusal of this petition as well as the Petition for Annulment of Judgment brought by the petitioner before the Court of Appeals in CA-G.R. SP No. 34696 reveals that the instant petition is a mere reproduction of the petition/complaint filed before the appellate tribunal for annulment of judgment. Paragraphs two (2) to eighteen (18) of this petition were copied verbatim from the Petition

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[21] *Id.* at 391.

[22] *Id.* at 393.

[23] *Id.* at 394-403.

[24] *Id.* at 452-462.

for Annulment of Judgment earlier filed in the court *a quo*, except for the designation of the parties thereto, *i.e.*, plaintiff was changed to petitioner, defendant to respondent. In fact, even the prayer in this petition is the same prayer in the Petition for Annulment of Judgment dismissed by the Court of Appeals, x x x.

x x x x x x x x x

Under Section 9(2) of Batas Pambansa Blg. 129, otherwise known as "The Judiciary Reorganization Act of 1980," it is the Court of Appeals (then the Intermediate Appellate Court), and not this Court, which has jurisdiction to annul judgments of Regional Trial Courts, *viz*:

> **SEC. 9. Jurisdiction** — The Intermediate Appellate Court shall exercise:
>
> x x x x x x x x x
>
> (2) *Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; and*
>
> x x x x x x x x x

Thus, this Court apparently has no jurisdiction to entertain a petition which is evidently another petition to annul the February 24, 1992 Decision of the respondent Branch 27, Regional Trial Court of Lapu-lapu City, it appearing that jurisdiction thereto properly pertains to the Court of Appeals. Such a petition was brought before the appellate court, but due to petitioner's failure to nullify Judge Risos' Decision in said forum, LLDHC, apparently at a loss as to what legal remedy to take, brought the instant petition under the guise of a petition for *certiorari* under Rule 65 seeking once again to annul the judgment of Branch 27.

Instead of filing this petition for *certiorari* under Rule 65, which is essentially another Petition to Annul Judgment, petitioner LLDHC should have filed a timely Petition for Review under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals, dated December 29, 1994, dismissing the Petition for Annulment of Judgment filed by the petitioner LLDHC before the court *a quo*. But, this is all academic now. The appellate court's decision had become final and executory on January 28, 1995.[25]

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[25] *Id.* at 456-458.

Despite such pronouncements, this Court, nevertheless, passed upon the merits of LLDHC's Petition for *Certiorari* in G.R. No. 118633. This Court said that the petition, "which was truly for annulment of judgment,"[26] cannot prosper because the two grounds on which a judgment may be annulled were not present in the case.[27] Going further, this Court held that even if the petition were to be given due course as a petition for *certiorari* under Rule 65 of the Revised Rules of Court, it would still be dismissible for not being brought within a reasonable period of time as it took LLDHC almost three years from the time it received the February 24, 1992 decision until the time it brought this action.[28]

LLDHC's motion for reconsideration was denied with finality[29] on November 18, 1996, and on February 18, 1997, an Entry of Judgment[30] was made certifying that the September 6, 1996 Resolution of this Court in G.R. No. 118633 had become final and executory on December 23, 1996.

Consequently, on November 28, 1996, the Lapu-Lapu RTC issued an Order[31] directing the execution of the judgment in Civil Case No. 2203-L. A corresponding Writ of Execution[32] was issued on December 17, 1996. The Motions to Stay Execution filed by LLDHC and GSIS were denied by the Lapu-Lapu RTC on February 19, 1997.[33]

Meanwhile, on December 27, 1996, the Court of Appeals rendered a Decision[34] in the separate appeals taken by GSIS

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[26] *Id.* at 458.

[27] *Id.* at 458-459.

[28] *Id.* at 460-461.

[29] *Id.* at 463.

[30] *Id.* at 464-465.

[31] *Id.* at 467.

[32] *Id.* at 468-469.

[33] *Id.* at 472.

[34] CA *rollo*, pp. 41-50.

and LLDHC from the May 10, 1994 Manila RTC Decision in Civil Case No. R-82-3429. This case, docketed as **CA-G.R. CV No. 49117**, affirmed the Manila RTC decision with modification insofar as awarding LLDHC attorney's fees and litigation expenses.

On March 3, 1997, GSIS came to this Court on a Petition for Review of the Court of Appeals' decision in **CA-G.R. CV No. 49117**. This was docketed as **G.R. No. 127732** and was dismissed on April 14, 1997[35] due to late filing, the due date being January 31, 1997. This dismissal became final and executory on May 30, 1997.[36]

On March 8, 1997, LLDHC filed a Petition for *Certiorari* with preliminary injunction before the Court of Appeals, praying that GMC and the Lapu-Lapu RTC be ordered to cease and desist from proceeding with the execution of its Decision in Civil Case No. 2203-L, on the theory that the Manila RTC decision was a supervening event which made it mandatory for the Lapu-Lapu RTC to stop the execution of its decision. This case was docketed as **CA-G.R. SP No. 44052**. On July 16, 1997, the Court of Appeals issued an Order temporarily restraining the Lapu-Lapu RTC and GMC from executing the February 24, 1992 decision in Civil Case No. 2203-L so as not to render the resolution of the case moot and academic.[37]

On July 21, 1997, because of GSIS's continued refusal to implement the December 17, 1996 Writ of Execution, the Lapu-Lapu RTC, upon GMC's motion, issued an Order[38] redirecting its instructions to the Register of Deeds of Lapu-Lapu City, to wit:

WHEREFORE, the defendant GSIS having refused to implement the Order of this Court dated December 17, 1996 the Court in

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[35] *Id.* at 51.

[36] *Id.*

[37] *Rollo* (G.R. No. 167000), p. 622.

[38] *Id.* at 474-475.

accordance with Rule 39, Sec. 10-a of the 1997 Rules of Procedure, hereby directs the Register of Deeds of Lapu-lapu City to cancel the Transfer Certificate of Titles of the properties involved in this case and to issue new ones in the name of the plaintiff and to deliver the same to the latter within ten (10) days after this Order shall have become final.[39]

While the TRO issued by the Court of Appeals in CA-G.R. SP No. 44052 was in effect, the Manila RTC, on August 1, 1997, issued a Writ of Execution[40] of its judgment in Civil Case No. R-82-3429. On August 7, 1997, the Sheriff implemented the Writ and ordered the Register of Deeds of Lapu-Lapu City to cancel the consolidated certificates of title issued in the name of GSIS and to issue new ones in favor of LLDHC. In conformity with the TRO, the Lapu-Lapu RTC on August 19, 1997, ordered[41] the suspension of its July 21, 1997 Order. With no similar restraining order against the execution of the Manila RTC Decision, a Writ of Possession was issued on August 21, 1997 to cause GSIS and all persons claiming rights under it to vacate the properties in question and to place LLDHC in peaceful possession thereof.[42]

On October 23, 1997, the Lapu-Lapu RTC, being aware of the events that have taken place while the TRO was in effect, issued an Order[43] reiterating its previous Orders of November 28, 1996, December 17, 1996, and July 21, 1997. The Lapu-Lapu RTC held that since the restraining order issued by the Court of Appeals in CA-G.R. SP No. 44052 had already lapsed by operation of law, and the February 24, 1992 Decision in Civil Case No. 2203-L had not only become final and executory but had been affirmed and upheld by both the Court of Appeals and this Court, the inescapable mandate was to give due course

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[39] *Id.*

[40] *Id.* at 477-478.

[41] *Id.* at 486.

[42] *Id.* at 479-480.

[43] *Id.* at 484-486.

to the efficacy of its decision. The Lapu-Lapu RTC thus directed the Register of Deeds of Lapu-Lapu City to effect the transfer of the titles to the subject lots in favor of GMC and declared "any and all acts done by the Register of Deeds of Lapu-Lapu City null and void starting with the surreptitious issuance of the new certificates of title in the name of [LLDHC], contrary" to its decision and orders.[44]

On November 13, 1997, LLDHC filed before the Court of Appeals another Petition for *Certiorari* with preliminary injunction and motion to consolidate with CA-G.R. SP No. 44052. This case was docketed as **CA-G.R. SP No. 45946**, but was dismissed[45] on November 20, 1997 for LLDHC's failure to comply with Section 1, Rule 65 of the 1997 Rules of Civil Procedure which requires the petition to be accompanied by, among others, "copies of all pleadings and documents relevant and pertinent thereto."[46]

The petition in CA-G.R. SP No. 44052 would likewise be dismissed[47] by the Court of Appeals on January 9, 1998, but this time, on the merits, to wit:

> The validity of the decision of the respondent judge in Civil Case No. 2303-L has thus been brought both before this Court and to the Supreme Court by the petitioner. In both instances the respondent judge has been upheld. The instant petition is petitioner's latest attempt to resist the implementation or execution of that decision using as a shield a decision of a Regional Trial Court in the National Capital Region. We are not prepared to allow it. The applicable rule and jurisprudence are clear. The prevailing party is entitled as a matter of right to a writ of execution, and the issuance thereof is a ministerial duty compellable by *mandamus*. We do not believe that there exists in this instance a supervening event which would justify a deviation from this rule.[48]

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[44] *Id.* at 486.

[45] *Id.* at 513.

[46] *Id.*

[47] *Id.* at 504-508.

[48] *Id.* at 507.

Prior to this, however, on November 28, 1997, the Lapu-Lapu RTC, acting on GMC's Omnibus Motion, made the following orders: for LLDHC to show cause why it should not be declared in contempt; for a writ of preliminary prohibitory injunction to be issued to restrain all persons acting on LLDHC's orders from carrying out such orders in defiance of its final and executory judgment; and for a writ of preliminary mandatory injunction to be issued to direct the ouster of LLDHC. The Lapu-Lapu RTC also declared the Register of Deeds of Lapu-Lapu City in contempt and directed the Office of the City Sheriff to implement the above orders and to immediately detain and confine the Register of Deeds of Lapu-Lapu City at the City Jail if he continues to refuse to transfer the titles of the subject lots after ten days from receipt of this order.[49]

On December 22, 1997, the Lapu-Lapu RTC denied[50] the motion for reconsideration filed by the Register of Deeds of Lapu-Lapu City. In separate motions, LLDHC, and again the Register of Deeds of Lapu-Lapu City, sought the reconsideration of the November 28, 1997 and December 22, 1997 Orders. On May 27, 1998, the Lapu-Lapu RTC, acting under a new judge,[51] granted both motions and accordingly set aside the November 28, 1997 and December 22, 1997 Orders.[52]

With the denial[53] of its motion for reconsideration on August 4, 1998, GMC came to this Court on a Petition for *Certiorari*, Prohibition and *Mandamus*, seeking to set aside the May 27, 1998 Order of the Lapu-Lapu RTC in Civil Case No. 2203-L. The Petition was referred to the Court of Appeals, which under *Batas Pambansa Blg*. 129, exercises original jurisdiction to issue such writs.[54] This was docketed as **CA-G.R. SP No. 50650**.

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[49] *Id.* at 490-498.

[50] *Id.* at 503.

[51] The previous judge retired on December 23, 1997.

[52] *Rollo* (G.R. No. 167000), pp. 522-527.

[53] *Id.* at 529.

[54] CA *rollo*, p. 393.

On April 30, 1999, the Court of Appeals rendered its Decision[55] in CA-G.R. SP No. 50650, the dispositive portion of which reads:

WHEREFORE, the petition being partly meritorious, the Court hereby resolves as follows:

(1) To AFFIRM the Orders of May 28, 1998 and August 4, 1998 in Civil Case No. 2203-L insofar as they set aside the order holding respondent Register of Deeds guilty of indirect contempt of court and to NULLIFY said orders in so far as they set aside the directives contained in paragraphs (a) and (b) and (c) of the order dated November 28, 1997.

(2) To DECLARE without FORCE and EFFECT insofar as petitioner Group Management Corporation is concerned the decision in Civil Case No. R-82-3429 as well as the orders and writs issued for its execution and enforcement: and

(3) To ENJOIN respondent Lapu-Lapu Development and Housing Corporation, along with its agents and representatives and/or persons/ public officials/employees acting in its interest, specifically respondent Regional Trial Court of Manila Branch 38, and respondent Register of Deeds of Lapu-Lapu City, from obstructing, interfering with or in any manner delaying the implementation/execution/ enforcement by the Lapu-Lapu City RTC of its order and writ of execution in Civil Case No. 2203-L.

For lack of sufficient basis the charge of contempt of court against respondent Lapu-Lapu Development and Housing Corporation and the public respondents is hereby DISMISSED.[56]

With the denial of LLDHC's motion for reconsideration on December 29, 1999,[57] LLDHC, on January 26, 2000, filed before this Court a Petition for Review on *Certiorari* assailing the

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[55] *Rollo* (G.R. No. 167000), pp. 89-112; penned by Associate Justice Artemio G. Tuquero with Associate Justices Eubulo Verzola and Mariano H. Umali, concurring.

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

[57] *Id.* at 606.

April 30, 1999 decision of the Court of Appeals in CA-G.R. SP No. 50650. This petition was docketed as **G.R. No. 141407**.

This Court dismissed LLDHC's petition and upheld the decision of the Court of Appeals in CA-G.R. SP No. 50650 in its decision dated September 9, 2002.[58] LLDHC's Motion for Reconsideration and Second Motion for Reconsideration were also denied on November 13, 2002[59] and February 3, 2003,[60] respectively.

The September 9, 2002 decision of this Court in G.R. No. 141407 became final on March 10, 2003.[61]

On March 11, 2004, the Lapu-Lapu RTC, acting on GMC's Motion for Execution, issued an Order[62] the dispositive portion of which reads:

> WHEREFORE, in light of the foregoing considerations, plaintiff Group Management Corporation's motion is GRANTED, while defendant GSIS' motion to stay the issuance of a writ of execution is denied for lack of merit. Consequently, the Sheriff of this Court is directed to proceed with the immediate implementation of this Court's decision dated February 24, 1992, by enforcing completely this Court's Order of Execution dated November 28, 1996, the writ of execution dated December 17, 1996, the Order dated July 21, 1997, the Order dated October 23 1997, the Order dated November 28, 1997 and the Order dated December 22, 1997.[63]

On May 7, 2004, the Lapu-Lapu RTC denied[64] the motions for reconsideration filed by LLDHC and GSIS.

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[58] *Id.* at 682-685; penned by Associate Justice Artemio V. Panganiban with Associate Justices Reynato S. Puno (Chairman), Renato C. Corona and Conchita Carpio-Morales, concurring.

[59] *Id.* at 686.

[60] *Id.* at 688.

[61] *Lapu-Lapu Development and Housing Corporation v. Group Management Corporation*, 437 Phil. 297 (2002).

[62] *Rollo* (G.R. No. 167000), pp. 113-115.

[63] *Id.* at 115.

[64] *Id.* at 695-696.

On May 27, 2004, LLDHC filed before the Court of Appeals a Petition for *Certiorari*, Prohibition and *Mandamus*[65] against the Lapu-Lapu RTC for having issued the Orders of March 11, 2004 and May 7, 2004 (assailed Orders). This petition docketed as **CA-G.R. SP No. 84382**, sought the annulment of the assailed Orders and for the Court of Appeals to command the Lapu-Lapu RTC to desist from further proceeding in Civil Case No. 2203-L, to dismiss GMC's Motion for Execution, and for the issuance of a Temporary Restraining Order (TRO)/Writ of Preliminary Injunction against the Lapu-Lapu RTC and GMC.

On July 6, 2004, GSIS filed its own Petition for *Certiorari* and Prohibition with Preliminary Injunction and Temporary Restraining Order[66] before the Court of Appeals to annul the assailed Orders of the Lapu-Lapu RTC, to prohibit the judge therein and the Register of Deeds of Lapu-Lapu City from implementing such assailed Orders, and for the issuance of a TRO and writ of preliminary injunction to maintain the *status quo* while the case is under litigation. This petition was docketed as **CA-G.R. SP No. 85096.**

The Court of Appeals initially dismissed outright LLDHC's petition for failure to attach the Required Secretary's Certificate/ Board Resolution authorizing petitioner to initiate the petition,[67] but in a Resolution[68] dated August 2, 2004, after having found the explanation for the mistake satisfactory, the Court of Appeals, "on equitable consideration and for the purpose of preserving the *status quo* during the pendency of the appeal,"[69] issued a TRO against the Lapu-Lapu RTC from enforcing its jurisdiction and judgment/order in Civil Case No. 2203-L until further orders. In its August 30, 2004 Resolution,[70] the Court of Appeals, without

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[65] *Id.* at 697-720.

[66] *Id.* at 723-739.

[67] *Id.* at 721-722.

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

[69] *Id.* at 117.

[70] *Id.* at 118-119.

resolving the case on its merits, also issued a Writ of Preliminary Injunction, commanding the Lapu-Lapu RTC to cease and desist from implementing the assailed Orders in Civil Case No. 2203-L, until further orders.

On November 25, 2004, the Twentieth Division of the Court of Appeals promulgated its decision in CA-G.R. SP No. 85096. It dismissed GSIS's petition and affirmed the assailed Orders of March 11, 2004 and May 7, 2004. The Court of Appeals found no merit in GSIS's petition since the judgment in Civil Case No. 2203-L, which was decided way back on February 24, 1992, had long become final and executory, which meant that the Lapu-Lapu RTC had no legal obstacle to cause said judgment to be executed and enforced. The Court of Appeals quoted in full, portions of this Court's Decision in G.R. No. 141407 to underscore the fact that no less than the Supreme Court had declared that the decision in Civil Case No. 2203-L was valid and binding and had become final and executory a long time ago and had not been in any way nullified by the decision rendered by the Manila RTC on May 10, 1994 in Civil Case No. R-82-3429. On January 20, 2005, the Court of Appeals upheld its decision and denied GSIS's Motion for Reconsideration.[71]

However, on September 23, 2005, the Special Nineteenth Division of the Court of Appeals came out with its own decision in CA-G.R. SP No. 84382. It granted LLDHC's petition, contrary to the Court of Appeals' decision in CA-G.R. SP No. 85096, and annulled and set aside the March 11, 2004 Order of the Lapu-Lapu RTC in this wise:

> WHEREFORE, finding merit in the instant Petition for *Certiorari*, Prohibition and *Mandamus*, the same is hereby **GRANTED**, and the assailed Order, dated March 11, 2004, of the Regional Trial Court, 7th Judicial Region, Branch 27, Lapulapu City, in Civil Case No. 2203-L is **ANNULLED AND SET ASIDE.**
>
> Accordingly, respondent Judge Benedicto Cobarde is hereby **ORDERED:**

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[71] *Id.* at 183-184.

a) to **DESIST** from further proceeding in Civil Case No. 2203-L; and

b) to **DISMISS** GMC's Motion for Execution in the abovementioned case;

Meanwhile, the Writ of Preliminary Injunction earlier issued is hereby declared **PERMANENT**. No pronouncement as to costs.[72]

GSIS[73] and GMC[74] are now before this Court, with their separate Petitions for Review on *Certiorari*, assailing the decisions of the Court of Appeals in **CA-G.R. SP No. 85096** and **CA-G.R. SP No. 84382,** respectively.

G.R. No. 167000

In G.R. No. 167000, GSIS is assailing the Orders issued by the Lapu-Lapu RTC on March 11, 2004 and May 7, 2004 for being legally unenforceable on GSIS because the titles of the 78 lots in Marigondon, Lapu-Lapu City were already in LLDHC's name, due to the final and executory judgment rendered by the Manila RTC in Civil Case No. R-82-3429. GSIS contends that it is legally and physically impossible for it to comply with the assailed Orders as the "subject matter to be delivered or performed have already been taken away from"[75] GSIS. GSIS asserts that the circumstances which have arisen, from the judgment of the Manila RTC to the cancellation of GSIS's titles, are "supervening events" which should be considered as an exception to the doctrine of finality of judgments because they render the execution of the final and executory judgment of the Lapu-Lapu RTC in Civil Case No. 2203-L unjust and inequitable. GSIS further claims that it should not be made to pay damages of any kind because its funds and properties are exempt from execution, garnishment, and other legal processes under Section 39 of Republic Act No. 8291.

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[72] *Rollo* (G.R. No. 169971), p. 601.

[73] *Rollo* (G.R. No. 167000), pp. 3-35.

[74] *Rollo* (G.R. No. 169971), pp. 3-82.

[75] *Rollo* (G.R. No. 167000), p. 20.

LLDHC, in its Compliance,[76] believes that it was impleaded in this case as a mere nominal party since it filed its own Petition for *Certiorari* before the Court of Appeals, which was granted in **CA-G.R. SP No. 84382**. LLDHC essentially agrees with GSIS that the implementation of the assailed Orders have become legally impossible due to the fully implemented Writ of Execution issued by the Manila RTC in Civil Case No. R-82-3429. LLDHC alleges that because of this "supervening event," GSIS cannot be compelled to execute a final deed of sale in GMC's favor, and "LLDHC cannot be divested of its titles, ownership and possession" of the subject properties.[77]

GMC in its comment[78] argues that GSIS has no legal standing to institute this petition because it has no more interest in the subject lots, since it is no longer in possession and the titles thereto have already been registered in LLDHC's name. GMC claims that the decision of the Special Nineteenth Division of the Court of Appeals is barred by *res judicata*, and that LLDHC is guilty of forum shopping for filing several petitions before the Court of Appeals and this Court with the same issues and arguments. GMC also asserts that the judgment in Civil Case No. R-82-3429 is enforceable only between GSIS and LLDHC as GMC was not a party to the case, and that the Manila RTC cannot overrule the Lapu-Lapu RTC, they being co-equal courts.

G.R. No. 169971

In G.R. No. 169971, GMC is praying that the decision of the Special Nineteenth Division of the Court of Appeals in **CA-G.R. SP No. 84382** be reversed and set aside. GMC is claiming that the Court of Appeals, in rendering the said decision, committed a palpable legal error by overruling several final decisions rendered by the Lapu-Lapu RTC, the Court of Appeals, and this Court.[79] GMC claims that the Lapu-Lapu RTC's duty

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[76] *Id.* at 787-792.

[77] *Id.* at 791.

[78] *Id.* at 242-316.

[79] *Rollo* (G.R. No. 169971), pp. 3-82.

to continue with the implementation of its orders is purely ministerial as the judgment has not only become final and executory, but has been affirmed by both the Court of Appeals and the Supreme Court in several equally final and executory decisions.[80] GMC, repeating its arguments in G.R. No. 167000, maintains that the petition is barred by *res judicata*, that there is forum shopping, and that the Manila RTC decision is not binding on GMC.

LLDHC in its comment[81] insists that there is a supervening event which rendered it necessary to stay the execution of the judgment of the Lapu-Lapu RTC. LLDHC also asserts that, as correctly found by the Court of Appeals in **CA-G.R. SP No. 84382**, the Lapu-Lapu RTC decision in Civil Case No. 2203-L was not affirmed with finality by the Court of Appeals and the Supreme Court as the decision was not reviewed on the merits.

SUMMARY OF THE ISSUES

The present case is peculiar in the sense that it involves two conflicting final and executory decisions of two different trial courts. Moreover, one of the RTC decisions had been fully executed and implemented. To complicate things further, the parties have previously filed several petitions, which have reached not only the Court of Appeals but also this Court. Upon consolidation of the two petitions, this Court has narrowed down the issues to the following:

1. Whether or not the decision of the Manila RTC in Civil Case No. R-82-3429 constitutes a supervening event, which should be admitted as an exception to the doctrine of finality of judgments.

2. Whether or not the September 23, 2005 Decision of the Special Nineteenth Division of the Court of Appeals in CA-G.R. SP No. 84382 and GSIS's Petition in G.R. No. 167000 are barred by *res judicata*.

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[80] *Id.* at 50.

[81] *Id.* at 663-672.

3. Whether or not there is a legal and physical impossibility for GSIS to comply with the March 11, 2004 and May 7, 2004 Orders of the Lapu-Lapu RTC in Civil Case No. 2203-L.

4. Whether or not LLDHC and GSIS are guilty of forum shopping.

DISCUSSION

First Issue: Supervening Event

It is well-settled that once a judgment attains finality, it becomes immutable and unalterable. It may not be changed, altered or modified in any way even if the modification were for the purpose of correcting an erroneous conclusion of fact or law. This is referred to as the "doctrine of finality of judgments," and this doctrine applies even to the highest court of the land.[82] This Court explained its rationale in this wise:

> The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[83]

This Court has, on several occasions, ruled that the doctrine of finality of judgments admits of certain exceptions, namely: "the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments,

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[82] *Dapar v. Biascan*, 482 Phil. 385, 405 (2004).

[83] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, G.R. No. 123346, November 29, 2005, 476 SCRA 305, 337.

and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable."[84]

Both GSIS and LLDHC claim that the execution of the decision and orders in Civil Case No. 2203-L should be stayed because of the occurrence of "supervening events" which render the execution of the judgment "impossible, unfair, unjust and inequitable."[85] However, in order for an event to be considered a supervening event to justify the alteration or modification of a final judgment, the event must have transpired **after the judgment has become final and executory,** to wit:

> Supervening events refer to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time.[86]

The Lapu-Lapu RTC Decision in Civil Case No. 2203-L was promulgated on **February 24, 1992**, while the Manila RTC Decision in Civil Case No. R-82-3429 was promulgated on **May 10, 1994**. As early as December 6, 1993, both GSIS's and LLDHC's appeals of the Lapu-Lapu RTC Decision were dismissed by the said RTC.[87] Only GSIS moved to reconsider this dismissal, which was denied on July 6, 1994.[88] Strictly speaking, the Lapu-Lapu RTC Decision should have attained finality at that stage; however, LLDHC filed with the Court of Appeals its Petition for Annulment of Judgment (CA-G.R. SP No. 34696) on July 27, 1994 and it used therein the Manila RTC Decision as its main ground for annulment of the Lapu-Lapu RTC decision.

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[84] *Heirs of Maura So v. Obliosca*, G.R. No. 147082, January 28, 2008, 542 SCRA 406, 418.

[85] *Rollo* (G.R. No. 167000), pp. 18-20.

[86] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 23 (2002).

[87] CA *rollo*, pp. 168-169.

[88] *Id.* at 176.

The Court of Appeals nonetheless dismissed LLDHC's Petition for Annulment of Judgment, in CA-G.R. SP No. 34696,[89] and that became final and executory on January 28, 1995,[90] after LLDHC interposed no appeal. The entry of judgment in this case was issued on August 18, 1995.[91] Moreover, the similar petition of LLDHC before this Court in G.R. No. 118633 was decided on September 6, 1996 and became final and executory on December 23, 1996. Therefore, the ruling by the Manila RTC is evidently not a supervening event. It was already in existence even before the decision in Civil Case No. 2203-L attained finality.

Just as LLDHC and GSIS, as the losing parties, had the right to file their respective appeals within the prescribed period, GMC, as the winning party in Civil Case No. 2203-L, equally had the correlative right to benefit from the finality of the resolution of its case,[92] to wit:

> A final judgment vests in the prevailing party a right recognized and protected by law under the due process clause of the Constitution. A final judgment is "a vested interest which it is right and equitable that the government should recognize and protect, and of which the individual could not be deprived arbitrarily without injustice."[93] (Citations omitted.)

Since the Manila RTC decision does not constitute a supervening event, there is therefore neither reason nor justification to alter, modify or annul the Lapu-Lapu RTC Decision and Orders, which have long become final and executory. Thus, in the present case, GMC must not be deprived of its right to enjoy the fruits of a final verdict.

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[89] *Rollo* (G.R. No. 167000), pp. 381-392.

[90] *Id.* at 393.

[91] *Id.*

[92] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, *supra* note 83.

[93] *Insular Bank of Asia and America Employees' Union (IBAAEU) v. Inciong*, 217 Phil. 629, 650 (1984).

It is settled in jurisprudence that to stay execution of a final judgment, a supervening event "must create a substantial change in the rights or relations of the parties which would render execution of a final judgment unjust, impossible or inequitable making it imperative to stay immediate execution in the interest of justice."[94]

However, what would be unjust and inequitable is for the Court to accord preference to the Manila RTC Decision on this occasion when in the past, the Court of Appeals and this Court have repeatedly, consistently, and with finality rejected LLDHC's moves to use the Manila RTC Decision as a ground to annul, and/or to bar the execution of, the Lapu-Lapu RTC Decision. To be sure, in the Decision dated September 9, 2002 in G.R. No. 141407, penned by former Chief Justice Artemio V. Panganiban, the Court already passed upon the lack of effect of the Manila RTC Decision on the finality of the Lapu-Lapu RTC decision in this wise:

> The records of the case clearly show that the Lapu-lapu Decision has become final and executory and is thus valid and binding upon the parties. Obviously, petitioner [LLDHC] is again trying **another backdoor attempt to annul the final and executory Decision of the Lapu-lapu RTC**.
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> *First*, it was petitioner that filed on March 11, 1992 a **Notice of Appeal** contesting the Lapu-lapu RTC Judgment in Civil Case No. 2203-L rendered on February 24, 1992. The Notice was however **rejected by the said RTC for being frivolous and dilatory.** Since petitioner had done nothing thereafter, the Decision clearly became final and executory.
>
> **However, upon receipt of the Manila RTC Decision, petitioner found a new tool to evade the already final Lapu-lapu Decision by seeking the annulment of the latter in a Petition with the CA**. **However, the appellate court dismissed the action**, because petitioner had been unable to prove any of the grounds for annulment; namely lack of jurisdiction or extrinsic fraud. Because no appeal had been taken by petitioner, the ruling of the CA also became final and executory.

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[94] *Silverio, Jr. v. Filipino Business Consultants, Inc.*, 504 Phil. 150, 162 (2005).

Second, **the Supreme Court likewise recognized the finality of the CA Decision when it threw out LLDHC's Petition for *Certiorari* in GR No. 118633.** This Court ruled thus:

> "Instead of filing this petition for *certiorari* under Rule 65, which is essentially another Petition to Annul Judgment, petitioner LLDHC should have filed a timely Petition for Review under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals, dated December 29, 1994, dismissing the Petition for Annulment of Judgment filed by the petitioner LLDHC before the court *a quo*. *But this is all academic now. The appellate court's decision had become final and executory on January 28, 1995*."

Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors in interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been. Petitioner's failure to file an appeal within the reglementary period renders the judgment final and executory. The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and, hence, unappealable. **Therefore, since the Lapu-lapu Decision has become final and executory, its execution has become mandatory and ministerial on the part of the judge**.

The CA correctly ruled that the Lapu-lapu Judgment is binding upon petitioner [LLDHC] which, by its own motion, participated as an intervenor. In fact, the latter **filed an Answer in Intervention** and thereafter **actively took part in the trial**. Thus, having had an opportunity to be heard and to seek a reconsideration of the action or ruling it complained of, it cannot claim that it was denied due process of law. What the law prohibits is the absolute absence of the opportunity to be heard. Jurisprudence teaches that a party cannot feign denial of due process if it has been afforded the opportunity to present its side.

Petitioner likewise claims that Private Respondent GMC cannot escape the adverse effects of the final and executory judgment of the Manila RTC.

Again, we do not agree. A trial court has no power to stop an act that has been authorized by another trial court of equal rank. **As correctly stated by the CA, the Decision rendered by the Manila**

RTC — while final and executory — cannot bind herein private respondent [GMC], which was not a party to the case before the said RTC. A personal judgment is binding only upon the parties, their agents, representatives and successors in interest.

Third, **petitioner grievously errs in insisting that the judgment of the Manila RTC nullified that of the Lapu-lapu RTC. As already adverted to earlier, courts of coequal and coordinate jurisdiction may not interfere with or pass upon each other's orders or processes, since they have the same power and jurisdiction**. Except in extreme situations authorized by law, they are proscribed from doing so.[95] (Emphases supplied.)

It likewise does not escape the attention of this Court that the only reason the Manila RTC Decision was implemented ahead of the Lapu-Lapu RTC Decision was that LLDHC successfully secured a TRO from the Court of Appeals through its petition for *certiorari* docketed as CA-G.R. SP No. 44052, which was eventually dismissed by the appellate court. The Court of Appeals ruled that the Manila RTC Decision did not constitute a supervening event that would forestall the execution of the Lapu-Lapu RTC Decision. This decision of the Court of Appeals likewise became final and executory in 1998.

It bears repeating that the issue of whether or not the Manila RTC Decision could nullify or render unenforceable the Lapu-Lapu RTC Decision has been litigated many times over in different fora. It would be the height of inequity if the Court were to now reverse the Court of Appeals and its own final and executory rulings and allow GSIS to prevent the execution of the Lapu-Lapu RTC Decision on the same legal grounds previously discredited by the courts.

Second Issue:
Res Judicata

GMC asserts that the September 23, 2005 Decision of the Special Nineteenth Division of the Court of Appeals in CA-

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[95] *Lapu-Lapu Development and Housing Corporation v. Group Management Corporation*, *supra* note 61 at 312-315.

G.R. SP No. 84382 and the petition herein by GSIS in G.R. No. 167000 are barred by *res judicata* as the issues involved had been fully resolved not only by the lower courts but by this Court as well. GSIS and LLDHC both insist that *res judicata* does not apply as this Court "has not yet rendered a decision involving the same or any similar petition."[96] The petitions by LLDHC before the Court of Appeals and GSIS before this Court both prayed for the annulment of the March 11, 2004 and May 7, 2004 Orders of the Lapu-Lapu RTC in Civil Case No. 2203-L. These assailed Orders were both issued to resolve the parties' motions and to have the February 24, 1992 judgment implemented and executed.

In *Republic of the Philippines (Civil Aeronautics Administration) v. Yu*,[97] this Court expounded on the concept of *res judicata* and explained it in this wise:

> *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[98]

In *Villanueva v. Court of Appeals*,[99] we enumerated the elements of *res judicata* as follows:

a) The former judgment or order must be final;

b) It must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case;

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[96] *Rollo* (G.R. No. 169971), pp. 712, 882.

[97] G.R. No. 157557, March 10, 2006, 484 SCRA 416.

[98] *Id.* at 420.

[99] 349 Phil. 99 (1998).

c) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and

d) There must be, between the first and second actions, identity of parties, of subject matter and of cause of action. This requisite is satisfied if the two (2) actions are substantially between the same parties.[100]

All three parties herein are in agreement with the facts that led to the petitions in this case. However, not all of them agree that the matters involved in this case have already been judicially settled. While GMC contends that GSIS's petition is barred by *res judicata*, both GSIS and LLDHC assert that this Court has not yet decided any similar petition, thus disputing the claim of *res judicata*.

Res judicata has two concepts: (1) "bar by prior judgment" as enunciated in Rule 39, Section 47(b) of the 1997 Rules of Civil Procedure; and (2) "conclusiveness of judgment" in Rule 39, Section 47(c), which reads as follows:

(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; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

In explaining the two concepts of *res judicata*, this Court held that:

There is "bar by prior judgment" when, as between the first case where the judgment was rendered, and the second case that is sought to be barred, there is identity of parties, subject matter, and causes

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[100] *Id.* at 109.

of action. But where there is identity of parties and subject matter in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is "conclusiveness of judgment." Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action. The identity of causes of action is not required but merely identity of issues.[101]

In *Peñalosa v. Tuason*,[102] we laid down the test in determining whether or not the causes of action in the first and second cases are identical:

> Would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action.[103]

Res judicata clearly exists in G.R. No. 167000 and in CA-G.R. SP No. 84382 because both GSIS's and LLDHC's actions put in issue the validity of the Lapu-Lapu RTC Decision and were based on the assumption that it has either been modified, altered or nullified by the Manila RTC Decision.

In CA-G.R. SP No. 84382, LLDHC sought to annul the assailed Orders of the Lapu-Lapu RTC and to order the judge therein to desist from further proceeding in Civil Case No. 2203-L. LLDHC sought for the same reliefs in its Petition for Annulment of Judgment in CA-G.R. SP No. 34696 and G.R. No. 118633, in its Petition for *Certiorari* in CA-G.R. SP No. 44052, and in its Petition for Review on *Certiorari* in G.R. No. 141407, all of which have been decided with finality.

In G.R. No. 167000, GSIS is praying for the reversal of the November 25, 2004 Decision and January 20, 2005 Resolution

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[101] *Republic of the Philippines (Civil Aeronautics Administration) v. Yu*, *supra* note 97 at 422.

[102] 22 Phil. 303 (1912).

[103] *Id.* at 322.

in CA-G.R. SP No. 85096, wherein the Court of Appeals affirmed the assailed Orders. The validity of these assailed Orders hinges on the validity of the Lapu-Lapu RTC Decision, which issue had already been decided with finality by both the Court of Appeals and this Court.

Notwithstanding the difference in the forms of actions GSIS and LLDHC filed, the doctrine of *res judicata* still applies considering that the parties were litigating the same thing, *i.e.*, the 78 lots in Marigondon, Lapu-Lapu City, and more importantly, the same contentions and evidence were used in all causes of action. As this Court held in *Mendiola v. Court of Appeals*[104]:

> The test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment. x x x.[105]

The doctrine of *res judicata* makes a final judgment on the merits rendered by a court of competent jurisdiction conclusive as to the rights of the parties and their privies and amounts to an absolute bar to subsequent actions involving the same claim, demand, or cause of action.[106] Even a finding of conclusiveness of judgment operates as estoppel with respect to matters in issue or points controverted, on the determination of which the finding or judgment was anchored.[107]

Evidently, this Court could dispose of this case simply upon the application of the principle of *res judicata*. It is clear that GSIS's petition in G.R. No. 167000 and LLDHC's petition in CA-G.R. SP No. 84382 should have never reached those stages for having been barred by a final and executory judgment on

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[104] 327 Phil. 1156 (1996).

[105] *Id.* at 1166.

[106] *Republic of the Philippines (Civil Aeronautics Administration) v. Yu*, *supra* note 97 at 422-423.

[107] *Camara v. Court of Appeals*, 369 Phil. 858, 868 (1999).

their claims. However, considering the nature of the case before us, this Court is compelled to make a final determination of the issues in the interest of substantial justice and to end the wasteful use of our courts' time and resources.

Third Issue:
GSIS's Compliance with the
Lapu-Lapu RTC Judgment and Orders

GSIS asserts that the assailed Orders cannot be enforced upon it given the physical and legal impossibility for it to comply as the titles over the subject properties were transferred to LLDHC under the Manila RTC writ of execution.

A closer perusal of the March 11, 2004 and May 7, 2004 Orders shows that GSIS's argument holds no water. The May 7, 2004 Order denied GSIS's and LLDHC's motions for reconsideration of the March 11, 2004 Order. The March 11, 2004 Order resolved GMC's urgent manifestation and motion to proceed with the implementation of the February 24, 1992 final and executory decision and GSIS's and LLDHC's opposition thereto, as well as GSIS's motion to stay the issuance of a writ of execution against it. The dispositive portion of the Order reads:

> WHEREFORE, in the light of the foregoing considerations, plaintiff Group Management Corporation's motion is GRANTED, while defendant GSIS' motion to stay the issuance of a writ of execution is denied for lack of merit. Consequently, **the Sheriff of this Court is directed to proceed with the immediate implementation of this Court's decision dated February 24, 1992**, by enforcing completely this Court's Order of Execution dated November 28, 1996, the writ of execution dated December 17, 1996, the Order dated July 21, 1997, the Order dated October 23, 1997, the Order dated November 28, 1997 and the Order dated December 22, 1997.[108] (Emphasis ours.)

While the previous orders and writs of execution issued by the Lapu-Lapu RTC required the GSIS to execute the final deed

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[108] *Rollo* (G.R. No. 167000), p. 693.

of sale and to deliver the subject properties, the Lapu-Lapu RTC, in its subsequent Orders, modified this by directing its order to the Register of Deeds of Lapu-Lapu City. In its July 21, 1997 Order,[109] the Lapu-Lapu RTC, seeing GSIS's obstinate refusal to implement the court's previous orders, directed the Register of Deeds of Lapu-Lapu City to cancel the Transfer Certificates of Title of the subject properties and to issue new ones in the name of GMC, and to deliver the same to GMC. Moreover, in its October 23, 1997 Order, the Lapu-Lapu RTC, noting the implemented judgment of the Manila RTC, declared the issuance of new titles to LLDHC null and void for being contrary to the court's February 24, 1992 decision and directed the Register of Deeds to effect the transfer of the titles to GMC.

Considering that the assailed Orders merely directed the Lapu-Lapu RTC's Sheriff to proceed with the implementation of the court's previous orders, that is, to make sure that the Register of Deeds of Lapu-Lapu City complied with the orders, GSIS had nothing to comply with insofar as the titles to, and possession of, the subject properties were concerned, the Orders being clearly directed towards the Sheriff of the Lapu-Lapu RTC and the Register of Deeds of Lapu-Lapu City. Hence, GSIS's argument of legal and physical impossibility of compliance with the assailed Orders is baseless.

GSIS also argues that it cannot be the "subject [of any] execution including [the] payment of any damage and other monetary judgments because all GSIS funds and properties are absolutely and expressly exempt from execution and other legal processes under Section 39 of Republic Act No. 8291."[110]

Section 39 of Republic Act No. 8291 provides:

SECTION 39. Exemption from Tax, Legal Process and Lien. —It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits

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[109] *Id.* at 474-475.

[110] *Id.* at 17.

under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding any laws to the contrary, the GSIS, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds. These exemptions shall continue unless expressly and specifically revoked and any assessment against the GSIS as of the approval of this Act are hereby considered paid. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect.

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The funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi judicial agencies or administrative bodies including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS.

This Court, in *Rubia v. Government Service Insurance System*,[111] held that the exemption of GSIS is not absolute and does not encompass all of its funds, to wit:

In so far as Section 39 of the GSIS charter exempts the GSIS from execution, suffice it to say that such exemption is not absolute and does not encompass all the GSIS funds. By way of illustration and as may be gleaned from the Implementing Rules and Regulation of the GSIS Act of 1997, one exemption refers to social security benefits and other benefits of GSIS *members* under Republic Act No. 8291 in connection with financial obligations of the members to other parties. The pertinent GSIS Rule provides:

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[111] 476 Phil. 623 (2004).

Rule XV. Funds of the GSIS

Section 15.7 ***Exemption of Benefits of Members from Tax, Attachment, Execution, Levy or other Legal Processes.*** – The social security benefits and other benefits of GSIS members under R.A. 8291 shall be exempt from tax, attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies **in connection with all financial obligations of the member,** including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties or incurred in connection with his position or work, as well as COA disallowances. Monetary liability in favor of the GSIS, however, may be deducted from the benefits of the member. [Emphasis supplied]

The processual exemption of the GSIS funds and properties under Section 39 of the GSIS Charter, in our view, should be read consistently with its avowed principal purpose: to maintain actuarial solvency of the GSIS in the protection of assets which are to be used to finance the retirement, disability and life insurance benefits of its members. Clearly, the exemption should be limited to the purposes and objects covered. Any interpretation that would give it an expansive construction to exempt all GSIS assets from legal processes absolutely would be unwarranted.

Furthermore, the declared policy of the State in Section 39 of the GSIS Charter granting GSIS an exemption from tax, lien, attachment, levy, execution, and other legal processes should be read together with the grant of power to the GSIS to invest its "excess funds" under Section 36 of the same Act. Under Section 36, the GSIS is granted the ancillary power to invest in business and other ventures for the benefit of the employees, by using its excess funds for investment purposes. In the exercise of such function and power, the GSIS is allowed to assume a character similar to a private corporation. Thus, it may sue and be sued, as also, explicitly granted by its charter. Needless to say, where proper, under Section 36, the GSIS may be held liable for the contracts it has entered into in the course of its business investments. For GSIS cannot claim a special immunity from liability in regard to its business ventures under said Section. Nor can it deny contracting parties, in our view, the right of redress and the enforcement of a claim, particularly as it arises from a purely

contractual relationship, of a private character between an individual and the GSIS.[112]

This ruling has been reiterated in the more recent case of *Government Service Insurance System v. Regional Trial Court of Pasig City, Branch 71*,[113] wherein GSIS, which was also the petitioner in that case, asked to reverse this Court's findings in *Rubia* and grant GSIS absolute immunity. This Court rejected that plea and held that GSIS should not be allowed to hide behind such immunity especially since its obligation arose from its own wrongful action in a business transaction.

In this case, the monetary judgments against GSIS arose from its failure to comply with its private and contractual obligation to GMC. As such, GSIS cannot claim immunity from the enforcement of the final and executory judgment against it.[114]

Fourth Issue:
Forum Shopping

On the issue of forum shopping, this Court already found LLDHC guilty of forum shopping and was adjudged to pay treble costs way back in 2002 in G.R. No. 141407[115]:

> There is forum shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) from another. In *Gatmaytan v. CA*, the petitioner therein repeatedly availed itself of several judicial remedies in different courts, simultaneously or successively. All those remedies were substantially founded on the same transactions and the same essential facts and circumstances; and all raised substantially the same issues either pending in, or already resolved adversely by, some other court. This Court held that therein petitioner was trying to increase his chances of obtaining a favorable decision by filing multiple suits in several courts. Hence, he was found guilty of forum shopping.

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[112] *Id.* at 637-640.

[113] G.R. No. 175393, December 18, 2009, 608 SCRA 552, 584.

[114] *Id.*

[115] *Lapu-Lapu Development and Housing Corporation v. Group Management Corporation*, *supra* note 61.

In the present case, after the Lapu-Lapu RTC had rendered its Decision in favor of private respondent, petitioner filed several petitions before this Court and the CA essentially seeking the annulment thereof. True, petitioner had filed its Complaint in the Manila RTC before private respondent filed its own suit in the Lapu-Lapu RTC. Records, however, show that private respondent learned of the Manila case only when petitioner filed its Motion for Intervention in the Lapu-Lapu RTC. When GMC filed its own Motion to Intervene in the Manila RTC, it was promptly rebuffed by the judge therein. On the other hand, petitioner was able to present its side and to participate fully in the proceedings before the Lapu-Lapu RTC.

On July 27, 1994, almost two years after the dismissal of its appeal by the Lapu-lapu RTC, petitioner filed in the CA a suit for the annulment of that RTC judgment. On December 29, 1994, this suit was rejected by the CA in a Decision which became final and executory on January 28, 1995, after no appeal was taken by petitioner. However, this action did not stop petitioner. On February 2, 1995, it filed with this Court another Petition deceptively cloaked as *certiorari*, but which in reality sought the annulment of the Lapu-lapu Decision. This Court dismissed the Petition on September 6, 1996. Petitioner's Motion for Reconsideration was denied with finality on November 18, 1996.

On November 28, 1996, Judge Risos of the Lapu-lapu RTC directed the execution of the judgment in the case filed before it. The Motion to Stay Execution filed by petitioner was denied on February 19, 1997. Undaunted, it filed in this Court another Petition for *Certiorari*, Prohibition and *Mandamus*. On September 21, 1998, we referred the Petition to the CA for appropriate action. This new Petition again essentially sought to annul the final and executory Decision rendered by the Lapu-lapu RTC. Needless to say, the new suit was unsuccessful. Still, this rejection did not stop petitioner. It brought before this Court the present Petition for Review on *Certiorari* alleging the same facts and circumstances and raising the same issues already decided by this Court in G.R. No. 118633.

First Philippine International Bank v. CA stresses that what is truly important to consider in determining whether forum shopping exists is the vexation caused the courts and the parties-litigants by one who asks different courts and/or administrative agencies to rule on the same or related facts and causes and/or to grant the same or substantially the same relief, in the process creating the possibility of conflicting rulings and decisions.

Petitioner in the present case sued twice before the CA and thrice before this Court, alleging substantially the same facts and circumstances, raising essentially the same issues, and praying for almost identical reliefs for the annulment of the Decision rendered by the Lapu-lapu RTC. This insidious practice of repeatedly bringing essentially the same action — albeit disguised in various nomenclatures — before different courts at different times is forum shopping no less. Because of petitioner's actions, the execution of the Lapu-lapu Decision has been needlessly delayed and several courts vexed.[116]

There is forum shopping when two or more actions or proceedings, other than appeal or *certiorari*, involving the same parties for the same cause of action, are instituted either simultaneously or successively to obtain a more favorable decision.[117] This Court, in *Spouses De la Cruz v. Joaquin*,[118] explained why forum shopping is disapproved of:

Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice, and congests court dockets. Willful and deliberate violation of the rule against it is a ground for the summary dismissal of the case; it may also constitute direct contempt of court.[119]

It is undeniable that both LLDHC and GSIS are guilty of forum shopping, for having gone through several actions and proceedings from the lowest court to this Court in the hopes that they will obtain a decision favorable to them. In all those actions, only one issue was in contention: the ownership of the subject lots. In the process, the parties degraded the administration of justice, congested our court dockets, and abused our judicial system. Moreover, the simultaneous and successive actions filed below have resulted in conflicting decisions rendered by not only the trial courts but also by different divisions of the Court of Appeals.

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[116] *Id.* at 315-317.

[117] *Spouses De la Cruz, v. Joaquin,* 502 Phil. 803, 813 (2005).

[118] *Id.*

[119] *Id.*

The very purpose of the rule against forum shopping was to stamp out the abominable practice of trifling with the administration of justice.[120] It is evident from the history of this case that not only were the parties and the courts vexed, but more importantly, justice was delayed. As this Court held in the earlier case of LLDHC against GMC: "[The] insidious practice of repeatedly bringing essentially the same action – albeit disguised in various nomenclatures – before different courts at different times **is forum shopping no less**."[121]

Conclusion

Nonetheless, like we said, substantial justice requires the resolution of this controversy on its merits. It is the duty of this Court to put an end to this long-delayed litigation and render a decision, which will bind all parties with finality.

Although it is settled that the Lapu-Lapu RTC Decision was not in any way nullified by the Manila RTC Decision, it is this Court's duty to resolve the legal implications of having two conflicting, final, and executory decisions in existence. In *Collantes v. Court of Appeals*,[122] this Court, faced with the similar issue of having two conflicting, final and executory decisions before it, offered three options to solve the dilemma: "the first is for the parties to assert their claims anew, the second is to determine which judgment came first, and the third is to determine which of the judgments had been rendered by a court of last resort."[123]

In *Collantes*, this Court applied the first option and resolved the conflicting issues anew. However, resorting to the first solution in the case at bar would entail disregarding not only the final and executory decisions of the Lapu-Lapu RTC and

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[120] *Young v. John Keng Seng a.k.a. John Sy*, 446 Phil. 823, 832 (2003).

[121] *Lapu-Lapu Development and Housing Corporation v. Group Management Corporation, supra* note 61 at 317.

[122] G.R. No. 169604, March 6, 2007, 517 SCRA 561.

[123] *Id.* at 576.

the Manila RTC, but also the final and executory decisions of the Court of Appeals and this Court. Moreover, it would negate two decades' worth of litigating. Thus, we find it more equitable and practicable to apply the second and third options consequently maintaining the finality of one of the conflicting judgments. The primary criterion under the second option is the time when the decision was rendered and became final and executory, such that earlier decisions should prevail over the current ones since final and executory decisions vest rights in the winning party. In the third solution, the main criterion is the determination of which court or tribunal rendered the decision. Decisions of this Court should be accorded more respect than those made by the lower courts.[124]

Applying these criteria to the case at bar, the February 24, 1992 Decision of the Lapu-Lapu RTC in Civil Case No. 2203-L was not only promulgated first; it also attained finality on January 28, 1995, before the Manila RTC's May 10, 1994 Decision in Civil Case No. R-82-3429 became final on May 30, 1997. It is especially noteworthy that months after the Lapu-Lapu RTC issued its writ of execution on December 17, 1996, the Manila RTC issued its own writ of execution on August 1, 1997. To recall, the Manila RTC writ was only satisfied first because the Court of Appeals in CA-G.R. SP No. 44052 deemed it appropriate to issue a temporary restraining order against the execution of the Lapu-Lapu RTC Decision, pending the case before it. Hence, the fact that the Manila RTC Decision was implemented and executed first does not negate the fact that the Lapu-Lapu RTC Decision was not only rendered earlier, but had also attained finality earlier. Furthermore, while both judgments reached the Court of Appeals, only Civil Case No. 2203-L was passed upon on the merits by this Court. In G.R. No. 141407, this Court resolved LLDHC's petition for review on *certiorari* seeking to annul the Court of Appeals' Decision in CA-G.R. SP No. 50650. This Court, in dismissing the petition, upheld the validity of the Lapu-Lapu RTC Decision and declared

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[124] Heirs of *Maura So v. Obliosca*, *supra* note 84.

that the Manila RTC Decision cannot bind GMC. That decision became final and executory way back on March 10, 2003.

While this Court cannot blame the parties for exhausting all available remedies to obtain a favorable judgment, the issues involved in this case should have been resolved upon the finality of this Court's decision in G.R. No. 141407. As pronounced by this Court in *Villanueva v. Court of Appeals*[125]:

> The interest of the judicial system in preventing relitigation of the same dispute recognizes that judicial resources are finite and the number of cases that can be heard by the court is limited. Every dispute that is reheard means that another will be delayed. In modern times when court dockets are filled to overflowing, this concern is of critical importance. x x x.[126]

In summary, this Court finds the execution of the Lapu-Lapu RTC Decision in Civil Case No. 2203-L to be in order. We affirm the assailed Orders of March 11, 2004 and May 7, 2004, which reiterate, among others, the October 23, 1997 Order issued by the Lapu-Lapu RTC, directing the Register of Deeds of Lapu-Lapu City to cancel the certificates of title of LLDHC and to issue new ones in GMC's name. Whatever rights are due LLDHC from GSIS as a result of the final judgment of the Manila RTC in Civil Case No. R-82-3429, which we have previously held to be binding between GSIS and LLDHC, may be threshed out in an appropriate proceeding. Such proceeding shall not further delay the execution of the Lapu-Lapu RTC Decision.

WHEREFORE, in view of the foregoing, the petition in **G.R. No. 167000** is *DENIED* and the **Decision dated November 25, 2004** and **Resolution dated January 20, 2005** of the Twentieth Division of the Court of Appeals are *AFFIRMED*. The petition in **G.R. No. 169971** is *GRANTED* and the **Decision dated September 23, 2005** of the Special Nineteenth Division of the Court of Appeals is hereby *REVERSED AND SET ASIDE*.

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[125] 349 Phil. 99 (1998).

[126] *Id.* at 113.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167391. June 8, 2011]

PHIL-VILLE DEVELOPMENT AND HOUSING CORPORATION, *petitioner, vs.* **MAXIMO BONIFACIO, CEFERINO R. BONIFACIO, APOLONIO B. TAN, BENITA B. CAINA, CRISPINA B. PASCUAL, ROSALIA B. DE GRACIA, TERESITA S. DORONIA, CHRISTINA GOCO AND ARSENIO C. BONIFACIO, in their capacity as the surviving heirs of the late ELEUTERIA RIVERA *VDA.* *DE* BONIFACIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A PURELY QUESTION OF FACT IS BEYOND THE POWER OF THE SUPREME COURT TO RESOLVE.— Petitioner argues in its first two assignments of errors that the Court of Appeals acted with grave abuse of discretion in entertaining respondents' petition. However, said contention deserves scant consideration since the Court of Appeals, in CA-G.R. SP No. 62211, properly assumed jurisdiction over respondents' case after the same was referred to it by this Court through our Resolution dated September 25, 2000. The issue raised by respondents, as petitioners in G.R. No. 142640, was purely a question of fact that is beyond the power of this Court to resolve. Essentially, respondents asked the Court to

determine the ownership of the lots purportedly covered by petitioner's titles.

2. ID.; ACTIONS; THE NATURE OF AN ACTION IS DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT AND THE CHARACTER OF THE RELIEF SOUGHT BY THE PLAINTIFF, AND THE LAW IN EFFECT WHEN THE ACTION WAS FILED IRRESPECTIVE OF WHETHER HE IS ENTITLED TO ALL OR ONLY SOME OF SUCH RELIEF.— The nature of an action is determined by the material allegations of the complaint and the character of the relief sought by plaintiff, and the law in effect when the action was filed irrespective of whether he is entitled to all or only some of such relief. x x x. Ultimately, petitioner submits that a cloud exists over its titles because TCT No. C-314537 in the name of Eleuteria Rivera purports to cover the same parcels of land covered by petitioner's TCT Nos. 270921, 270922 and 270923. It points out that what appears to be a valid and effective TCT No. C-314537 is, in truth, invalid because it covers Lot 23 which is not among those described in the OCT No. 994 on file with the Register of Deeds of Rizal and registered on May 3, 1917. Petitioner notes that the OCT No. 994 allegedly registered on April 19, 1917 and from which TCT No. C-314537 was derived, is not found in the records of the Register of Deeds. In other words, the action seeks the removal of a cloud from Phil-Ville's title and/or the confirmation of its ownership over the disputed properties as the successor-in-interest of N. Dela Merced and Sons, Inc.

3. ID.; ID.; ACTION FOR QUIETING OF TITLE; EXPLAINED; TWO REQUISITES; FIRST REQUISITE, PRESENT.— Quieting of title is a common law remedy for the removal of any cloud upon, doubt, or uncertainty affecting title to real property. Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title. In such action, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and make the claimant, who has no rights to said immovable, respect and not

disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property. In order that an action for quieting of title may prosper, two requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. As regards the first requisite, we find that petitioner was able to establish its title over the real properties subject of this action. On the other hand, respondents have not adduced competent evidence to establish their title to the contested property or to dispute petitioner's claim over the same.

4. ID.; ID.; ID.; CLOUD ON TITLE; FOUR ELEMENTS; FOURTH ELEMENT, NOT PRESENT.— [T]he second requisite in an action for quieting of title requires that the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. x x x. [T]he cloud on title consists of: (1) any instrument, record, claim, encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is in truth and in fact invalid, ineffective, voidable, or unenforceable; and (4) may be prejudicial to the title sought to be quieted. The fourth element is not present in the case at bar.

5. ID.; ID.; ID.; A PROCEEDING *QUASI IN REM*; EXPLAINED.— [A]n action to quiet title is characterized as a proceeding *quasi in rem*. In an action *quasi in rem*, an individual is named a defendant and the purpose of the proceeding is to subject his interests to the obligation or loan burdening the property. Actions *quasi in rem* deal with the status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. The judgment therein is binding only upon the parties who joined in the action.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; DISCUSSED; PETITIONER IS ENTITLED TO DECLARATORY RELIEF.— [P]etitioner was well aware that the lots encompassed by its titles are not the same as that covered by respondents' title. This brings petitioner's action within the purview of Rule 63 of the Rules of Court on Declaratory Relief. x x x. An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute, deed or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs. x x x. [A]lthough petitioner's complaint is captioned as Quieting of Title and Damages, all that petitioner prayed for, is for the court to uphold the validity of its titles as against that of respondents'. This is consistent with the nature of the relief in an action for declaratory relief where the judgment in the case can be carried into effect without requiring the parties to pay damages or to perform any act. Thus, while petitioner was not able to demonstrate that respondents' TCT No. C-314537 in the name of Eleuteria Rivera constitutes a cloud over its title, it has nevertheless successfully established its ownership over the subject properties and the validity of its titles which entitles it to declaratory relief.

APPEARANCES OF COUNSEL

Felix B. Lerio for petitioner.

Herrera Teehankee Faylona and Cabrera Law Office for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari*[1] seeks to set aside the Decision[2] dated January 31, 2005 and Resolution[3] dated March 15, 2005 of the Court of Appeals in CA-G.R. SP No. 62211. The Court of Appeals dismissed the Complaint[4] for Quieting of Title and Damages filed by Phil-Ville Development and Housing Corporation (Phil-Ville) and denied its Motion for Reconsideration.[5]

The factual antecedents, as culled from the records, are as follows.

Phil-Ville Development and Housing Corporation is the registered owner of three parcels of land designated as Lots 1-G-1, 1-G-2 and 1-G-3 of the subdivision plan Psd-1-13-006209, located in Caloocan City, having a total area of 8,694 square meters and covered by Transfer Certificates of Title (TCT) Nos. 270921,[6] 270922[7] and 270923.[8] Prior to their subdivision, the lots were collectively designated as Lot 1-G of the subdivision plan Psd-2731 registered in the name of Phil-Ville under TCT No. T-148220.[9] Said parcels of land form part of Lot 23-A of the Maysilo Estate originally covered by Original Certificate

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[1] *Rollo,* pp. 9-66.

[2] *Id.* at 68-102. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) with Associate Justices Romeo A. Brawner and Magdangal M. de Leon concurring.

[3] *Id.* at 104-105.

[4] Records, pp. 1-20.

[5] CA *rollo*, pp. 254-262.

[6] Exhibit "W".

[7] Exhibit "X".

[8] Exhibit "Y".

[9] Exhibit "V".

of Title (OCT) No. 994[10] registered on May 3, 1917 in the name of Isabel Gil de Sola as the judicial administratrix of the estate of Gonzalo Tuason and thirty-one (31) others. Phil-Ville acquired the lots by purchase from N. Dela Merced and Sons, Inc. on July 24, 1984.

Earlier, on September 27, 1961, a group composed of Eleuteria Rivera, Bartolome P. Rivera, Josefa R. Aquino, Gregorio R. Aquino, Pelagia R. Angeles, Modesta R. Angeles, Venancio R. Angeles, Felipe R. Angeles, Fidela R. Angeles and Rosauro R. Aquino, claiming to be the heirs of Maria de la Concepcion Vidal, a co-owner to the extent of 1-189/1000% of the properties covered by OCT Nos. 982, 983, 984, 985 and 994 of the Hacienda Maysilo, filed a petition with the Court of First Instance (CFI) of Rizal in Land Registration Case No. 4557. They prayed for the substitution of their names on OCT No. 994 in place of Maria de la Concepcion Vidal. Said petition was granted by the CFI in an Order[11] dated May 25, 1962.

Afterwards, the alleged heirs of Maria de la Concepcion Vidal filed a petition for the partition of the properties covered by OCT Nos. 982, 983, 984, 985 and 994. The case was docketed as Civil Case No. C-424 in the CFI of Rizal, Branch 12, Caloocan City. On December 29, 1965, the CFI granted the petition and appointed three commissioners to determine the most equitable division of the properties.[12] Said commissioners, however, failed to submit a recommendation.

Thirty-one (31) years later, on May 22, 1996, Eleuteria Rivera filed a Supplemental Motion[13] in Civil Case No. C-424, for the partition and segregation of portions of the properties covered by OCT No. 994. The Regional Trial Court (RTC), Branch 120, of Caloocan City, through Judge Jaime D. Discaya, to

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[10] Exhibit "B".

[11] Exhibit "TT".

[12] Exhibit "VV".

[13] Exhibit "XX".

whom the case was transferred, granted said motion. In an Order[14] dated September 9, 1996, Judge Discaya directed the segregation of portions of Lots 23, 28-A-1 and 28-A-2 and ordered the Register of Deeds of Caloocan City to issue to Eleuteria Rivera new certificates of title over them. Three days later, the Register of Deeds of Caloocan, Yolanda O. Alfonso, issued to Eleuteria Rivera TCT No. C-314537[15] covering a portion of Lot 23 with an area of 14,391.54 square meters. On December 12, 1996, the trial court issued another Order directing the acting Branch Clerk to issue a Certificate of Finality of the Order dated September 9, 1996.

Thereafter, one Rosauro R. Aquino filed a petition for *certiorari* contesting said Order of December 12, 1996 and impugning the partial partition and adjudication to Eleuteria Rivera of Lots 23, 28-A-1 and 28-A-2 of the Maysilo Estate. The case was docketed as CA-G.R. SP No. 43034 at the Court of Appeals.

Meanwhile, a writ of possession[16] was issued in Eleuteria Rivera's favor on December 26, 1996 upon the Order[17] of Judge Discaya issued on the same date. Accordingly, Sheriff Cesar L. Cruz served a Notice to Vacate[18] dated January 2, 1997 upon Phil-Ville, requiring it to vacate Lots 23-A and 28. Bonifacio Shopping Center, Inc., which occupied Lot 28-A-2, was also served a copy of the notice. Aggrieved, Bonifacio Shopping Center, Inc. filed a petition for *certiorari* and prohibition, docketed as CA-G.R. SP No. 43009, before the Court of Appeals. In a Decision[19] dated February 19, 1997, the appellate court set aside and declared as void the Order and Writ of Possession dated December 26, 1996 and the Notice to Vacate dated January

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[14] Exhibit "YY".

[15] Exhibit "QQ".

[16] Exhibit "DDD".

[17] Exhibit "BBB".

[18] Exhibit "CCC".

[19] Exhibit "EEE".

2, 1997. The appellate court explained that a party who has not been impleaded in a case cannot be bound by a writ of possession issued in connection therewith.

Subsequently, on February 22, 1997, Eleuteria Rivera *Vda. de* Bonifacio died at the age of 96.[20]

On April 23, 1997, the Secretary of Justice issued Department Order No. 137 creating a special committee to investigate the circumstances surrounding the issuance of OCT No. 994 and its derivative titles.

On April 29, 1997, the Court of Appeals rendered a Decision[21] in CA-G.R. SP No. 43034 granting Rosauro R. Aquino's petition and setting aside the RTC's Order of September 9, 1996, which granted Eleuteria Rivera's prayer for partition and adjudicated in her favor portions of Lots 23, 28-A-1 and 28-A-2 of the Maysilo Estate. The appellate court likewise set aside the Order and the Writ of Possession dated December 26, 1996.

Nonetheless, on June 5, 1997, petitioner filed a complaint for quieting of title and damages against the surviving heirs of Eleuteria Rivera *Vda. de* Bonifacio (namely Maximo R. Bonifacio, Ceferino R. Bonifacio, Apolonia B. Tan, Benita B. Caina, Crispina B. Pascual, Rosalia B. de Gracia, Teresita S. Doronia, Christina B. Goco, Arsenio C. Bonifacio, Carmen B. Bernardino and Danilo C. Bonifacio) and the Register of Deeds of Caloocan City. The case was docketed as Civil Case No. C-507 in the RTC of Caloocan City, Branch 122.

On October 7, 1997, then Senator Marcelo B. Fernan filed P.S. Resolution No. 1032 directing the Senate Committees on Justice and Human Rights and on Urban Planning, Housing and Resettlement to conduct a thorough investigation, in aid of legislation, of the irregularities surrounding the titling of the properties in the Maysilo Estate.

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[20] Exhibit "SS".

[21] Exhibit "FFF".

In a Decision[22] dated March 24, 2000, the Caloocan RTC ordered the quieting of Phil-Ville's titles over Lots 1-G-1, 1-G-2 and 1-G-3, declaring as valid TCT Nos. 270921, 270922 and 270923 in Phil-Ville's name. The *fallo* of said Decision reads:

WHEREFORE, and in view of the foregoing, judgment is hereby rendered as follows:

1. Ordering the quieting of title of the plaintiff over Lots 1-G-1, 1-G-2 and 1-G-3, all the subd. plan Psd-1-13-006209, being a portion of Lot 1-G, Psd-2731, LRC Rec. No. 4429, situated in Kalookan City, as owner thereof in fee simple and with full faith and credit;

2. Declaring Transfer Ce[r]tificates of Title Nos. 270921, 270922 and 270923 in the name of Phil-Ville Development and Housing Corporation over the foregoing parcels of land issued by the Registry of Deeds for Kalookan City, as valid and effective;

3. Declaring Transfer Certificate of Title No. C-314537 over Lot 23, being a portion of Maysilo Estate situated in Maysilo, Kalookan City, in the name of Eleuteria Rivera, issued by the Registry of Deeds for Kalookan City, as null and void and with no force and effect;

4. Ordering the private defendants to surrender to the Registry of Deeds for Kalookan City, thru this Court, the Owner's Duplicate Certificate of said Transfer Certificate of Title No. C-314537 in the name of Eleuteria Rivera;

5. Directing the public defendant, Register of Deeds of Kalookan City to cancel both Transfer Certificate of Title Nos. C-314537 in the name of Eleuteria Rivera on file with the Register of Deeds for Kalookan City, and the Owner's Duplicate copy of Transfer Certificate of Title No. C-314537 being required to be surrendered by the private defendants; and

6. Ordering the private defendants to pay plaintiff, jointly and severally, the sum of ₱10,000.00, as and by way of attorney's fees, plus the costs of suit.

SO ORDERED.[23]

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[22] *Rollo,* pp. 143-187.

[23] *Id.* at 186-187.

In upholding Phil-Ville's titles, the trial court adopted the conclusion in Senate Committee Report No. 1031[24] dated May 25, 1998 that there is only one OCT No. 994, registered on May 3, 1917, and that OCT No. 994, purportedly registered on April 19, 1917 (from which Eleuteria Rivera's title originated) does not exist. The trial court also found that it was physically impossible for respondents to be the heirs of Eleuteria Rivera's grandmother, Maria de la Concepcion Vidal, one of the registered owners of OCT No. 994, because Maria de la Concepcion was born sometime in 1903, later than Eleuteria Rivera who was born in 1901.[25] Lastly, the RTC pointed out that contrary to the contentions of Rivera's heirs, there is no overlapping of titles inasmuch as Lot 23 lies far from Lot 23-A, where Phil-Ville's lands are located.

On April 13, 2000, Atty. K.V. Faylona, on behalf of respondents, addressed a letter[26] to the Branch Clerk of Court of the Caloocan City RTC requesting the complete address of Phil-Ville and its counsel. Supposedly, respondents' counsels of record, Attys. Nicomedes Tolentino and Jerry D. Bañares, had abandoned the defense but still kept the records of the case. Thus, the Notice of Appeal[27] on behalf of respondents was filed by Atty. Faylona while two of the heirs, Danilo Bonifacio and Carmen Bernardino, filed a separate Notice of Appeal[28] through their own counsel. The appeals were consolidated and docketed as CA-G.R. CV No. 66547.

On April 17, 2000, respondents withdrew their appeal and instead filed before this Court a Petition for Review on *Certiorari*,[29] which was docketed as G.R. No. 142640. In a

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[24] Exhibit "III".

[25] *Rollo*, p. 174.

[26] Records, p. 628.

[27] *Id.* at 634-635.

[28] *Id.* at 629-630.

[29] CA *rollo*, pp. 10-38.

Resolution[30] dated September 25, 2000, the Court referred the petition to the Court of Appeals for adjudication on the merits since the case does not involve pure questions of law. Respondents moved for reconsideration of the Resolution, but the Court denied their motion. Thus, respondents' petition was transferred to the Court of Appeals and docketed as CA-G.R. SP No. 62211.

Meanwhile, on October 17, 2002, the Court of Appeals rendered a Decision[31] in CA-G.R. CV No. 66547, dismissing the appeal as regards Danilo Bonifacio and Carmen Bernardino. Yet, along with Danilo and Carmen, respondents moved for reconsideration on the contention that they are not bound by the judgment since they had withdrawn their appeal therein. The Court of Appeals denied said motion in a Resolution dated June 7, 2004. Danilo, Carmen and respondents elevated the case to the Supreme Court through a Petition for Review on *Certiorari*, which was docketed as G.R. No. 163397. Said petition, however, was denied by this Court in a Resolution dated September 8, 2004 for being filed out of time.

Subsequently, on January 31, 2005, the Court of Appeals promulgated its assailed Decision in CA-G.R. SP No. 62211, setting aside the RTC judgment and dismissing Phil-Ville's complaint. The appellate court held that the RTC had no jurisdiction to hear Phil-Ville's complaint as it effectively seeks to annul the Order dated May 25, 1962 of the CFI in LRC No. 4557, which directed the substitution of the late Eleuteria Rivera and her co-heirs in place of Maria de la Concepcion Vidal as registered owners on OCT No. 994. The appellate court likewise affirmed the validity of OCT No. 994 registered on April 19, 1917 citing the Supreme Court Decisions in *Metropolitan Waterworks and Sewerage Systems v. Court of Appeals*[32] and *Heirs of Luis J. Gonzaga v. Court of Appeals*[33] as precedents.

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[30] *Id.* at 150.

[31] *Id.* at 301-327.

[32] G.R. No. 103558, November 17, 1992, 215 SCRA 783.

[33] G.R. Nos. 96259 & 96274, September 3, 1996, 261 SCRA 327.

Phil-Ville sought reconsideration[34] of the decision, but the Court of Appeals denied its motion in the assailed Resolution dated March 15, 2005. Hence, this petition.

Petitioner alleges that:

I.

THE HONORABLE COURT OF APPEALS (FORMER NINTH DIVISION) ACTED WITHOUT JURISDICTION ON THE PETITION FOR REVIEW OF RESPONDENTS MAXIMO BONIFACIO, *ET AL*. IN CA-G.R SP NO. 62211 BECAUSE OF THE EARLIER DISMISSAL OF THEIR APPEAL IN CA-G.R NO. 66547.

II.

THE HONORABLE COURT OF APPEALS (FORMER NINTH DIVISION) ACTED WITHOUT JURISDICTION ON THE PETITION FOR REVIEW FILED BY RESPONDENTS MAXIMO BONIFACIO, *ET AL*. IN CA-G.R. NO. SP 62211 WHICH DOES NOT RAISE PURE QUESTION[S] OF LAW OR ISSUE[S] OF JURISDICTION AND THEREFORE THE PROPER REMEDY AVAILABLE TO THEM IS ORDINARY APPEAL WHICH, AS STATED, HAD ALREADY BEEN DISMISSED IN CA-G.R. CV NO. 66547.

III.

THE HONORABLE COURT OF APPEALS (FORMER NINTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN HOLDING THAT THE TRIAL COURT HAS NO JURISDICTION ON THE COMPLAINT FOR QUIETING OF TITLE FILED BY PETITIONER PHIL-VILLE IN CIVIL CASE NO. C-507, OR IN THE ALTERNATIVE, IN FAILING TO DECLARE RESPONDENTS MAXIMO [BONIFACIO], *ET AL*. ALREADY IN ESTOPPEL TO RAISE THE SAID ISSUE OF JURISDICTION.[35]

Condensed, petitioner puts in issue the following: (1) whether the Court of Appeals committed grave abuse of discretion in

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[34] CA *rollo*, pp. 254-262.

[35] *Rollo*, p. 38.

taking cognizance of respondents' petition; and (2) whether the Court of Appeals committed grave abuse of discretion in declaring that the trial court had no jurisdiction over Civil Case No. C-507.

Pertinently, however, the genuine issue in this case is whether TCT No. C-314537 in the name of Eleuteria Rivera constitutes a cloud over petitioner's titles over portions of Lot 23-A of the Maysilo Estate.

Petitioner argues mainly that the Court of Appeals acted without jurisdiction in resolving respondents' petition for review since it had dismissed their appeal in CA-G.R. CV No. 66547 for failure to file brief. Petitioner also points out that respondents' petition is defective because Maximo Bonifacio alone signed its verification and certification of non-forum shopping without proof that he was authorized to sign for the other respondents. It contends that the ruling in *MWSS v. Court of Appeals* and *Heirs of Gonzaga v. Court of Appeals* will not invalidate its titles because it is not a party to any of said cases. As well, petitioner invokes the finding in the joint investigation by the Senate and the Department of Justice (DOJ) that there is only one OCT No. 994, that is, the one registered on May 3, 1917. It maintains that the trial court had jurisdiction to hear its action since it is one for quieting of title and not for annulment of the CFI Order dated May 25, 1962.

Conversely, respondents rely on *MWSS v. Court of Appeals* and *Heirs of Gonzaga v. Court of Appeals* that upheld the titles emanating from OCT No. 994 registered on April 19, 1917. Therefore, they insist that petitioner has no cause of action to seek the nullification of their title which is a derivative of said OCT. Respondents reiterate that since they had withdrawn their appeal in CA-G.R. CV No. 66547, the Court of Appeals decision therein applies only to Danilo Bonifacio and Carmen Bernardino. Lastly, they believe that petitioner's action is one for annulment of judgment, which is foreign to the jurisdiction of the trial court.

Petitioner argues in its first two assignments of errors that the Court of Appeals acted with grave abuse of discretion in

entertaining respondents' petition. However, said contention deserves scant consideration since the Court of Appeals, in CA-G.R. SP No. 62211, properly assumed jurisdiction over respondents' case after the same was referred to it by this Court through our Resolution dated September 25, 2000. The issue raised by respondents, as petitioners in G.R. No. 142640, was purely a question of fact that is beyond the power of this Court to resolve. Essentially, respondents asked the Court to determine the ownership of the lots purportedly covered by petitioner's titles.

Neither do we find merit in petitioner's contention that the dismissal of the appeal in CA-G.R. CV No. 66547 is binding on respondents. The appellate court itself recognized the withdrawal of appeal filed by respondents, thus:

> … However, defendants Maximo R. Bonifacio, *et al*. withdrew their appeal so that the only appellants herein are defendants-appellants Danilo R. Bonifacio, *et al*.[36]

So did the trial court err in taking cognizance of petitioner's action for quieting of title contrary to respondents' assertion that it is actually one for annulment of the CFI Order dated May 25, 1962? To this query, we rule in the negative.

The nature of an action is determined by the material allegations of the complaint and the character of the relief sought by plaintiff, and the law in effect when the action was filed irrespective of whether he is entitled to all or only some of such relief.[37]

In its complaint, petitioner alleges:

> 27. That said TCT No. C-314537 of the late Eleuteria Rivera, although apparently valid and effective, are in truth and in fact invalid and ineffective[;]

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[36] CA *rollo*, p. 321.

[37] *Heirs of Toring v. Heirs of Boquilaga*, G.R. No. 163610, September 27, 2010, p. 9.

27.1. An examination of Decree No. 36455 issued on April 19, 1917 in LRC Case No. 4429 and also of OCT No. 994 which was issued … pursuant thereto will show that Lot 23 covered by the said TCT No. C-3145[3]7 of the late Eleuteria Rivera is not one of the 34 parcels of land covered by said Decree No. 36455 and OCT 994;

27.2. That, as hereinbefore stated, the same TCT No. C-314537 of the late Eleuteria Rivera is a direct transfer from OCT No. 994 which was registered on April 19, 1917. The fact, however, is that there is only one OCT No. 994 which was issued … pursuant to Decree No. 36455 in LRC Case No. 4429 and said OCT 994 was registered with the Register of Deeds of Rizal on May 3, 1917. The Office of the Register of Deeds of Caloocan City or of Malabon or of Pasig City has no record of any OCT No. 994 that was allegedly registered on April 19, 1917;

27.3. That said TCT No. C-314537 of the late Eleuteria Rivera could not cover Lot 23-A or any portion/s thereof because, as hereinbefore recited, the whole of Lot 23-A had been totally disposed of as early as July 24, 1923 and she and/or any of her alleged predecessors-in-interest is not among those named in the memorandum of encumbrances of OCT No. 994 as vendees or vendors of said Lot 23-A;[38]

Ultimately, petitioner submits that a cloud exists over its titles because TCT No. C-314537 in the name of Eleuteria Rivera purports to cover the same parcels of land covered by petitioner's TCT Nos. 270921, 270922 and 270923. It points out that what appears to be a valid and effective TCT No. C-314537 is, in truth, invalid because it covers Lot 23 which is not among those described in the OCT No. 994 on file with the Register of Deeds of Rizal and registered on May 3, 1917. Petitioner notes that the OCT No. 994 allegedly registered on April 19, 1917 and from which TCT No. C-314537 was derived, is not found in the records of the Register of Deeds. In other words, the action seeks the removal of a cloud from Phil-Ville's title and/or the confirmation of its ownership over the disputed properties as the successor-in-interest of N. Dela Merced and Sons, Inc.

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[38] Records, pp. 15-16.

Quieting of title is a common law remedy for the removal of any cloud upon, doubt, or uncertainty affecting title to real property. Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title. In such action, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property.[39]

In order that an action for quieting of title may prosper, two requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[40]

As regards the first requisite, we find that petitioner was able to establish its title over the real properties subject of this action. Petitioner submitted in evidence the Deed of Absolute Sale[41] by which it acquired the subject property from N. Dela Merced and Sons, Inc., as well as copies of OCT No. 994 dated May 3, 1917 and all the derivative titles leading to the issuance of TCT Nos. 270921, 270922 and 270923 in petitioner's name as follows:

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[39] *Heirs of Toring v. Heirs of Boquilaga*, *supra* note 37 at 11.

[40] *Eland Philippines, Inc. v. Garcia*, G.R. No. 173289, February 17, 2010, 613 SCRA 66, 92.

[41] Exhibit "BB".

Title No.	Registration Date	Holder
8004	July 24, 1923	Vedasto Galino
8059	September 3, 1923	-ditto-
8160	October 24, 1923	-ditto-
8164	November 6, 1923	Juan Cruz Sanchez
8321	February 26, 1924	-ditto-
8734	September 11, 1924	Emilio Sanchez
12946	November 21, 1927	-ditto-
28315	July 16, 1935	Eastern Syndicate Mining Co., Inc.
39163	November 18, 1939	Royal Lawrence Rutter
43559	July 26, 1941	Mapua Institute of Technology
18767	June 16, 1950	Sofia Nepomuceno
57541	March 13, 1958	Leona N. de Jesus, Pacifico Nepomuceno, Sofia Nepomuceno, Soledad Nepomuceno de Jesus
81679	December 15, 1960	Pacifico Nepomuceno, Sofia N. Jugo, Soledad N. de Jesus
(81680) 17745	December 15, 1960	Pacifico Nepomuceno & Co.
C-13794	April 21, 1978	Pacifico Nepomuceno & Co. Inc.
C-14603	May 16, 1978	N. de La Merced & Sons, Inc.
T-148220	April 22, 1987	Phil-Ville Development and Housing Corp.[42]

[42] Exhibits "F"-"V".

Petitioner likewise presented the *Proyecto de particion de la Hacienda de Maysilo*[43] to prove that Lot 23-A, of which petitioner's Lots 1-G-1, 1-G-2 and 1-G-3 form part, is among the 34 lots covered by OCT No. 994 registered on May 3, 1917. It produced tax receipts accompanied by a Certification[44] dated September 15, 1997 issued by the City Treasurer of Caloocan stating that Phil-Ville has been religiously paying realty taxes on the lots. Its documentary evidence also includes a Plan[45] prepared by the Chief of the Geodetic Surveys Division showing that Lot 23-A of the Maysilo Estate is remotely situated from Lot 23 portion of the Maysilo Estate. Petitioner ties these pieces of evidence to the finding in the DOJ Committee Report[46] dated August 28, 1997 and Senate Committee Report No. 1031 dated May 25, 1998 that, indeed, there is only one OCT No. 994, that is, the one registered on May 3, 1917.

On the other hand, respondents have not adduced competent evidence to establish their title to the contested property or to dispute petitioner's claim over the same. It must be noted that the RTC Order dated September 9, 1996 in Civil Case No. C-424, which resulted in the issuance of TCT No. C-314537 in the name of Eleuteria Rivera had long been set aside by the Court of Appeals in CA-G.R. SP No. 43034. Clearly, respondents' claim anchored primarily on TCT No. C-314537 lacks legal basis. Rather, they rely simply on the Court's pronouncement in *MWSS v. Court of Appeals* and *Heirs of Gonzaga v. Court of Appeals* that OCT No. 994 registered on May 3, 1917 and all titles emanating from it are void.

The Supreme Court sustained said decisions in the case of *Manotok Realty, Inc. v. CLT Realty Development Corporation*[47]

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[43] Exhibits "D" & "E".

[44] Exhibit "KK".

[45] Exhibit "GG".

[46] Exhibit "NN".

[47] G.R. Nos. 123346, 134385 and 148767, November 29, 2005, 476 SCRA 305.

promulgated on November 29, 2005. In said case, the Court declared void the titles of the Manotoks and Aranetas which were derived from OCT No. 994 registered on May 3, 1917 consistent with its ruling in *MWSS* and *Gonzaga*. The Court disregarded the DOJ and Senate reports on the alleged anomalies surrounding the titling of the Maysilo Estate.

However, on motion for reconsideration, the Court issued a Resolution[48] dated December 14, 2007 which created a Special Division of the Court of Appeals to hear the consolidated cases on remand. The Special Division was tasked to hear and receive evidence, conclude the proceedings and submit to the Court a report on its findings as well as recommend conclusions within three months from the finality of said Resolution. However, to guide the proceedings before the Special Division, the Court laid the following definitive conclusions:

> … *First*, there is only one OCT 994. As it appears on the record, that mother title was received for transcription by the Register of Deeds on 3 May 1917, and that should be the date which should be reckoned as the date of registration of the title. It may also be acknowledged, as appears on the title, that OCT No. 994 resulted from the issuance of the decree of registration on [19] April 1917, although such date cannot be considered as the date of the title or the date when the title took effect.
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> *Second*. **Any title that traces its source to OCT No. 994 dated [19] April 1917 is void, for such mother title is inexistent**. The fact that the Dimson and CLT titles made specific reference to an OCT No. 994 dated [19] April 1917 casts doubt on the validity of such titles since they refer to an inexistent OCT. This error alone is, in fact, sufficient to invalidate the Dimson and CLT claims over the subject property if singular reliance is placed by them on the dates appearing on their respective titles.
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> *Third*. The decisions of this Court in *MWSS v. Court of Appeals* and *Gonzaga v. Court of Appeals* cannot apply to the cases at bar, especially in regard to their recognition of an OCT No. 994 dated 19

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[48] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, G.R. Nos. 123346 and 134385, December 14, 2007, 540 SCRA 304.

April 1917, a title which we now acknowledge as inexistent. Neither could the conclusions in *MWSS* [and] *Gonzaga* with respect to an OCT No. 994 dated 19 April 1917 bind any other case operating under the factual setting the same as or similar to that at bar.[49] (Emphasis supplied.)

Eventually, on March 31, 2009, the Supreme Court issued a Resolution[50] reversing its Decision of November 29, 2005 and declaring certain titles in the names of Araneta and Manotok valid. In the course of discussing the flaws of Jose Dimson's title based on his alleged 25% share in the hereditary rights of Bartolome Rivera, Eleuteria Rivera's co-petitioner in LRC No. 4557, the Court noted:

… However, the records of these cases would somehow negate the rights of Rivera to claim from Vidal. The Verification Report of the Land Registration Commission dated 3 August 1981 showed that Rivera was 65 years old on 17 May 1963 (as gathered from the records of Civil Case Nos. 4429 and 4496). It can thus be deduced that, if Rivera was already 65 years old in 1963, then he must have been born around 1898. On the other hand, Vidal was only nine (9) years in 1912; hence, she could have been born only on [1903]. This alone creates an unexplained anomalous, if not ridiculous, situation wherein Vidal, Rivera's alleged grandmother, was seven (7) years younger than her alleged grandson. Serious doubts existed as to whether Rivera was in fact an heir of Vidal, for him to claim a share in the disputed portions of the Maysilo Estate.[51]

The same is true in this case. The Death Certificate[52] of Eleuteria Rivera reveals that she was 96 years old when she died on February 22, 1997. That means that she must have been born in 1901. That makes Rivera two years older than her alleged grandmother Maria de la Concepcion Vidal who

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[49] *Id.* at 348-349.

[50] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, G.R. Nos. 123346 & 134385, March 31, 2009, 582 SCRA 583.

[51] *Id.* at 609.

[52] Exhibit "SS".

was born in 1903. Hence, it was physically impossible for Eleuteria Rivera to be an heir of Maria de la Concepcion Vidal.

Moreover, the Partition Plan of the Maysilo Estate shows that Lot 23-A was awarded, not to Maria de la Concepcion Vidal, but to Isabel Tuason, Esperanza Tuason, Trinidad Jurado, Juan O' Farrell and Angel O' Farrell.[53] What Vidal received as her share were Lot 6 and portions of Lots 10 and 17, all subject to the usufructuary right of her mother Mercedes Delgado. This was not at all disputed by respondents.

On the other hand, Vedasto Galino, who was the holder of TCT No. 8004 registered on July 24, 1923 and to whom petitioner traces its titles, was among the successful petitioners in Civil Case No. 391 entitled *Rosario Negrao, et al. v. Concepcion Vidal, et al.*, who sought the issuance of bills of sale in favor of the actual occupants of certain portions of the Maysilo Estate.

Be that as it may, the second requisite in an action for quieting of title requires that the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. Article 476 of the Civil Code provides:

> Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
>
> An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

Thus, the cloud on title consists of: (1) any instrument, record, claim, encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is in truth and in fact invalid, ineffective,

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[53] Exhibit "E-21".

voidable, or unenforceable; and (4) may be prejudicial to the title sought to be quieted. The fourth element is not present in the case at bar.

While it is true that TCT No. C-314537 in the name of Eleuteria Rivera is an instrument that appeared to be valid but was subsequently shown to be invalid, it does not cover the same parcels of land that are described in petitioner's titles. Foremost, Rivera's title embraces a land measuring 14,391.54 square meters while petitioner's lands has an aggregate area of only 8,694 square meters. On the one hand, it may be argued that petitioner's land could be subsumed within Rivera's 14,391.54-square meter property. Yet, a comparison of the technical descriptions of the parties' titles negates an overlapping of their boundaries.

The technical description of respondents' TCT No. C-314537 reads:

A parcel of land (**Lot 23**, being a portion of Maysilo Estate) situated in Maysilo, Caloocan, Metro Manila, Island of Luzon. Bounded on the NW., along line 1-2 by Blk. 2; on the SW., along line 2-3 by **Jacinto Street**, along lines 3-4-5 by Blk. 4; along line 5-6 by **Bustan St., and San Diego St.**, on the S., along lines 6-7-8 by Blk. 13, all of Caloocan Cadastre; on the NE., along line 8-9 by Caloocan Cadastre; and on the N., along line 9-1 by **Epifanio de los Santos Avenue**. Beginning at a point marked "1" on plan, being S. 28 deg. 30'E., 530.50 m. from MBM No. 1, Caloocan Cadastre; thence S. 07 deg. 20'W., 34.00 m. to point 2; S. 17 deg. 10'E., 12.00 m. to point 3; (0/ illegible)

S. 15 deg. 31'E., 31.00 m. to point 4; S. 27 deg. 23'E., 22.50 m. to point 5;

S. 38 deg. 41'E., 43.20 m. to point 6; S. 71 deg. 35'E., 10.60 m. to point 7;

N. 84 deg. 30'E., 38.80 m. to point 8; N. 11 deg. 40'W., 131.20 m. to point 9;

N. 89 deg. 10'W., 55.00 m. to the point of beginning; containing an area of **FOURTEEN THOUSAND THREE HUNDRED NINETY ONE SQUARE METERS AND FIFTY FOUR SQUARE DECIMETERS (14,391.54)**. more or less. All points referred to are

indicated on the plan and are marked on the ground by Old Ps. cyl. conc. mons. 15 x 60 cm.; bearings true;[54] (Emphasis supplied).

On the other hand, the technical description of petitioner's lands before they were subdivided under TCT No. T-148220 is as follows:

A parcel of land (Lot No. 1-G of the subdivision plan Psd-2731, being a portion of **Lot 23-A**, Maysilo Estate, GLRO Rec. No. 4429), situated in the Municipality of Caloocan, Province of Rizal. Bounded on the North., by **Calle A. Samson**; on the East., by **properties of Gregoria de Jesus, Arcadio de Jesus and Felix de Jesus**; on the South., by **properties of Lucas Bustamante and Patricio Galauran**; and on the West., by **property of Patricio Galauran**; and Lot No. 1-E of the subdivision plan. Beginning at a point marked "1" on plan, being N.69 deg. 27'E., 1600.19 m. from BLLM No. 1, Mp. of Caloocan, more or less, thence S. 21 deg. 25'E., 44.78 m. to point 2; thence S. 14 deg. 57'E., 37.24 m. to point 3; thence S. 81 deg. 11'W., 20.28 m. to point 4; thence S. 86 deg. 06'W., 15.45 m. to point 5; thence N. 67 deg. 20'W., 15.91 m. to point 6; thence N. 35 deg. 19'W., 37.56 m. to point 7; thence N. 27 deg. 11'W., 12.17 m. to point 8; thence N. 19 deg. 26'W., 23.32 m. to point 9; thence N. 13 deg. 08'W., 28.25 m. to point 10; thence S. 78 deg. 45'W., 13.00 m. to point 11; thence N. 0 deg. 56'E., 48.92 m. to point 12; thence N. 89 deg. 13'E., 53.13 m. to point 13; thence S. 21 deg. 24'E., 67.00 m. to the point of beginning; containing an area of **EIGHT THOUSAND SIX HUNDRED NINETY FOUR (8,694) SQUARE METERS**, more or less. All points referred to are indicated on the plan and are marked on the ground points 1,2,3 and 13 by Old PLS conc. mons. point 4,6,7,8 and 9 by Old PLS stone mons.; points 5 to 10 and old stakes points 11 and 12 by PLS conc. mons. bearings true, declination 1 deg. 08'E., date of the original survey, Sept. 8-27, Oct. 4-21 and Nov. 17-18, 1911 and that of the subdivision survey, Oct. 14 and 15, 1927.[55] (Emphasis supplied).

Such disparity in location is more vividly illustrated in the Plan prepared by Engr. Privadi J.G. Dalire, Chief of the Geodetic Surveys Division, showing the relative positions of Lots 23

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[54] Exhibit "QQ"; see also records, p. 14.

[55] Exhibit "V".

and 23-A. As it appears on the Plan, the land covered by respondents' TCT No. C-314537 lies far west of petitioner's lands under TCT Nos. 270921, 270922 and 270923. Strictly speaking, therefore, the existence of TCT No. C-314537 is not prejudicial to petitioner's titles insofar as it pertains to a different land.

Significantly, an action to quiet title is characterized as a proceeding *quasi in rem*.[56] In an action *quasi in rem*, an individual is named a defendant and the purpose of the proceeding is to subject his interests to the obligation or loan burdening the property. Actions *quasi in rem* deal with the status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. The judgment therein is binding only upon the parties who joined in the action.[57]

Yet, petitioner was well aware that the lots encompassed by its titles are not the same as that covered by respondents' title. In its complaint, Phil-Ville alleges:

> 27.4. That Lot 23, being a portion of Maysilo Estate, as described in said TCT No. C-314537 of the late Eleuteria Rivera when plotted using its tie line to MBM No. 1, Caloocan Cadastre is outside Lot 23-A of the Maysilo Estate. This must be so because Lot 23 is not [a] portion of Lot 23-A, Maysilo Estate….[58]

This brings petitioner's action within the purview of Rule 63 of the Rules of Court on Declaratory Relief. Section 1 of Rule 63 provides:

> SECTION 1. *Who may file petition.*— Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance or any other governmental regulation may, **before breach or violation** thereof, bring an action in the appropriate Regional Trial Court **to determine**

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[56] *San Pedro v. Ong*, G.R. No. 177598, October 17, 2008, 569 SCRA 767, 780.

[57] *Id.* at 781.

[58] Records, p. 16.

any question of construction or **validity** arising, **and for a declaration of his rights** or duties, thereunder.

An action for the reformation of an instrument, **to quiet title to real property or remove clouds therefrom**, or to consolidate ownership under Article 1607 of the Civil Code, **may be brought under this Rule**. (Emphasis supplied).

An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute, deed or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.

In the present case, petitioner filed a complaint for quieting of title after it was served a notice to vacate but before it could be dispossessed of the subject properties. Notably, the Court of Appeals, in CA-G.R. SP No. 43034, had earlier set aside the Order which granted partial partition in favor of Eleuteria Rivera and the Writ of Possession issued pursuant thereto. And although petitioner's complaint is captioned as Quieting of Title and Damages, all that petitioner prayed for, is for the court to uphold the validity of its titles as against that of respondents'. This is consistent with the nature of the relief in an action for declaratory relief where the judgment in the case can be carried into effect without requiring the parties to pay damages or to perform any act.[59]

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[59] See M.V. Moran, *COMMENTS ON THE RULES OF COURT*, p. 203 (1997).

Thus, while petitioner was not able to demonstrate that respondents' TCT No. C-314537 in the name of Eleuteria Rivera constitutes a cloud over its title, it has nevertheless successfully established its ownership over the subject properties and the validity of its titles which entitles it to declaratory relief.

WHEREFORE, the petition for review on *certiorari* is *GRANTED*. The Decision dated January 31, 2005 and Resolution dated March 15, 2005 of the Court of Appeals in CA-G.R. SP No. 62211 are *SET ASIDE*. The Decision dated March 24, 2000 of the Caloocan RTC in Civil Case No. C-507 is hereby *REINSTATED and UPHELD*.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169913. June 8, 2011]

HEIRS OF DR. JOSE DELESTE, namely: JOSEFA DELESTE, JOSE RAY DELESTE, RAUL HECTOR DELESTE, and RUBEN ALEX DELESTE, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES (LBP), as represented by its Manager, LAND VALUATION OFFICE OF LBP COTABATO CITY; THE REGIONAL DIRECTOR — REGION 12 OF COTABATO CITY, THE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM; THE REGIONAL DIRECTOR OF REGION X — CAGAYAN DE ORO CITY, represented by MCMILLAN LUCMAN, in his capacity as Provincial**

Agrarian Reform Officer (PARO) of DAR Lanao del Norte; LIZA BALBERONA, in her capacity as DAR Municipal Agrarian Reform Officer (MARO); REYNALDO BAGUIO, in his capacity as the Register of Deeds of Iligan City as nominal party; the emancipation patent holders: FELIPE D. MANREAL, CUSTUDIO M. RICO, HEIRS OF DOMINGO V. RICO, HEIRS OF ABDON T. MANREAL, MACARIO M. VELORIA, ALICIA B. MANREAL, PABLO RICO, SALVACION MANREAL, HEIRS OF TRANQUILIANA MANREAL, HEIRS OF ANGELA VELORIA, HEIRS OF NECIFURO CABALUNA, HEIRS OF CLEMENTE RICO, HEIRS OF MANTILLANO OBISO, HEIRS OF HERCULANO BALORIO, and TITO BALER, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEALS FROM QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; CONTENTS OF THE PETITION; NON-COMPLIANCE WITH THE REQUIREMENTS SHALL BE SUFFICIENT GROUND FOR THE DISMISSAL OF THE PETITION.—** In filing a petition for review as an appeal from awards, judgments, final orders, or resolutions of any quasi-judicial agency in the exercise of its quasi-judicial functions, it is required under Sec. 6(c), Rule 43 of the Rules of Court that it be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order, or resolution appealed from, with certified true copies of such material portions of the record referred to in the petition and other supporting papers. x x x Non-compliance with any of the above-mentioned requirements concerning the contents of the petition, as well as the documents that should accompany the petition, shall be sufficient ground for its dismissal as stated in Sec. 7, Rule 43 of the Rules.

2. **ID.; ID.; ID.; ID.; ID.; DISMISSAL OF THE PETITION FOR FAILURE TO COMPLY WITH THE REQUIRED ATTACHMENTS, UNWARRANTED WHERE THE DOCUMENTS REQUIRED BY THE APPELLATE COURT**

ARE NOT NECESSARY FOR THE PROPER DISPOSITION OF THE CASE.— In the instant case, the CA dismissed the petition in CA-G.R. SP No. 85471 for petitioners' failure to attach the writ of execution, the order nullifying the writ of execution, and such material portions of the record referred to in the petition and other supporting papers. A perusal of the issues raised before the CA would, however, show that the documents required by the appellate court are not necessary for the proper disposition of the case. x x x Petitioners complied with the requirement under Sec. 6(c), Rule 43 of the Rules of Court when they appended to the petition filed before the CA certified true copies of the following documents: (1) the challenged resolution dated July 8, 2004 issued by the DARAB denying petitioners' motion for reconsideration; (2) the duplicate original copy of petitioners' Motion for Reconsideration dated April 6, 2005; (3) the assailed decision dated March 15, 2004 issued by the DARAB reversing on appeal the decision of the PARAD and nullifying with finality the order of execution pending appeal; (4) the Order dated December 8, 2003 issued by the PARAD reinstating the writ of execution earlier issued; and (5) the Decision dated July 21, 2003 issued by the PARAD in the original proceedings for the cancellation of the EPs. The CA, therefore, erred when it dismissed the petition based on such technical ground.

3. ID.; ID.; ID.; ID.; THE COURT OF APPEALS, INSTEAD OF DISMISSING THE PETITION, COULD REQUIRE THE PARTIES TO SUBMIT THE OMITTED DOCUMENTS WHERE THE SAME ARE MATERIAL TO THE APPEAL.— Even assuming that the omitted documents were material to the appeal, the appellate court, instead of dismissing outright the petition, could have just required petitioners to submit the necessary documents. In *Spouses Espejo v. Ito*, the Court held that "under Section 3 (d), Rule 3 of the Revised Internal Rules of the Court of Appeals, the Court of Appeals is with authority to require the parties to submit additional documents as may be necessary to promote the interests of substantial justice."

4. ID.; ID.; ID.; ID.; THE PARTIES' SUBSEQUENT SUBMISSION OF THE DOCUMENTS REQUIRED BY THE COURT OF APPEALS WITH THE MOTION FOR RECONSIDERATION CONSTITUTES SUBSTANTIAL

COMPLIANCE WITH THE FORMAL REQUIREMENTS, WHICH MAY CALL FOR THE RELAXATION OF THE RULES OF PROCEDURE.— [P]etitioners' subsequent submission of the documents required by the CA with the motion for reconsideration constitutes substantial compliance with Section 6(c), Rule 43 of the Rules of Court. In *Jaro v. CA*, this Court held that subsequent and substantial compliance may call for the relaxation of the rules of procedure. Particularly: x x x **There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure.** In *Cusi-Hernandez vs. Diaz* and *Piglas-Kamao vs. National Labor Relations Commission*, we ruled that **the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance.** The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in each case was the fact that the petitioners therein substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the Court of Appeals, stressing the ruling that by precipitately dismissing the petitions "the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case."

5. ID.; RULES OF PROCEDURE; STRICT AND RIGID APPLICATION OF TECHNICALITIES MUST BE AVOIDED IF IT TENDS TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE; DISMISSAL OF THE PETITION BASED ON TECHNICALITY, UNWARRANTED.— Time and again, this Court has held that a strict and rigid application of technicalities must be avoided if it tends to frustrate rather than promote substantial justice. As held in *Sta. Ana v. Spouses Carpo*: Rules of procedure are merely tools designed to facilitate the attainment of justice. **If the application of the Rules would tend to frustrate rather than to promote justice, it is always within our power to suspend the rules or except a particular case from their operation. Law and jurisprudence grant to courts the prerogative to relax compliance with the procedural rules, *even the most mandatory in character,* mindful of the duty to reconcile *the need to put an end to litigation speedily* and *the parties' right to an opportunity to be heard*.** Clearly, the

dismissal of the petition by the CA on mere technicality is unwarranted in the instant case.

6. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM PROGRAM; THE COURT MAY ASSUME JURISDICTION OVER MATTERS INVOLVING THE IMPLEMENTATION THEREOF WHERE THE ISSUES RAISED IN IT MAY BE RESOLVED ON THE BASIS OF THE RECORDS BEFORE IT AND WHERE THE REMAND OF THE CASE TO THE DEPARTMENT OF AGRARIAN REFORM (DAR) SECRETARY WOULD ONLY CAUSE UNNECESSARY DELAY AND HARDSHIP ON THE PARTIES.— Indeed, it is the Office of the DAR Secretary which is vested with the primary and exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. However, this will not prevent the Court from assuming jurisdiction over the petition considering that the issues raised in it may already be resolved on the basis of the records before Us. Besides, to allow the matter to remain with the Office of the DAR Secretary would only cause unnecessary delay and undue hardship on the parties. Applicable, by analogy, is Our ruling in the recent *Bagong Pagkakaisa ng Manggagawa ng Triumph International v. Department of Labor and Employment Secretary*, where We held: But as the CA did, we similarly recognize that **undue hardship, to the point of injustice, would result if a remand would be ordered under a situation where we are in the position to resolve the case based on the records before us.**

7. POLITICAL LAW; LOCAL GOVERNMENT; LOCAL ZONING ORDINANCE; THE POWER OF THE LOCAL GOVERNMENT TO RECLASSIFY LANDS FROM AGRICULTURAL TO NON-AGRICULTURAL PRIOR TO THE PASSAGE OF RA 6657 IS NOT SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF AGRARIAN REFORM.— [A]fter an assiduous study of the records of the case, We agree with petitioners that the subject property, particularly Lot No. 1407, is outside the coverage of the agrarian reform program in view of the enactment by the City of Iligan of its local zoning ordinance, City Ordinance No. 1313. It is undeniable that the local government has the power to reclassify agricultural into non-agricultural lands. In *Pasong Bayabas Farmers Association, Inc. v. CA*, this Court held that pursuant

to Sec. 3 of Republic Act No. (RA) 2264, amending the Local Government Code, municipal and/or city councils are empowered to "adopt zoning and subdivision ordinances or regulations in consultation with the National Planning Commission." It was also emphasized therein that "[t]he power of the local government to convert or reclassify lands [from agricultural to non-agricultural lands prior to the passage of RA 6657] is not subject to the approval of the [DAR]."

8. ID.; ID.; ID.; LOCAL CITY ORDINANCE NO. 1313 (ZONING REGULATION OF ILIGAN CITY) RECLASSIFYING THE SUBJECT PROPERTY INTO COMMERCIAL/ RESIDENTIAL AREA, DECLARED VALID; TASK FORCE ON HUMAN SETTLEMENTS WAS NOT EMPOWERED TO REVIEW AND APPROVE ZONING ORDINANCE.— [I]t is not controverted that City Ordinance No. 1313, which was enacted by the City of Iligan in 1975, reclassified the subject property into a commercial/residential area. DARAB, however, believes that the approval of HLURB is necessary in order for the reclassification to be valid. We differ. As previously mentioned, City Ordinance No. 1313 was enacted by the City of Iligan in 1975. Significantly, there was still no HLURB to speak of during that time. It was the Task Force on Human Settlements, the earliest predecessor of HLURB, which was already in existence at that time, having been created on September 19, 1973 pursuant to Executive Order No. 419. It should be noted, however, that the Task Force was not empowered to review and approve zoning ordinances and regulations. As a matter of fact, 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 Human Settlements Regulatory Commission (HSRC) was the regulatory arm of the Ministry of Human Settlements. Significantly, accompanying the Certification dated October 8, 1999 issued by Gil R. Balondo, Deputy Zoning Administrator of the City Planning and Development Office, Iligan City, and the letter dated October 8, 1999 issued by Ayunan B. Rajah, Regional Officer of the HLURB, is the Certificate of Approval issued by Imelda Romualdez Marcos, then Minister of Human Settlements and Chairperson of the HSRC, showing that the local zoning ordinance was, indeed, approved on September 21, 1978. This leads to

no other conclusion than that City Ordinance No. 1313 enacted by the City of Iligan was approved by the HSRC, the predecessor of HLURB. The validity of said local zoning ordinance is, therefore, beyond question.

9. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM PROGRAM; TO BE EXEMPT FROM THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), ALL THAT IS NEEDED IS ONE VALID RECLASSIFICATION OF THE LAND FROM AGRICULTURAL TO NON-AGRICULTURAL BY A DULY AUTHORIZED GOVERNMENT AGENCY PRIOR TO THE EFFECTIVITY OF THE CARL.— Since the subject property had been reclassified as residential/commercial land with the enactment of City Ordinance No. 1313 in 1975, it can no longer be considered as an "agricultural land" within the ambit of RA 6657. As this Court held in *Buklod nang Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc.*, "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."

10. ID.; ID.; PRIOR TO FULL PAYMENT OF THE JUST COMPENSATION, TENANT-FARMERS HAVE ONLY AN INCHOATE RIGHT OVER THE LAND THEY WERE TILLING; EMANCIPATION PATENTS (EPs) MAY BE ISSUED IN FAVOR OF THE TENANT-FARMERS ONLY UPON FULL PAYMENT OF THE AMORTIZATIONS DUE THEM.— It should be clarified that even if under PD 27, tenant-farmers are "deemed owners" as of October 21, 1972, this is not to be construed as automatically vesting upon these tenant-farmers absolute ownership over the land they were tilling. Certain requirements must also be complied with, such as payment of just compensation, before full ownership is vested upon the tenant-farmers. This was elucidated by the Court in *Association of Small Landowners in the Philippines, Inc. v. Sec. of Agrarian Reform*: It is true that P.D. No. 27 expressly ordered the emancipation of tenant-farmer as October 21, 1972 and declared that he shall "*be deemed the owner*" of a portion of land consisting of a family-sized farm except that "no title to the land owned by him was to be actually issued to him unless and until he had become a full-fledged member of a duly recognized farmers'

cooperative." **It was understood, however, that full payment of the just compensation also had to be made first, conformably to the constitutional requirement.** x x x. Prior to compliance with the prescribed requirements, tenant-farmers have, at most, an inchoate right over the land they were tilling. In recognition of this, a CLT is issued to a tenant-farmer to serve as a "provisional title of ownership over the landholding while the lot owner is awaiting full payment of [just compensation] or for as long as the [tenant-farmer] is an 'amortizing owner.'" This certificate "proves inchoate ownership of an agricultural land primarily devoted to rice and corn production. It is issued in order for the tenant-farmer to acquire the land" he was tilling. Concomitantly, with respect to the LBP and the government, tenant-farmers cannot be considered as full owners of the land they are tilling unless they have fully paid the amortizations due them. This is because it is only upon such full payment of the amortizations that EPs may be issued in their favor.

11. ID.; ID.; LAND TRANSFER UNDER PRESIDENTIAL DECREE 27, TWO STAGES; TENANT-FARMERS ARE "DEEMED OWNERS" ONLY UPON ISSUANCE TO THEM OF THE CERTIFICATES OF LAND TRANSFER (CLTs); NO VESTED RIGHTS ACCRUED PRIOR TO THE RECLASSIFICATION OF THE SUBJECT LAND AND THE APPROVAL THEREOF; LOT NO. 1407 IS OUTSIDE THE COVERAGE OF THE AGRARIAN REFORM PROGRAM.— In *Del Castillo v. Orciga*, We explained that land transfer under PD 27 is effected in two (2) stages. The first stage is the issuance of a CLT to a farmer-beneficiary as soon as the DAR transfers the landholding to the farmer-beneficiary in recognition that said person is its "deemed owner." And the second stage is the issuance of an EP as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the farmer-beneficiary. **In the case at bar, the CLTs were issued in 1984. Therefore, for all intents and purposes, it was only in 1984 that private respondents, as farmer-beneficiaries, were recognized to have an inchoate right over the subject property prior to compliance with the prescribed requirements. Considering that the local zoning ordinance was enacted in 1975, and subsequently approved by the HSRC in 1978, private respondents still had no vested rights to speak of during this period, as it was only in 1984 that private respondents**

were issued the CLTs and were "deemed owners." The same holds true even if EPs and OCTs were issued in 2001, since reclassification had taken place twenty-six (26) years prior to their issuance. Undeniably, no vested rights accrued prior to reclassification and its approval. Consequently, the subject property, particularly Lot No. 1407, is outside the coverage of the agrarian reform program.

12. ID.; ID.; FAILURE OF THE DEPARTMENT OF AGRARIAN REFORM TO NOTIFY THE LANDOWNERS THAT IT IS SUBJECTING THEIR PROPERTY UNDER THE COVERAGE OF THE AGRARIAN REFORM PROGRAM CONSTITUTES A DENIAL OF THEIR RIGHT TO DUE PROCESS OF LAW.— The importance of an actual notice in subjecting a property under the agrarian reform program cannot be underrated, as non-compliance with it trods roughshod with the essential requirements of administrative due process of law. x x x. [I]n *Sta. Monica Industrial & Dev't. Corp. v. DAR*, this Court underscored the significance of notice in implementing the agrarian reform program when it stated that "notice is part of the constitutional right to due process of law. It informs the landowner of the State's intention to acquire a private land upon payment of just compensation and gives him the opportunity to present evidence that his landholding is not covered or is otherwise excused from the agrarian law." The Court, therefore, finds interest in the holding of the DARAB that petitioners were not denied the right to due process despite the fact that only the Nanamans were identified as the owners. x x x. But it was incumbent upon the DAR to notify Deleste, being the landowner of the subject property. It should be noted that the deed of sale executed by Hilaria in favor of Deleste was registered on March 2, 1954, and such registration serves as a constructive notice to the whole world that the subject property was already owned by Deleste by virtue of the said deed of sale. x x x. It bears stressing that the principal purpose of registration is "to notify other persons not parties to a contract that a transaction involving the property has been entered into." There was, therefore, no reason for DAR to feign ignorance of the transfer of ownership over the subject property. x x x. Petitioners' right to due process of law was, indeed, violated when the DAR failed to notify them that it is subjecting the subject property under the coverage of the agrarian reform program.

13. ID.; ID.; TAX DECLARATIONS OR REALTY TAX PAYMENTS OF PROPERTY ARE GOOD INDICIA OF POSSESSION IN THE CONCEPT OF AN OWNER, FOR NO ONE IN HIS RIGHT MIND WOULD BE PAYING TAXES FOR A PROPERTY THAT IS NOT IN HIS ACTUAL OR AT LEAST, CONSTRUCTIVE POSSESSION.— [T]hat DAR should have sent the notice to Deleste, and not to the Nanamans, is bolstered by the fact that the tax declaration in the name of Virgilio was already canceled and a new one issued in the name of Deleste. Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, they are nonetheless "good indicia of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or, at least, constructive possession."

14. ID.; ID.; NO VALID TRANSFER OF TITLE WHERE THE CERTIFICATES OF LAND TRANSFER (CLTs) ON WHICH THEY ARE GROUNDED ARE VOID; CANCELLATION OF THE EMANCIPATION PATENTS (EPs) AND THE ORIGINAL CERTIFICATES OF TITLE ISSUED WARRANTED WHERE THE LANDOWNERS RIGHT TO DUE PROCESS WAS VIOLATED AND THEIR PROPERTY IS OUTSIDE THE COVERAGE OF THE AGRARIAN REFORM PROGRAM.— [I]f the illegality in the issuance of the CLTs is patent, the Court must immediately take action and declare the issuance as null and void. There being no question that the CLTs in the instant case were "improperly issued, for which reason, their cancellation is warranted." The same holds true with respect to the EPs and certificates of title issued by virtue of the void CLTs, as there can be no valid transfer of title should the CLTs on which they were grounded are void. Cancellation of the EPs and OCTs are clearly warranted in the instant case since, aside from the violation of petitioners' right to due process of law, the subject property is outside the coverage of the agrarian reform program.

15. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; TWO ASPECTS; DISTINGUISHED.— [T]he doctrine of *res judicata* has two aspects, namely: (1) "bar by prior judgment," wherein the judgment in a prior case bars the prosecution of a second action upon the same claim, demand, or cause of action; and (2) "conclusiveness of judgment," which precludes relitigation

of a particular fact or issue in another action between the same parties on a different claim or cause of action. Citing *Agustin v. Delos Santos*, this Court, in *Spouses Antonio v. Sayman*, expounded on the difference between the two aspects of *res judicata*: The principle of *res judicata* is applicable by way of (1) "bar by prior judgment" and (2) "conclusiveness of judgment." This Court had occasion to explain the difference between these two aspects of *res judicata* as follows: There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal. **But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment."** Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein 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.

16. ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT, EXPLAINED; APPLICATION; ISSUE OF VALIDITY OF THE EMANCIPATION PATENTS NOT BARRED BY *RES JUDICATA*.— To be sure, conclusiveness of judgment merits application "when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction." Elucidating further on this second aspect of *res judicata*, the Court, in *Spouses Antonio*, stated: x x x The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the

conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. **Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.** Applying the above statement of the Court to the case at bar, we find that LBP's contention that this Court's ruling in *Heirs of Sofia Nanaman Lonoy* that the EPs and OCTs issued in 2001 had already become indefeasible and incontrovertible precludes a "relitigation" of the issue concerning the validity of the EPs issued to private respondents does not hold water.

APPEARANCES OF COUNSEL

Alan Joseph A. Sheker for petitioners.
Delfin B. Samson for DAR.
*LBP Legal Services Gro*up for Land Bank of the Phils.
Paul Centillas Zaide for private respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before Us is a Petition for Review on *Certiorari* under Rule 45 seeking to reverse and set aside the October 28, 2004 Resolution[1] of the Court of Appeals (CA) and its September 13, 2005 Resolution[2] denying petitioners' motion for reconsideration.

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[1] *Rollo*, pp. 72-73. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Sesinando E. Villon and Rodrigo F. Lim, Jr.

[2] *Id.* at 75-78. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr.

The Facts

The spouses Gregorio Nanaman (Gregorio) and Hilaria Tabuclin (Hilaria) were the owners of a parcel of agricultural land located in Tambo, Iligan City, consisting of 34.7 hectares (subject property). Said spouses were childless, but Gregorio had a son named Virgilio Nanaman (Virgilio) by another woman. Virgilio had been raised by the couple since he was two years old. Gregorio also had two daughters, Esperanza and Caridad, by still another woman.[3]

When Gregorio died in 1945, Hilaria and Virgilio administered the subject property.[4] On February 16, 1954, Hilaria and Virgilio sold the subject property to Dr. Jose Deleste (Deleste) for PhP 16,000.[5] The deed of sale was notarized on February 17, 1954 and registered on March 2, 1954. Also, the tax declaration in the name of Virgilio was cancelled and a new tax declaration was issued in the name of Deleste. The arrears in the payment of taxes from 1952 had been updated by Deleste and from then on, he paid the taxes on the property.[6]

On May 15, 1954, Hilaria died.[7] Gregorio's brother, Juan Nanaman, was appointed as special administrator of the estate of the deceased spouses. Subsequently, Edilberto Noel (Noel) was appointed as the regular administrator of the joint estate.[8]

On April 30, 1963, Noel, as the administrator of the intestate estate of the deceased spouses, filed before the Court of First Instance, Branch II, Lanao del Norte an action against Deleste for the reversion of title over the subject property, docketed as

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[3] *Id.* at 126-127.

[4] *Heirs of Sofia Nanaman Lonoy v. Sec. of Agrarian Reform*, G.R. No. 175049, November 27, 2008, 572 SCRA 185, 192.

[5] *Rollo*, p. 127.

[6] *Id.* at 153-154.

[7] *Id.* at 127.

[8] *Heirs of Sofia Nanaman Lonoy v. Sec. of Agrarian Reform, supra* note 4, at 193.

Civil Case No. 698.[9] Said case went up to this Court in *Noel v. CA*, where We rendered a Decision[10] on January 11, 1995, affirming the ruling of the CA that the subject property was the conjugal property of the late spouses Gregorio and Hilaria and that the latter could only sell her one-half (1/2) share of the subject property to Deleste. As a result, Deleste, who died in 1992, and the intestate estate of Gregorio were held to be the co-owners of the subject property, each with a one-half (1/2) interest in it.[11]

Notably, while Civil Case No. 698 was still pending before the CFI, particularly on October 21, 1972, Presidential Decree No. (PD) 27 was issued. This law mandates that tenanted rice and corn lands be brought under the Operation Land Transfer (OLT) Program and awarded to farmer-beneficiaries. Thus, the subject property was placed under the said program.[12] However, only the heirs of Gregorio were identified by the Department of Agrarian Reform (DAR) as the landowners. Concomitantly, the notices and processes relative to the coverage were sent to these heirs.[13]

In 1975, the City of Iligan passed City Ordinance No. 1313, known as the "Zoning Regulation of Iligan City," reclassifying the subject property as commercial/residential.[14]

Eventually, on February 12, 1984, DAR issued Certificates of Land Transfer (CLTs) in favor of private respondents who

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[9] *Rollo*, p. 127.

[10] *Noel v. Court of Appeals*, G.R. Nos. 59550 and 60636, January 11, 1995, 240 SCRA 78.

[11] *Heirs of Sofia Nanaman Lonoy v. Sec. of Agrarian Reform*, *supra* note 4, at 193.

[12] *Rollo*, pp. 154-155; *Heirs of Sofia Nanaman Lonoy v. Sec. of Agrarian Reform*, *supra* note 4, at 193-194.

[13] *Id.* at 155.

[14] *Id.* at 127.

were tenants and actual cultivators of the subject property.[15] The CLTs were registered on July 15, 1986.[16]

In 1991, the subject property was surveyed.[17] The survey of a portion of the land consisting of 20.2611 hectares, designated as Lot No. 1407, was approved on January 8, 1999.[18] The claim folder for Lot No. 1407 was submitted to the LBP which issued a Memorandum of Valuation and a Certificate of Cash Deposit on May 21, 2001 and September 12, 2001, respectively. Thereafter, Emancipation Patents (EPs) and Original Certificates of Title (OCTs) were issued on August 1, 2001 and October 1, 2001, respectively, in favor of private respondents over their respective portions of Lot No. 1407.[19]

Meanwhile, on November 22, 1999, the City of Iligan filed a complaint with the Regional Trial Court (RTC), Branch 4 in Iligan City for the expropriation of a 5.4686-hectare portion of Lot No. 1407, docketed as Special Civil Action No. 4979. On December 11, 2000, the RTC issued a Decision granting the expropriation. Considering that the real owner of the expropriated portion could not be determined, as the subject property had not yet been partitioned and distributed to any of the heirs of Gregorio and Deleste, the just compensation for the expropriated portion of the subject property in the amount of PhP 27,343,000 was deposited with the Development Bank of the Philippines in Iligan City, in trust for the RTC in Iligan City.[20]

On February 28, 2002, the heirs of Deleste, petitioners herein, filed with the Department of Agrarian Reform Adjudication Board (DARAB) a petition seeking to nullify private

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[15] *Id.*

[16] *Id.* at 155.

[17] *Id.*

[18] *Id.* at 156.

[19] *Id.* at 990, 263-292.

[20] *Id.* at 156; *supra* note 4, at 195.

respondents' EPs.[21] This was docketed as Reg. Case No. X-471-LN-2002.

On July 21, 2003, the Provincial Agrarian Reform Adjudicator (PARAD) rendered a Decision[22] declaring that the EPs were null and void in view of the pending issues of ownership, the subsequent reclassification of the subject property into a residential/commercial land, and the violation of petitioners' constitutional right to due process of law.

Dissatisfied, private respondents immediately filed their Notice of Appeal on July 22, 2003. Notwithstanding it, on July 24, 2003, petitioners filed a Motion for a Writ of Execution pursuant to Section 2, Rule XII of the Revised Rules of Procedure, which was granted in an Order dated August 4, 2003 despite strong opposition from private respondents.[23] On January 28, 2004, the DARAB nullified the Order dated August 4, 2003 granting the writ of execution.[24]

Subsequently, the DARAB, in DARAB Case No. 12486, reversed the ruling of the PARAD in its Decision[25] dated March 15, 2004. It held, among others, that the EPs were valid as it was the heirs of Deleste who should have informed the DAR of the pendency of Civil Case No. 698 at the time the subject property was placed under the coverage of the OLT Program considering that DAR was not a party to the said case. Further, it stated that the record is bereft of any evidence that the city ordinance has been approved by the Housing and Land Use Regulatory Board (HLURB), as mandated by DAR Administrative Order No. 01, Series of 1990, and held that whether the subject property is indeed exempt from the OLT Program is an administrative determination, the jurisdiction

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[21] *Id.* at 128.

[22] *Id.* at 152-163.

[23] *Id.* at 133.

[24] *Id.* at 634-635.

[25] *Id.* at 126-141.

of which lies exclusively with the DAR Secretary or the latter's authorized representative. Petitioners' motion for reconsideration was likewise denied by the DARAB in its Resolution[26] dated July 8, 2004.

Undaunted, petitioners filed a petition for review with the CA, docketed as CA-G.R. SP No. 85471, challenging the Decision and Resolution in DARAB Case No. 12486. This was denied by the CA in a Resolution dated October 28, 2004 for petitioners' failure to attach the writ of execution, the order nullifying the writ of execution, and such material portions of the record referred to in the petition and other supporting papers, as required under Sec. 6 of Rule 43 of the Rules of Court. Petitioners' motion for reconsideration was also denied by the appellate court in a Resolution dated September 13, 2005 for being *pro forma*.

On November 18, 2005, petitioners filed a petition for review with this Court. In Our Resolution[27] dated February 4, 2008, We resolved to deny the said petition for failure to show sufficiently any reversible error in the assailed judgment to warrant the exercise by the Court of its discretionary appellate jurisdiction in this case.

On March 19, 2008, petitioners filed a Motion for Reconsideration.[28] On April 11, 2008, they also filed a Supplement to the Motion for Reconsideration.[29]

In Our Resolution[30] dated August 20, 2008, this Court resolved to grant petitioners' motion for reconsideration and give due course to the petition, requiring the parties to submit their respective memoranda.

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[26] *Id.* at 102-103.

[27] *Id.* at 822-823.

[28] *Id.* at 824-861.

[29] *Id.* at 862-881.

[30] *Id.* at 959-960.

The Issues

I. [WHETHER THE CA WAS CORRECT IN DISMISSING] OUTRIGHT THE PETITION FOR REVIEW OF PETITIONERS X X X.

II. [WHETHER] THE OUTRIGHT DENIAL OF PETITIONERS' MOTION FOR RECONSIDERATION BASED ON A MISAPPRECIATION OF FACTS IS JUSTIFIED; AND [WHETHER THE] OUTRIGHT DISMISSAL OF THE PETITION IS JUST CONSIDERING THE IMPORTANCE OF THE ISSUES RAISED THEREIN.

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III. [WHETHER PETITIONERS' LAND IS] COVERED BY AGRARIAN REFORM GIVEN THAT THE CITY OF ILIGAN PASSED [CITY] ORDINANCE NO. 1313 RECLASSIFYING THE AREA INTO A STRICTLY RESIDENTIAL AREA IN 1975.

IV. [WHETHER THE LAND] THAT HAS BEEN PREVIOUSLY AND PARTIALLY EXPROPRIATED BY A CITY GOVERNMENT [MAY] STILL BE SUBJECT[ED] TO AGRARIAN REFORM.

V. [WHETHER DAR VIOLATED] THE RIGHTS OF PETITIONERS TO PROCEDURAL DUE PROCESS.

VI. [WHETHER] THE COMPENSATION DETERMINED BY DAR AND LBP IS CORRECT GIVEN THAT THE FORMULA USED HAD BEEN REPEALED.

VII. [WHETHER] THE ISSUANCE OF EMANCIPATION PATENTS [IS] LEGAL GIVEN THAT THEY WERE FRUITS OF AN ILLEGAL PROCEEDING.

VIII. [WHETHER] THE CERTIFICATES OF TITLE [ARE] VALID GIVEN THAT THEY WERE DIRECTLY ISSUED TO THE FARMER-BENEFICIARIES IN GROSS VIOLATION OF SECTION 16(E) OF R.A. 6657 X X X.[31]

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[31] *Id.* at 991-992. Original in lowercase.

Our Ruling

The petition is meritorious.

Effect of non-compliance with the requirements under Sec. 6, Rule 43 of the Rules of Court

In filing a petition for review as an appeal from awards, judgments, final orders, or resolutions of any quasi-judicial agency in the exercise of its quasi-judicial functions, it is required under Sec. 6(c), Rule 43 of the Rules of Court that it be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order, or resolution appealed from, with certified true copies of such material portions of the record referred to in the petition and other supporting papers. As stated:

> Sec. 6. *Contents of the petition.* – The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) **be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers**; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis supplied.)

Non-compliance with any of the above-mentioned requirements concerning the contents of the petition, as well as the documents that should accompany the petition, shall be sufficient ground for its dismissal as stated in Sec. 7, Rule 43 of the Rules:

> Sec. 7. *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and **the contents of and the documents which should accompany the petition** shall be **sufficient ground for the dismissal thereof**. (Emphasis supplied.)

In the instant case, the CA dismissed the petition in CA-G.R. SP No. 85471 for petitioners' failure to attach the writ of execution, the order nullifying the writ of execution, and such material portions of the record referred to in the petition and other supporting papers.[32]

A perusal of the issues raised before the CA would, however, show that the foregoing documents required by the appellate court are not necessary for the proper disposition of the case. Specifically:

> Is [Lot No. 1407] within the ambit of the [Comprehensive Agrarian Reform Program]?
>
> Can the OLT by DAR over the subject land validly proceed without notice to the landowner?
>
> Can the OLT be validly completed without a certification of deposit by Land Bank?
>
> [I]s the landowner barred from exercising his right of retention x x x [considering that EPs were already issued on the basis of CLTs]?
>
> Are the EPs over the subject land x x x valid x x x?[33]

Petitioners complied with the requirement under Sec. 6(c), Rule 43 of the Rules of Court when they appended to the petition filed before the CA certified true copies of the following documents: (1) the challenged resolution dated July 8, 2004 issued by the DARAB denying petitioners' motion for reconsideration; (2) the duplicate original copy of petitioners' Motion for Reconsideration dated April 6, 2005; (3) the assailed decision dated March 15, 2004 issued by the DARAB reversing on appeal the decision of the PARAD and nullifying with finality the order of execution pending appeal; (4) the Order dated December 8, 2003 issued by the PARAD reinstating the writ of execution earlier issued; and (5) the Decision dated July 21, 2003 issued by the PARAD in the original proceedings for

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[32] *Id.* at 72.

[33] *Id.* at 87.

the cancellation of the EPs.[34] The CA, therefore, erred when it dismissed the petition based on such technical ground.

Even assuming that the omitted documents were material to the appeal, the appellate court, instead of dismissing outright the petition, could have just required petitioners to submit the necessary documents. In *Spouses Espejo v. Ito*,[35] the Court held that "under Section 3 (d), Rule 3 of the Revised Internal Rules of the Court of Appeals,[36] the Court of Appeals is with authority to require the parties to submit additional documents as may be necessary to promote the interests of substantial justice."

Moreover, petitioners' subsequent submission of the documents required by the CA with the motion for reconsideration constitutes substantial compliance with Section 6(c), Rule 43 of the Rules of Court.[37] In *Jaro v. CA*, this Court held that subsequent and substantial compliance may call for the relaxation of the rules of procedure. Particularly:

> The amended petition no longer contained the fatal defects that the original petition had but the Court of Appeals still saw it fit to dismiss the amended petition. The Court of Appeals reasoned that "non-compliance in the original petition is admittedly attributable to the petitioner and that no highly justifiable and compelling reason has been advanced" to the court for it to depart from the mandatory requirements of Administrative Circular No. 3-96. The hard stance taken by the Court of Appeals in this case is unjustified under the circumstances.

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[34] *Id.* at 99-163.

[35] G.R. No. 176511, August 4, 2009, 595 SCRA 192, 206; citing *Spouses Lanaria v. Planta*, G.R. No. 172891, November 22, 2007, 538 SCRA 79.

[36] Rule 3, Sec. 3(d) reads: "When a petition does not have the complete annexes or the required number of copies, the Chief of the Judicial Records Division shall require the petitioner to complete the annexes or file the necessary number of copies of the petition before docketing the case. Pleadings improperly filed in court shall be returned to the sender by the Chief of the Judicial Records Division."

[37] *Gonzales v. Civil Service Commission*, G.R. No. 139131, September 27, 2002, 390 SCRA 124, 130.

There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure. In *Cusi-Hernandez vs. Diaz* and *Piglas-Kamao vs. National Labor Relations Commission*, we ruled that **the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance.** The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in each case was the fact that the petitioners therein substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the Court of Appeals, stressing the ruling that by precipitately dismissing the petitions "the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case."[38] (Citations omitted; emphasis supplied.)

Time and again, this Court has held that a strict and rigid application of technicalities must be avoided if it tends to frustrate rather than promote substantial justice.[39] As held in *Sta. Ana v. Spouses Carpo*:[40]

Rules of procedure are merely tools designed to facilitate the attainment of justice. **If the application of the Rules would tend to frustrate rather than to promote justice, it is always within our power to suspend the rules or except a particular case from their operation. Law and jurisprudence grant to courts the prerogative to relax compliance with the procedural rules*, even the most mandatory in character,* mindful of the duty to reconcile *the need to put an end to litigation speedily* and *the parties' right to an opportunity to be heard*.**

Our recent ruling in *Tanenglian v. Lorenzo* is instructive:

> We have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules, allowing us, depending on the circumstances, to set aside technical infirmities and give due course to the appeal. In cases where

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[38] G.R. No. 127536, February 19, 2002, 377 SCRA 282, 296-297.

[39] *Id.* at 298; citing *Cusi-Hernandez v. Diaz*, G.R. No. 140436, July 18, 2000, 336 SCRA 113.

[40] G.R. No. 164340, November 28, 2008, 572 SCRA 463, 477.

> we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause. (Citations omitted; emphasis supplied.)

Clearly, the dismissal of the petition by the CA on mere technicality is unwarranted in the instant case.

On the coverage of the subject property by the agrarian reform program

Petitioners contend that the subject property, particularly Lot No. 1407, is outside the coverage of the agrarian reform program in view of the enactment of City Ordinance No. 1313 by the City of Iligan reclassifying the area into a residential/commercial land.[41]

Unconvinced, the DARAB, in its Decision, noted that the record is bereft of any evidence that the city ordinance has been approved by the HLURB, thereby allegedly casting doubt on the validity of the reclassification over the subject property.[42] It further noted that whether the subject property is exempt from the OLT Program is an administrative determination, the jurisdiction of which lies exclusively with the DAR Secretary, not with the DARAB.

Indeed, it is the Office of the DAR Secretary which is vested with the primary and exclusive jurisdiction over all matters involving the implementation of the agrarian reform program.[43] However, this will not prevent the Court from assuming

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[41] *Rollo,* pp. 1010-1014.

[42] *Id.* at 135.

[43] *Sta. Ana v. Spouses Carpo, supra* note 40, at 480; citing *DAR v. Abdulwahid,* G.R. No. 163285, February 27, 2008, 547 SCRA 30, 40.

jurisdiction over the petition considering that the issues raised in it may already be resolved on the basis of the records before Us. Besides, to allow the matter to remain with the Office of the DAR Secretary would only cause unnecessary delay and undue hardship on the parties. Applicable, by analogy, is Our ruling in the recent *Bagong Pagkakaisa ng Manggagawa ng Triumph International v. Department of Labor and Employment Secretary*,[44] where We held:

> But as the CA did, we similarly recognize that **undue hardship, to the point of injustice, would result if a remand would be ordered under a situation where we are in the position to resolve the case based on the records before us.** As we said in *Roman Catholic Archbishop of Manila v. Court of Appeals*:
>
> > [w]e have laid down the rule that the remand of the case to the lower court for further reception of evidence is not necessary where the Court is in a position to resolve the dispute based on the records before it. **On many occasions, the Court, in the public interest and for the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice, would not be subserved by the remand of the case.**
>
> Thus, we shall directly rule on the dismissal issue. And while we rule that the CA could not validly rule on the merits of this issue, we shall not hesitate to refer back to its dismissal ruling, where appropriate. (Citations omitted; emphasis supplied.)

Pertinently, after an assiduous study of the records of the case, We agree with petitioners that the subject property, particularly Lot No. 1407, is outside the coverage of the agrarian reform program in view of the enactment by the City of Iligan of its local zoning ordinance, City Ordinance No. 1313.

It is undeniable that the local government has the power to reclassify agricultural into non-agricultural lands. In *Pasong*

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[44] G.R. Nos. 167401 & 167407, July 5, 2010, 623 SCRA 185, 207.

Bayabas Farmers Association, Inc. v. CA,[45] this Court held that pursuant to Sec. 3 of Republic Act No. (RA) 2264, amending the Local Government Code, municipal and/or city councils are empowered to "adopt zoning and subdivision ordinances or regulations in consultation with the National Planning Commission." It was also emphasized therein that "[t]he power of the local government to convert or reclassify lands [from agricultural to non-agricultural lands prior to the passage of RA 6657] is not subject to the approval of the [DAR]."[46]

Likewise, it is not controverted that City Ordinance No. 1313, which was enacted by the City of Iligan in 1975, reclassified the subject property into a commercial/residential area. DARAB, however, believes that the approval of HLURB is necessary in order for the reclassification to be valid.

We differ. As previously mentioned, City Ordinance No. 1313 was enacted by the City of Iligan in 1975. Significantly, there was still no HLURB to speak of during that time. It was the Task Force on Human Settlements, the earliest predecessor of HLURB, which was already in existence at that time, having been created on September 19, 1973 pursuant to Executive Order No. 419. It should be noted, however, that the Task Force was not empowered to review and approve zoning ordinances and regulations. As a matter of fact, 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 Human Settlements Regulatory Commission (HSRC) was the regulatory arm of the Ministry of Human Settlements.[47]

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[45] G.R. Nos. 142359 & 142980, May 25, 2004, 429 SCRA 109, 134-135.

[46] *Id.* at 135.

[47] Under Sec. 18 of PD 1396, the Human Settlements Commission established pursuant to PD 933 was renamed as the Human Settlements Regulatory Commission and was made the regulatory arm of the Ministry of Human Settlements. PD 1396 was issued on June 2, 1978.

Significantly, accompanying the Certification[48] dated October 8, 1999 issued by Gil R. Balondo, Deputy Zoning Administrator of the City Planning and Development Office, Iligan City, and the letter[49] dated October 8, 1999 issued by Ayunan B. Rajah, Regional Officer of the HLURB, is the Certificate of Approval issued by Imelda Romualdez Marcos, then Minister of Human Settlements and Chairperson of the HSRC, showing that the local zoning ordinance was, indeed, approved on September 21, 1978. This leads to no other conclusion than that City Ordinance No. 1313 enacted by the City of Iligan was approved by the HSRC, the predecessor of HLURB. The validity of said local zoning ordinance is, therefore, beyond question.

Since the subject property had been reclassified as residential/ commercial land with the enactment of City Ordinance No. 1313 in 1975, it can no longer be considered as an "agricultural land" within the ambit of RA 6657. As this Court held in *Buklod nang Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc.*,[50] "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."

Despite the foregoing ruling, respondents allege that the subsequent reclassification by the local zoning ordinance cannot free the land from the legal effects of PD 27 which deems the land to be already taken as of October 21, 1972, when said law took effect. Concomitantly, they assert that the rights which accrued from said date must be respected. They also maintain that the reclassification of the subject property did not alter its agricultural nature, much less its actual use.[51]

Verily, vested rights which have already accrued cannot just be taken away by the expedience of issuing a local zoning

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[48] *Rollo*, p. 340.

[49] *Id.* at 341.

[50] G.R. Nos. 131481 & 131624, March 16, 2011.

[51] *Rollo*, pp. 1078-1081, 1098-1101; 1207-1216.

ordinance reclassifying an agricultural land into a residential/commercial area. As this Court extensively discussed in *Remman Enterprises, Inc. v. CA*:[52]

> In the main, REMMAN hinges its application for exemption on the ground that the subject lands had ceased to be agricultural lands by virtue of the zoning classification by the Sangguniang Bayan of Dasmariñas, Cavite, and approved by the HSRC, specifying them as residential.
>
> In *Natalia Realty, Inc. v. Department of Agriculture*, this Court resolved the issue of whether lands already classified for residential, commercial or industrial use, as approved by the Housing and Land Use Regulatory Board (HLURB) and its precursor agencies, *i.e.*, National Housing Authority and Human Settlements Regulatory Commission, prior to 15 June 1988, are covered by Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988. We answered in the negative, thus:
>
> > We now determine whether such lands are covered by the CARL. 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," 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 land."
> >
> > x x x x x x x x x
> >
> > 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 —

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[52] G.R. Nos. 132073 & 132361, September 27, 2006, 503 SCRA 378, 391-393.

> . . . Agricultural lands 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. . . . .

However, *Natalia* should be cautiously applied in light of Administrative Order 04, Series of 2003, which outlines the rules on the Exemption on Lands from CARP Coverage under Section (3) of Republic Act No. 6657, and Department of Justice (DOJ) Opinion No. 44, Series of 1990. It reads:

> I. Prefatory Statement
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> Republic Act (RA) 6657 or the Comprehensive Agrarian Reform Law (CARL), Section 3, Paragraph (c) defines "agricultural land" as referring to "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land."
>
> Department of Justice Opinion No. 44, Series of 1990, (or "DOJ Opinion 44-1990" for brevity) and the case of *Natalia Realty versus Department of Agrarian Reform* (12 August 2993, 225 SCRA 278) opines that with respect to the conversion of agricultural land covered by RA 6657 to non-agricultural uses, the authority of the Department of Agrarian Reform (DAR) to approve such conversion may be exercised from the date of its effectivity, on 15 June 1988. Thus, all lands that are already classified as commercial, industrial or residential before 15 June 1988 no longer need any conversion clearance.
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> ***However, the reclassification of lands to non-agricultural uses shall not operate to divest tenant[-]farmers of their rights over lands covered by Presidential Decree (PD) No. 27, which have been vested prior to 15 June 1988.***

As emphasized, **the reclassification of lands to non-agricultural cannot be applied to defeat vested rights of tenant-farmers under Presidential Decree No. 27.**

Indeed, in the recent case of *Sta. Rosa Realty Development Corporation v. Amante*, where the Court was confronted with the issue of whether the contentious property therein is agricultural in nature on the ground that the same had been classified as "park" since 1979 under the Zoning Ordinance of Cabuyao, as approved by the HLURB, the Court said:

> The Court recognizes the power of a local government to reclassify and convert lands through local ordinance, especially if said ordinance is approved by the HLURB. Municipal Ordinance No. 110-54 dated November 3, 1979, enacted by the Municipality of Cabuyao, divided the municipality into residential, commercial, industrial, agricultural and institutional districts, and districts and parks for open spaces. It did not convert, however, existing agricultural lands into residential, commercial, industrial, or institutional. While it classified Barangay Casile into a municipal park, as shown in its permitted uses of land map, the ordinance did not provide for the retroactivity of its classification. In *Co vs. Intermediate Appellate Court*, it was held **that an ordinance converting agricultural lands into residential or light industrial should be given *prospective* application only, and should not change the nature of existing agricultural lands in the area or the legal relationships existing over such land**. . . . .
>
> A reading of Metro Manila Zoning Ordinance No. 81-01, series of 1981, does not disclose any provision converting existing agricultural lands in the covered area into residential or light industrial. While it declared that after the passage of the measure, the subject area shall be used only for residential or light industrial purposes, it is not provided therein that it shall have retroactive effect so as to discontinue all rights previously acquired over lands located within the zone which are neither residential nor light industrial in nature. **This simply means that, if we apply the general rule, as we must, the ordinance should be given prospective operation only. The further implication is that it should not change the nature of existing agricultural lands in the area or the legal relationships existing over such lands.** (Citations omitted; emphasis supplied.)

This, however, raises the issue of whether vested rights have actually accrued in the instant case. In this respect, We reckon that under PD 27, tenant-farmers of rice and corn lands were

"deemed owners" of the land they till as of October 21, 1972. This policy, intended to emancipate the tenant-farmers from the bondage of the soil, is given effect by the following provision of the law:

> The tenant farmer, whether in land classified as landed estate or not, shall be **deemed owner** of a portion constituting a family size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated. (Emphasis supplied.)

It should be clarified that even if under PD 27, tenant-farmers are "deemed owners" as of October 21, 1972, this is not to be construed as automatically vesting upon these tenant-farmers absolute ownership over the land they were tilling. Certain requirements must also be complied with, such as payment of just compensation, before full ownership is vested upon the tenant-farmers. This was elucidated by the Court in *Association of Small Landowners in the Philippines, Inc. v. Sec. of Agrarian Reform*:[53]

> It is true that P.D. No. 27 expressly ordered the emancipation of tenant-farmer as October 21, 1972 and declared that he shall "*be deemed the owner*" of a portion of land consisting of a family-sized farm except that "no title to the land owned by him was to be actually issued to him unless and until he had become a full-fledged member of a duly recognized farmers' cooperative." **It was understood, however, that full payment of the just compensation also had to be made first, conformably to the constitutional requirement.**
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> When E.O. No. 228, categorically stated in its Section 1 that:
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> > All qualified farmer-beneficiaries are now *deemed full owners* as of October 21, 1972 of the land they acquired by virtue of Presidential Decree No. 27.
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> **it was obviously referring to lands already validly acquired under the said decree, after proof of full-fledged membership in the farmers' cooperatives and full payment of just compensation.** Hence, it was also perfectly proper for the Order to also provide in

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[53] G.R. No. 78742, July 14, 1989, 175 SCRA 343, 390-391.

its Section 2 that the "lease rentals paid to the landowner by the farmer-beneficiary after October 21, 1972 (pending transfer of ownership after full payment of just compensation), shall be considered as advance payment for the land."

The CARP Law, for its part, conditions the transfer of possession and ownership of the land to the government on receipt by the landowner of the corresponding payment or the deposit by the DAR of the compensation in cash or LBP bonds with an accessible bank. **Until then, title also remains with the landowner. No outright change of ownership is contemplated either.** (Citations omitted; emphasis supplied.)

Prior to compliance with the prescribed requirements, tenant-farmers have, at most, an inchoate right over the land they were tilling. In recognition of this, a CLT is issued to a tenant-farmer to serve as a "provisional title of ownership over the landholding while the lot owner is awaiting full payment of [just compensation] or for as long as the [tenant-farmer] is an 'amortizing owner.'"[54] This certificate "proves inchoate ownership of an agricultural land primarily devoted to rice and corn production. It is issued in order for the tenant-farmer to acquire the land"[55] he was tilling.

Concomitantly, with respect to the LBP and the government, tenant-farmers cannot be considered as full owners of the land they are tilling unless they have fully paid the amortizations due them. This is because it is only upon such full payment of the amortizations that EPs may be issued in their favor.

In *Del Castillo v. Orciga*, We explained that land transfer under PD 27 is effected in two (2) stages. The first stage is the issuance of a CLT to a farmer-beneficiary as soon as the DAR transfers the landholding to the farmer-beneficiary in recognition that said person is its "deemed owner." And the second stage is the issuance of an EP as proof of full ownership of the

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[54] *Del Castillo v. Orciga*, G.R. No. 153850, August 31, 2006, 500 SCRA 498, 506.

[55] *Id.* at 505-506.

landholding upon full payment of the annual amortizations or lease rentals by the farmer-beneficiary.[56]

In the case at bar, the CLTs were issued in 1984. Therefore, for all intents and purposes, it was only in 1984 that private respondents, as farmer-beneficiaries, were recognized to have an inchoate right over the subject property prior to compliance with the prescribed requirements. Considering that the local zoning ordinance was enacted in 1975, and subsequently approved by the HSRC in 1978, private respondents still had no vested rights to speak of during this period, as it was only in 1984 that private respondents were issued the CLTs and were "deemed owners."

The same holds true even if EPs and OCTs were issued in 2001, since reclassification had taken place twenty-six (26) years prior to their issuance. Undeniably, no vested rights accrued prior to reclassification and its approval. Consequently, the subject property, particularly Lot No. 1407, is outside the coverage of the agrarian reform program.

On the violation of petitioners' right to due process of law

Petitioners contend that DAR failed to notify them that it is subjecting the subject property under the coverage of the agrarian reform program; hence, their right to due process of law was violated.[57] Citing *De Chavez v. Zobel*,[58] both the DAR and the private respondents claim that the enactment of PD 27 is a statutory notice to all owners of agricultural lands devoted to rice and/or corn production,[59] implying that there was no need for an actual notice.

We agree with petitioners. The importance of an actual notice in subjecting a property under the agrarian reform program cannot be underrated, as non-compliance with it trods roughshod

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[56] *Id.* at 506.

[57] *Rollo*, p. 976.

[58] No. L-28609, January 17, 1974, 55 SCRA 26.

[59] *Rollo*, pp. 1080, 1102.

with the essential requirements of administrative due process of law.[60] Our ruling in *Heirs of Jugalbot v. CA*[61] is particularly instructive:

> Firstly, the taking of subject property was done in violation of constitutional due process. **The Court of Appeals was correct in pointing out that Virginia A. Roa was denied due process because the DAR failed to send notice of the impending land reform coverage to the proper party.** The records show that notices were erroneously addressed and sent in the name of Pedro N. Roa who was not the owner, hence, not the proper party in the instant case. The ownership of the property, as can be gleaned from the records, pertains to Virginia A. Roa. Notice should have been therefore served on her, and not Pedro N. Roa.
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> x x x x x x x x x
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> In addition, the defective notice sent to Pedro N. Roa was followed by a DAR certification signed by team leader Eduardo Maandig on January 8, 1988 stating that the subject property was tenanted as of October 21, 1972 and primarily devoted to rice and corn despite the fact that there was no ocular inspection or any on-site fact-finding investigation and report to verify the truth of the allegations of Nicolas Jugalbot that he was a tenant of the property. The absence of such ocular inspection or on-site fact-finding investigation and report likewise deprives Virginia A. Roa of her right to property through the denial of due process.
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> By analogy, *Roxas & Co., Inc. v. Court of Appeals* applies to the case at bar since there was likewise a violation of due process in the implementation of the Comprehensive Agrarian Reform Law when the petitioner was not notified of any ocular inspection and investigation to be conducted by the DAR before acquisition of the property was to be undertaken. Neither was there proof that petitioner was given the opportunity to at least choose and identify its retention area in those portions to be acquired. Both in the Comprehensive Agrarian Reform Law and Presidential Decree No. 27, the right of retention and how this right is exercised, is guaranteed by law.

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[60] *Roxas & Co., Inc. v. CA*, G.R. No. 127876, December 17, 1999, 321 SCRA 106, 134.

[61] G.R. No. 170346, March 12, 2007, 518 SCRA 202, 210-213.

Since land acquisition under either Presidential Decree No. 27 and the Comprehensive Agrarian Reform Law govern the extraordinary method of expropriating private property, the law must be strictly construed. Faithful compliance with legal provisions, especially those which relate to the procedure for acquisition of expropriated lands should therefore be observed. In the instant case, no proper notice was given to Virginia A. Roa by the DAR. Neither did the DAR conduct an ocular inspection and investigation. Hence, any act committed by the DAR or any of its agencies that results from its failure to comply with the proper procedure for expropriation of land is a violation of constitutional due process and should be deemed arbitrary, capricious, whimsical and tainted with grave abuse of discretion. (Citations omitted; emphasis supplied.)

Markedly, a reading of *De Chavez* invoked by both the DAR and private respondents does not show that this Court ever made mention that actual notice may be dispensed with under PD 27, its enactment being a purported "statutory notice" to all owners of agricultural lands devoted to rice and/or corn production that their lands are subjected to the OLT program.

Quite contrarily, in *Sta. Monica Industrial & Dev't. Corp. v. DAR*,[62] this Court underscored the significance of notice in implementing the agrarian reform program when it stated that "notice is part of the constitutional right to due process of law. It informs the landowner of the State's intention to acquire a private land upon payment of just compensation and gives him the opportunity to present evidence that his landholding is not covered or is otherwise excused from the agrarian law."

The Court, therefore, finds interest in the holding of the DARAB that petitioners were not denied the right to due process despite the fact that only the Nanamans were identified as the owners. Particularly:

Fourthly, the PARAD also ruled that the petitioners were denied the right to be given the notice since only the Nanamans were identified as the owners. The fault lies with petitioners who did not present the tax declaration in the name of Dr. Deleste as of October 21, 1972.

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[62] G.R. No. 164846, June 18, 2008, 555 SCRA 97, 104.

It was only in 1995 that Civil Case No. 698 was finally decided by the Supreme Court dividing the 34.7 hectares between the Delestes and the Nanamans. Note that Dr. Deleste died in 1992 after PD 27 was promulgated, hence, the subject land or his ½ share was considered in his name only (see Art. 777, New Civil Code). Even then, it must be borne in mind that on September 26, 1972, PD No. 2 was issued by President Marcos proclaiming the whole country as a land reform area, this was followed by PD 27. This should have alarmed them more so when private respondents are in actual possession and cultivation of the subject property.

But it was incumbent upon the DAR to notify Deleste, being the landowner of the subject property. It should be noted that the deed of sale executed by Hilaria in favor of Deleste was registered on March 2, 1954, and such registration serves as a constructive notice to the whole world that the subject property was already owned by Deleste by virtue of the said deed of sale. In *Naval v. CA*, this Court held:

> Applying the law, we held in *Bautista v. Fule* that **the registration of an instrument involving *unregistered land* in the Registry of Deeds creates constructive notice** and binds third person who may subsequently deal with the same property.[63] x x x (Emphasis supplied.)

It bears stressing that the principal purpose of registration is "to notify other persons not parties to a contract that a transaction involving the property has been entered into."[64] There was, therefore, no reason for DAR to feign ignorance of the transfer of ownership over the subject property.

Moreover, that DAR should have sent the notice to Deleste, and not to the Nanamans, is bolstered by the fact that the tax declaration in the name of Virgilio was already cancelled and a new one issued in the name of Deleste.[65] Although tax declarations or realty tax payments of property are not conclusive

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[63] G.R. No. 167412, February 22, 2006, 483 SCRA 102, 111.

[64] *Gutierrez v. Mendoza-Plaza*, G.R. No. 185477, December 4, 2009, 607 SCRA 807, 817.

[65] *Rollo*, p. 153.

evidence of ownership, they are nonetheless "good indicia of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or, at least, constructive possession."[66]

Petitioners' right to due process of law was, indeed, violated when the DAR failed to notify them that it is subjecting the subject property under the coverage of the agrarian reform program.

On this note, We take exception to our ruling in *Roxas & Co., Inc. v. CA*,[67] where, despite a finding that there was a violation of due process in the implementation of the comprehensive agrarian reform program when the petitioner was not notified of any ocular inspection and investigation to be conducted by the DAR before acquiring the property, thereby effectively depriving petitioner the opportunity to at least choose and identify its retention area in those portions to be acquired,[68] this Court nonetheless ruled that such violation does not give the Court the power to nullify the certificates of land ownership award (CLOAs) already issued to the farmer-beneficiaries, since the DAR must be given the chance to correct its procedural lapses in the acquisition proceedings.

Manifesting her disagreement that this Court cannot nullify illegally issued CLOAs and should first ask the DAR to reverse and correct itself, Justice Ynares-Santiago, in her Concurring and Dissenting Opinion,[69] stated that "[i]f the acts of DAR are patently illegal and the rights of Roxas & Co. violated, the wrong decisions of DAR should be reversed and set aside. It follows that the fruits of the wrongful acts, in this case the illegally issued CLOAs, must be declared null and void." She also noted that "[i]f CLOAs can under the DAR's own order

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[66] *Republic v. Spouses Kalaw*, G.R. No. 155138, June 8, 2004, 431 SCRA 401, 413.

[67] *Supra* note 60.

[68] *Heirs of Jugalbot v. CA*, *supra* note 61, at 212.

[69] *Roxas & Co., Inc. v. CA, supra* note 60, at 158-177.

be cancelled administratively, with more reason can the courts, especially the Supreme Court, do so when the matter is clearly in issue."

In the same vein, if the illegality in the issuance of the CLTs is patent, the Court must immediately take action and declare the issuance as null and void. There being no question that the CLTs in the instant case were "improperly issued, for which reason, their cancellation is warranted."[70] The same holds true with respect to the EPs and certificates of title issued by virtue of the void CLTs, as there can be no valid transfer of title should the CLTs on which they were grounded are void.[71] Cancellation of the EPs and OCTs are clearly warranted in the instant case since, aside from the violation of petitioners' right to due process of law, the subject property is outside the coverage of the agrarian reform program.

Issue of Validity of EPs Not Barred by *Res Judicata*

The LBP maintains that the issue of the EPs' validity has already been settled by this Court in *Heirs of Sofia Nanaman Lonoy v. Secretary of Agrarian Reform*,[72] where We held that the EPs and OCTs issued in 2001 had already become indefeasible and incontrovertible by the time the petitioners therein instituted the case in 2005; hence, their issuance may no longer be reviewed.[73]

In effect, the LBP raises the defense of *res judicata* in order to preclude a "relitigation" of the issue concerning the validity of the EPs issued to private respondents.

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[70] *See* Justice Melo's Concurring and Dissenting Opinion in *Roxas & Co., Inc. v. CA*, *supra* note 60, at 155-158.

[71] *Gabriel v. Jamias*, G.R. No. 156482, September 17, 2008, 565 SCRA 443, 457; citing *Hermoso v. C.L. Realty Corporation*, G.R. No. 140319, May 5, 2006, 489 SCRA 556, 562.

[72] *Supra* note 4.

[73] *Rollo*, pp. 1216-1220.

Notably, the doctrine of *res judicata* has two aspects, namely: (1) "bar by prior judgment,"[74] wherein the judgment in a prior case bars the prosecution of a second action upon the same claim, demand, or cause of action;[75] and (2) "conclusiveness of judgment,"[76] which precludes relitigation of a particular fact or issue in another action between the same parties on a different claim or cause of action.[77]

Citing *Agustin v. Delos Santos*,[78] this Court, in *Spouses Antonio v. Sayman*,[79] expounded on the difference between the two aspects of *res judicata*:

> The principle of *res judicata* is applicable by way of (1) "bar by prior judgment" and (2) "conclusiveness of judgment." This Court had occasion to explain the difference between these two aspects of *res judicata* as follows:
>
> > There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
> >
> > **But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly**

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[74] *In Re: Petition for Probate of Last Will & Testament of Basilio Santiago*, G.R. No. 179859, August 9, 2010, 627 SCRA 351, 362.

[75] *Linzag v. CA*, G.R. No. 122181, June 26, 1998, 291 SCRA 304, 319.

[76] *In Re: Petition for Probate of Last Will & Testament of Basilio Santiago*, *supra* note 74, at 362.

[77] *Linzag v. CA*, *supra* note 75.

[78] G.R. No. 168139, January 20, 2009, 576 SCRA 576, 585.

[79] G.R. No. 149624, September 29, 2010, 631 SCRA 471, 480.

> **controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment."** Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein 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. (Citations omitted; emphasis supplied.)

To be sure, conclusiveness of judgment merits application "when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction."[80] Elucidating further on this second aspect of *res judicata*, the Court, in *Spouses Antonio*, stated:

> x x x The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. **Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.**[81] (Citations omitted; emphasis supplied.)

Applying the above statement of the Court to the case at bar, We find that LBP's contention that this Court's ruling in *Heirs of Sofia Nanaman Lonoy* that the EPs and OCTs issued in 2001 had already become indefeasible and incontrovertible precludes a "relitigation" of the issue concerning the validity of the EPs issued to private respondents does not hold water.

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[80] *Id.*

[81] *Id.* at 480-481.

In the first place, there is no identity of parties in *Heirs of Sofia Nanaman Lonoy* and the instant case. Arguably, the respondents in these two cases are similar. However, the petitioners are totally different. In *Heirs of Sofia Nanaman Lonoy*, the petitioners are more than 120 individuals who claim to be descendants of Fulgencio Nanaman, Gregorio's brother, and who collectively assert their right to a share in Gregorio's estate, arguing that they were deprived of their inheritance by virtue of the improper issuance of the EPs to private respondents without notice to them. On the other hand, in the instant case, petitioners are the heirs of Deleste who seek nullification of the EPs issued to private respondents on grounds of violation of due process of law, disregard of landowner's right of retention, improvident issuance of EPs and OCTs, and non-coverage of the agrarian reform program, among others. Evidently, there is even no privity among the petitioners in these two cases.

And in the second place, the issues are also dissimilar. In *Heirs of Sofia Nanaman Lonoy*, the issue was whether the filing of a petition for prohibition was the proper remedy for the petitioners therein, considering that the EPs and OCTs had already been issued in 2001, four (4) years prior to the filing of said petition in 2005. In the instant case, however, the issue is whether the EPs and OCTs issued in favor of private respondents are void, thus warranting their cancellation.

In addition, the factual circumstances in these two cases are different such that the necessity of applying the rule on indefeasibility of title in one is wanting in the other. In *Heirs of Sofia Nanaman Lonoy*, the petition for prohibition was filed by the petitioners therein in 2005, notwithstanding the fact that the EPs and OCTs had already been issued in 2001. For that reason, apart from making a ruling that "[p]rohibition, as a rule, does not lie to restrain an act that is already a *fait accompli*," it becomes incumbent upon this Court to hold that:

x x x Considering that such EPs and OCTs were issued in 2001, **they had become indefeasible and incontrovertible *by the time***

petitioners instituted CA-G.R. SP No. 00365 in 2005, and may no longer be judicially reviewed.[82] (Emphasis supplied.)

On the contrary, in the instant case, the petition for nullification of private respondents' EPs and OCTs was filed on February 28, 2002. Taking into account that the EPs and OCTs were issued on August 1, 2001 and October 1, 2001, respectively, the filing of the petition was well within the prescribed one year period, thus, barring the defense of indefeasibility and incontrovertibility. Even if the petition was filed before the DARAB, and not the Regional Trial Court as mandated by Sec. 32 of the Property Registration Decree,[83] this should necessarily have the same effect, considering that DARAB's jurisdiction extends to cases involving the cancellation of CLOAs, EPs, and even of certificates of title issued by virtue of a void EP. As this Court held in *Gabriel v. Jamias*:[84]

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[82] *Heirs of Sofia Nanaman Lonoy v. Sec. of Agrarian Reform*, *supra* note 4, at 207-208.

[83] Sec. 32 of the Property Registration Decree provides:

Sec. 32. *Review of decree of registration; Innocent purchaser for value.* — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance [now Regional Trial Court] a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value. Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

[84] G.R. No. 156482, September 17, 2008, 565 SCRA 443, 456-458.

It is well-settled that the DAR, through its adjudication arm, *i.e.*, the DARAB and its regional and provincial adjudication boards, exercises quasi-judicial functions and jurisdiction on all matters pertaining to an agrarian dispute or controversy and the implementation of agrarian reform laws. Pertinently, it is provided in the DARAB Revised Rules of Procedure that the DARAB has primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) and related agrarian reform laws. **Such jurisdiction shall extend to cases involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents which are registered with the Land Registration Authority.**

This Court has had the occasion to rule that the mere issuance of an emancipation patent does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny. Emancipation patents may be cancelled for violations of agrarian laws, rules and regulations. Section 12 (g) of P.D. No. 946 (issued on June 17, 1976) vested the then Court of Agrarian Relations with jurisdiction over cases involving the cancellation of emancipation patents issued under P.D. No. 266. Exclusive jurisdiction over such cases was later lodged with the DARAB under Section 1 of Rule II of the DARAB Rules of Procedure.

For sure, the jurisdiction of the DARAB cannot be deemed to disappear the moment a certificate of title is issued, for, such certificates are not modes of transfer of property but merely evidence of such transfer, and there can be no valid transfer of title should the CLOA, on which it was grounded, be void. The same holds true in the case of a certificate of title issued by virtue of a void emancipation patent.

From the foregoing, it is therefore undeniable that it is the DARAB and not the regular courts which has jurisdiction herein, this notwithstanding the issuance of Torrens titles in the names of the petitioners. For, it is a fact that the petitioners' Torrens titles emanated from the emancipation patents previously issued to them by virtue of being the farmer-beneficiaries identified by the DAR under the OLT of the government. The DAR ruling that the said emancipation patents were erroneously issued for failing to consider the valid retention rights of respondents had already attained finality. Considering that the action filed by respondents with the DARAB was precisely to annul the emancipation patents issued to the petitioners, the case

squarely, therefore, falls within the jurisdiction of the DARAB. x x x (Citations omitted; emphasis supplied.)

Inevitably, this leads to no other conclusion than that Our ruling in *Heirs of Sofia Nanaman Lonoy* concerning the indefeasibility and incontrovertibility of the EPs and OCTs issued in 2001 does not bar Us from making a finding in the instant case that the EPs and OCTs issued to private respondents are, indeed, void.

With the foregoing disquisition, it becomes unnecessary to dwell on the other issues raised by the parties.

WHEREFORE, the Court *GRANTS* the petition and *REVERSES* and *SETS ASIDE* the CA's October 28, 2004 and September 13, 2005 Resolutions in CA-G.R. SP No. 85471. The Emancipation Patents and Original Certificates of Title covering the subject property, particularly Lot No. 1407, issued in favor of private respondents are hereby declared *NULL* and *VOID*.

The DAR is ordered to *CANCEL* the aforementioned Emancipation Patents and Original Certificates of Title erroneously issued in favor of private respondents.

No pronouncement as to costs.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. No. 170146. June 8, 2011]

HON. WALDO Q. FLORES, in his capacity as Senior Deputy Executive Secretary in the Office of the President, HON. ARTHUR P. AUTEA, in his capacity as Deputy Executive Secretary in the Office of the President, and the PRESIDENTIAL ANTI-GRAFT COMMISSION (PAGC), *petitioners, vs.* **ATTY. ANTONIO F. MONTEMAYOR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; REQUISITES; NOT APPLICABLE WHERE THE OMBUDSMAN ONLY CONDUCTED A PRELIMINARY INVESTIGATION OF THE SAME CRIMINAL OFFENSE AGAINST THE RESPONDENT PUBLIC OFFICER.— Double jeopardy attaches only (1) upon a valid indictment, (2) before a competent court, (3) after arraignment, (4) when a valid plea has been entered, and (5) when the defendant was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused. We have held that none of these requisites applies where the Ombudsman only conducted a preliminary investigation of the same criminal offense against the respondent public officer. The dismissal of a case during preliminary investigation does not constitute double jeopardy, preliminary investigation not being part of the trial.

2. POLITICAL LAW; ADMINISTRATIVE LAW; LAW ON PUBLIC OFFICERS; DISMISSAL OF A CRIMINAL ACTION DOES NOT FORECLOSE INSTITUTION OF AN ADMINISTRATIVE PROCEEDING AGAINST THE SAME RESPONDENT, NOR CARRY WITH IT THE RELIEF FROM ADMINISTRATIVE LIABILITY.— The same wrongful act committed by the public officer can subject him to civil, administrative and criminal liabilities. We held in *Tecson v. Sandiganbayan*: [I]t is a basic principle of the law on public officers that a public official or employee is under a three-fold

responsibility for violation of duty or for a wrongful act or omission. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held *civilly* liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished *criminally.* Finally, such violation may also lead to suspension, removal from office, or other *administrative* sanctions. This administrative liability is separate and distinct from the penal and civil liabilities. Dismissal of a criminal action does not foreclose institution of an administrative proceeding against the same respondent, nor carry with it the relief from administrative liability. *Res judicata* did not set in because there is no identity of causes of action. Moreover, the decision of the Ombudsman dismissing the criminal complaint cannot be considered a valid and final judgment. On the criminal complaint, the Ombudsman only had the power to investigate and file the appropriate case before the Sandiganbayan.

3. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN ACT (R.A. 6770); POWERS OF THE OMBUDSMAN; THE INVESTIGATIVE AUTHORITY OF THE OMBUDSMAN IS NOT EXCLUSIVE BUT IS SHARED WITH OTHER SIMILARLY AUTHORIZED GOVERNMENT AGENCIES.— Section 12 of Article XI of the 1987 Constitution mandated the Ombudsman to act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, instrumentality thereof, including government-owned or controlled corporations. Under Section 13, Article XI, the Ombudsman is empowered to conduct investigations on his own or upon complaint by any person when such act appears to be illegal, unjust, improper, or inefficient. He is also given broad powers to take the appropriate disciplinary actions against erring public officials and employees. The investigative authority of the Ombudsman is defined in Section 15 of R.A. No. 6770 x x x. Such jurisdiction over public officers and employees, however, is not exclusive. **This power of investigation granted to the Ombudsman by the 1987 Constitution and The Ombudsman Act is not exclusive but is shared with other similarly authorized government agencies**, such as the PCGG and judges of municipal trial courts

and municipal circuit trial courts. The power to conduct preliminary investigation on charges against public employees and officials is likewise concurrently shared with the Department of Justice. Despite the passage of the Local Government Code in 1991, the Ombudsman retains concurrent jurisdiction with the Office of the President and the local *Sanggunians* to investigate complaints against local elective officials.

4. ID.; ID.; EXECUTIVE DEPARTMENT; PRESIDENT; A PRESIDENTIAL APPOINTEE IS UNDER THE DISCIPLINARY AUTHORITY OF THE OFFICE OF THE PRESIDENT; INVESTIGATIVE AUTHORITY OF THE PRESIDENTIAL ANTI-GRAFT COMMISSION (PAGC).— Respondent who is a presidential appointee is under the *disciplinary* authority of the OP. Executive Order No. 12 dated April 16, 2001 created the PAGC which was granted the authority to *investigate* presidential and also non-presidential employees "who may have acted in conspiracy or may have been involved with a presidential appointee or ranking officer mentioned x x x." On this score, we do not agree with respondent that the PAGC should have deferred to the Ombudsman instead of proceeding with the administrative complaint in view of the pendency of his petition for *certiorari* with the CA challenging the PAGC's jurisdiction. Jurisdiction is a matter of law. Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; THE INITIAL ACQUISITION OF JURISDICTION BY A COURT OF CONCURRENT JURISDICTION DIVESTS ANOTHER OF ITS OWN JURISDICTION.— It may be recalled that at the time respondent was directed to submit his counter-affidavit under the Ombudsman's Order dated March 19, 2004, the PAGC investigation had long commenced and in fact, the PAGC issued an order directing respondent to file his counter-affidavit/verified answer as early as May 19, 2003. The rule is that initial acquisition of jurisdiction by a court of concurrent jurisdiction divests another of its own jurisdiction. Having already taken cognizance of the complaint against the respondent involving non-declaration in his 2001 and 2002 SSAL, the PAGC thus retained jurisdiction over respondent's administrative case notwithstanding the subsequent filing of a

supplemental complaint before the Ombudsman charging him with the same violation.

6. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS; ESSENCE THEREOF IN ADMINISTRATIVE PROCEEDINGS; PARTIES WHO CHOOSE NOT TO AVAIL THEMSELVES OF THE OPPORTUNITY TO ANSWER CHARGES AGAINST THEM CANNOT COMPLAIN OF A DENIAL OF DUE PROCESS.— [W]e find no merit in [the respondent's] reiteration of the alleged gross violation of his right to due process. Records bear out that he was given several opportunities to answer the charge against him and present evidence on his defense, which he stubbornly ignored despite repeated warnings that his failure to submit the required answer/counter-affidavit and position paper with supporting evidence shall be construed as waiver on his part of the right to do so. The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. What is offensive to due process is the denial of the opportunity to be heard. This Court has repeatedly stressed that parties who choose not to avail themselves of the opportunity to answer charges against them cannot complain of a denial of due process. Having persisted in his refusal to file his pleadings and evidence before the PAGC, respondent cannot validly claim that his right to due process was violated.

7. ID.; ID.; ID.; THE TERMINATION OF THE INVESTIGATION AND SUBMISSION OF THE CASE FOR RESOLUTION BASED ON AVAILABLE EVIDENCE, FOR FAILURE OF THE RESPONDENT TO FILE HIS COUNTER-AFFIDAVIT OR ANSWER DESPITE GIVING HIM AMPLE OPPORTUNITY TO DO SO IS CONSIDERED NOT IRREGULAR.— We also find nothing irregular in considering the investigation terminated and submitting the case for resolution based on available evidence upon failure of the respondent to file his counter-affidavit or answer despite giving him ample opportunity to do so. This is allowed by the Rules of Procedure of the PAGC. The PAGC is also not required to furnish the respondent and complainant copy of its resolution.

8. ID.; ID.; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (RA 6713); THE DELIBERATE ATTEMPT OF THE PUBLIC OFFICER TO EVADE THE MANDATORY DISCLOSURE IN HIS STATEMENT OF ASSETS AND LIABILITIES (SSAL) ALL THE ASSETS ACQUIRED DURING THE PERIOD COVERED CONSTITUTES A VIOLATION THEREOF PUNISHABLE BY DISMISSAL EVEN IF NO CRIMINAL PROSECUTION IS INSTITUTED AGAINST HIM.— [W]e maintain that the penalty of dismissal from the service is justified as no acceptable explanation was given for the non-declaration of the two expensive cars in his 2001 and 2002 SSAL. Pursuant to Section 11, paragraph (b) of R.A. No. 6713, any violation of the law "proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him." Respondent's deliberate attempt to evade the mandatory disclosure of all assets acquired during the period covered was evident when he first claimed that the vehicles were lumped under the entry "Machineries/ Equipment" or still mortgaged, and later averred that these were already sold by the end of the year covered and the proceeds already spent. Under this scheme, respondent would have acquired as many assets never to be declared at anytime. Such act erodes the function of requiring accuracy of entries in the SSAL which must be a *true and detailed* statement. It undermines the SSAL as "the means to achieve the policy of accountability of all public officers and employees in the government" through which "the public are able to monitor movement in the fortune of a public official; [as] a valid check and balance mechanism to verify undisclosed properties and wealth."

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Cesar M. Lao for respondent.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

This resolves the motion for reconsideration of our Decision dated August 25, 2010 setting aside the October 19, 2005 Decision of the Court of Appeals and reinstating the Decision dated March 23, 2004 of the Office of the President in O.P. Case No. 03-1-581, which found the respondent administratively liable for failure to declare in his 2001 and 2002 Sworn Statement of Assets and Liabilities (SSAL) two expensive cars registered in his name, in violation of Section 7, Republic Act (R.A.) No. 3019 in relation to Section 8 (A) of R.A. No. 6713. The OP adopted the findings and recommendations of the Presidential Anti-Graft Commission (PAGC), including the imposition of the penalty of dismissal from service on respondent, with all accessory penalties.

The motion is anchored on the following grounds:

1. Respondent was subjected to two (2) administrative/criminal Investigations equivalently resulting in violation of his constitutional right against "double jeopardy".
2. Who to follow between conflicting decisions of two (2) government agencies involving the same facts and issues affecting the rights of the Respondent.
3. Respondent's constitutional right to due process was violated.
4. Penalties prescribed by the Honorable Court is too harsh and severe on the alleged offense committed/omitted.[1]

On the first ground, the Court finds it bereft of merit. Respondent asserts that since the PAGC charge involving non-declaration in his 2001 and 2002 SSAL was already the subject of investigation by the Ombudsman in OMB-C-C-04-0568-LSC, along with the criminal complaint for unexplained wealth, the former can no longer be pursued without violating the rule on double jeopardy.

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[1] *Rollo,* p. 477.

Double jeopardy attaches only (1) upon a valid indictment, (2) before a competent court, (3) after arraignment, (4) when a valid plea has been entered, and (5) when the defendant was convicted or acquitted, or the case was dismissed or otherwise terminated without the express consent of the accused.[2] We have held that none of these requisites applies where the Ombudsman only conducted a preliminary investigation of the same criminal offense against the respondent public officer.[3] The dismissal of a case during preliminary investigation does not constitute double jeopardy, preliminary investigation not being part of the trial.[4]

With respect to the second ground, respondent underscores the dismissal by the Ombudsman of the criminal and administrative complaints against him, including the charge subject of the proceedings before the PAGC and OP. It is argued that the Office of the Ombudsman as a constitutional body, pursuant to its mandate under R.A. No. 6770, has primary jurisdiction over cases cognizable by the Sandiganbayan, as against the PAGC which is not a constitutional body but a mere creation of the OP. Under said law, it is the Ombudsman who has disciplinary authority over all elective and appointive officials of the government, such as herein respondent.

The argument is untenable.

The same wrongful act committed by the public officer can subject him to civil, administrative and criminal liabilities. We held in *Tecson v. Sandiganbayan*[5]:

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[2] *Almario v. Court of Appeals*, G.R. No. 127772, March 22, 2001, 355 SCRA 1, 7.

[3] *Apolinario v. Flores*, G.R. No. 152780, January 22, 2007, 512 SCRA 113, 122.

[4] *Trinidad v. Office of the Ombudsman,* G.R. No. 166038, December 4, 2007, 539 SCRA 415, 424, citing *Vincoy v. Court of Appeals*, G.R. No. 156558, June 14, 2004, 432 SCRA 36, 40.

[5] G.R. No. 123045, November 16, 1999, 318 SCRA 80, 87-88.

[I]t is a basic principle of the law on public officers that a public official or employee is under a three-fold responsibility for violation of duty or for a wrongful act or omission. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held *civilly* liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished *criminally.* Finally, such violation may also lead to suspension, removal from office, or other *administrative* sanctions. This administrative liability is separate and distinct from the penal and civil liabilities. (Italics in the original.)

Dismissal of a criminal action does not foreclose institution of an administrative proceeding against the same respondent, nor carry with it the relief from administrative liability.[6] *Res judicata* did not set in because there is no identity of causes of action. Moreover, the decision of the Ombudsman dismissing the criminal complaint cannot be considered a valid and final judgment. On the criminal complaint, the Ombudsman only had the power to investigate and file the appropriate case before the Sandiganbayan.[7]

In the analogous case of *Montemayor v. Bundalian*,[8] this Court ruled:

Lastly, **we cannot sustain petitioner's stance that the dismissal of similar charges against him before the Ombudsman rendered the administrative case against him before the PCAGC moot and academic. To be sure, the decision of the Ombudsman does not operate as *res judicata* in the PCAGC case subject of this review.** The doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers. Petitioner was investigated by the Ombudsman for his possible criminal liability for the acquisition of the Burbank property in violation of the Anti-

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[6] *Office of the Court Administrator v. Enriquez,* A.M. No. P-89-290, January 29, 1993, 218 SCRA 1, 10; *Office of the Court Administrator v. Cañete,* A.M. No. P-91-621, November 10, 2004, 441 SCRA 512, 520.

[7] *Apolinario v. Flores, supra* note 3.

[8] G.R. No. 149335, July 1, 2003, 405 SCRA 264, 272-273.

Graft and Corrupt Practices Act and the Revised Penal Code. For the same alleged misconduct, petitioner, as a presidential appointee, was investigated by the PCAGC by virtue of the administrative power and control of the President over him. As the PCAGC's investigation of petitioner was administrative in nature, the doctrine of *res judicata* finds no application in the case at bar. (Emphasis supplied.)

Respondent argues that it is the Ombudsman who has primary jurisdiction over the administrative complaint filed against him. Notwithstanding the consolidation of the administrative offense (non-declaration in the SSAL) with the criminal complaints for unexplained wealth (Section 8 of R.A. No. 3019) and also for perjury (Article 183, Revised Penal Code, as amended) before the Office of the Ombudsman, respondent's objection on jurisdictional grounds cannot be sustained.

Section 12 of Article XI of the 1987 Constitution mandated the Ombudsman to act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, instrumentality thereof, including government-owned or controlled corporations. Under Section 13, Article XI, the Ombudsman is empowered to conduct investigations on his own or upon complaint by any person when such act appears to be illegal, unjust, improper, or inefficient. He is also given broad powers to take the appropriate disciplinary actions against erring public officials and employees.

The investigative authority of the Ombudsman is defined in Section 15 of R.A. No. 6770:

SEC. 15. *Powers, Functions and Duties.* – The Office of the Ombudsman shall have the following powers, functions and duties:

(1) **Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient**. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

x x x x x x x x x(Emphasis supplied.)

Such jurisdiction over public officers and employees, however, is not exclusive.

This power of investigation granted to the Ombudsman by the 1987 Constitution and The Ombudsman Act is not exclusive but is shared with other similarly authorized government agencies, such as the PCGG and judges of municipal trial courts and municipal circuit trial courts. The power to conduct preliminary investigation on charges against public employees and officials is likewise concurrently shared with the Department of Justice. Despite the passage of the Local Government Code in 1991, the Ombudsman retains concurrent jurisdiction with the Office of the President and the local *Sanggunians* to investigate complaints against local elective officials.[9] (Emphasis supplied.)

Respondent who is a presidential appointee is under the *disciplinary* authority of the OP. Executive Order No. 12 dated April 16, 2001 created the PAGC which was granted the authority to *investigate* presidential and also non-presidential employees "who may have acted in conspiracy or may have been involved with a presidential appointee or ranking officer mentioned x x x."[10] On this score, we do not agree with respondent that the PAGC should have deferred to the Ombudsman instead of proceeding with the administrative complaint in view of the pendency of his petition for *certiorari* with the CA challenging the PAGC's jurisdiction. Jurisdiction is a matter of law. Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated.[11]

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[9] *Office of the Ombudsman v. Galicia,* G.R. No. 167711, October 10, 2008, 568 SCRA 327, 339, citing *Panlilio v. Sandiganbayan,* G.R. No. 92276, June 26, 1992, 210 SCRA 421; *Cojuangco, Jr. v. Presidential Commission on Good Government,* G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226; *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice,* G.R. No. 159747, April 13, 2004, 427 SCRA 46; and *Hagad v. Gozo-Dadole,* G.R. No. 108072, December 12, 1995, 251 SCRA 242.

[10] Sec. 4 (b).

[11] *Office of the Ombudsman v. Estandarte,* G.R. No. 168670, April 13, 2007, 521 SCRA 155, 173, citing *Deltaventures Resources, Inc. v. Hon. Cabato,* 384 Phil. 252, 261 (2000).

It may be recalled that at the time respondent was directed to submit his counter-affidavit under the Ombudsman's Order dated March 19, 2004, the PAGC investigation had long commenced and in fact, the PAGC issued an order directing respondent to file his counter-affidavit/verified answer as early as May 19, 2003. The rule is that initial acquisition of jurisdiction by a court of concurrent jurisdiction divests another of its own jurisdiction.[12] Having already taken cognizance of the complaint against the respondent involving non-declaration in his 2001 and 2002 SSAL, the PAGC thus retained jurisdiction over respondent's administrative case notwithstanding the subsequent filing of a supplemental complaint before the Ombudsman charging him with the same violation.

As to the third ground raised by respondent, we find no merit in his reiteration of the alleged gross violation of his right to due process. Records bear out that he was given several opportunities to answer the charge against him and present evidence on his defense, which he stubbornly ignored despite repeated warnings that his failure to submit the required answer/ counter-affidavit and position paper with supporting evidence shall be construed as waiver on his part of the right to do so.

The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[13] What is offensive to due process is the denial of the opportunity to be heard.[14] This Court has repeatedly stressed that parties who

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[12] See *Panlilio v. Salonga,* G.R. No. 113087, June 27, 1994, 233 SCRA 476, 482.

[13] *Medina v. Commission on Audit (COA),* G.R. No. 176478, February 4, 2008, 543 SCRA 684, 696-697, citing *Montemayor v. Bundalian,* 453 Phil. 158, 165 (2003).

[14] *Octava v. Commission on Elections*, G.R. No. 166105, March 22, 2007, 518 SCRA 759, 764, citing *Garments and Textile Export Board v. Court of Appeals*, G.R. Nos. 114711 & 115889, February 13, 1997, 268 SCRA 258, 299.

choose not to avail themselves of the opportunity to answer charges against them cannot complain of a denial of due process.[15] Having persisted in his refusal to file his pleadings and evidence before the PAGC, respondent cannot validly claim that his right to due process was violated.

In his dissenting opinion, my esteemed colleague, Justice Lucas P. Bersamin, concurred with the CA's finding that respondent's right to due process was violated by the "unilateral investigation" conducted by the PAGC which did not furnish the respondent with a copy of the "prejudicial PAGC resolution." The dissent also agreed with the CA's observation that there was a "rush" on the part of the PAGC to find the respondent guilty of the charge. This was supposedly manifested in the issuance by the PAGC of its resolution even without taking into consideration any explanation and refutation of the charges that he might make, and even before the CA could finally resolve his suit to challenge the PAGC's jurisdiction to investigate him. On the other hand, the dissent proposed that the non-submission by respondent of his counter-affidavit or verified answer as directed by the PAGC should not be taken against him. Respondent's refusal was "not motivated by bad faith, considering his firm belief that PAGC did not have jurisdiction to administratively or disciplinarily investigate him."

We do not share this view adopted by the dissent.

Records reveal that on August 26, 2003, the CA already rendered a decision in CA-G.R. SP No. 77285 dismissing respondent's petition challenging the jurisdiction of the PAGC. Respondent's motion for reconsideration was likewise denied by the CA. Upon elevation to this Court via a petition for review on *certiorari* (G.R. No. 160443), the petition suffered the same fate. Under the First Division's Resolution dated January 26, 2004, the petition was denied for failure of the petitioner (respondent) to show that the CA committed any reversible error in the assailed decision and resolution. Said resolution

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[15] *Garcia v. Pajaro,* G.R. No. 141149, July 5, 2002, 384 SCRA 122, 138.

became final and executory on April 27, 2004. Thus, at the time respondent submitted his counter-affidavit before the Ombudsman on May 21, 2004, there was already a final resolution of his petition challenging the PAGC's investigative authority.

On the other hand, the PAGC submitted to the OP its September 1, 2003 resolution finding respondent guilty as charged and recommending that he be dismissed from the service, after the expiration of the 60-day temporary restraining order issued on June 23, 2003 by the CA in CA-G.R. SP No. 77285. The OP rendered its Decision adopting the PAGC's findings and recommendation on March 23, 2004. As thus shown, a period of ten (10) months had elapsed from the time respondent was directed to file his counter-affidavit or verified answer to the administrative complaint filed against him, up to the rendition of the OP's decision. It cannot therefore be said that the PAGC and OP proceeded with undue haste in determining respondent's administrative guilt.

Still on respondent's repeated claim that he was denied due process, it must be noted that when respondent received a copy of the OP Decision dated March 23, 2004, his petition for review filed in this Court assailing the CA's dismissal of CA-G.R. SP No. 77285 was already denied under Resolution dated January 26, 2004. However, despite the denial of his petition, respondent still refused to recognize PAGC's jurisdiction and continued to assail the same before the CA in CA-G.R. SP No. 84254, a petition for review under Rule 43 from the OP's March 23, 2004 Decision and May 13, 2004 Resolution.[16] In any event, respondent was served with a copy of the OP Decision, was able to seek reconsideration of the said decision, and appeal the same to the CA.

We also find nothing irregular in considering the investigation terminated and submitting the case for resolution based on available evidence upon failure of the respondent to file his counter-affidavit or answer despite giving him ample opportunity

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[16] *Rollo,* pp. 100-104.

to do so. This is allowed by the Rules of Procedure of the PAGC. The PAGC is also not required to furnish the respondent and complainant copy of its resolution.

The dissent of Justice Bersamin assails the OP's complete reliance on the PAGC's findings and recommendation which "constituted a gross violation of administrative due process as set forth in *Ang Tibay v. Court of Industrial Relations*[17]." Among others, it is required that "[T]he tribunal or any of its judges must act on its or his own independent consideration of the facts and the law of the controversy, and not simply accept the views of a subordinate in arriving at a decision." Justice Bersamin thus concludes that the OP should have itself reviewed and appreciated the evidence presented and *independently* considered the facts and the law of the controversy." It was also pointed out that the OP's statement that the respondent's arguments in his Motion for Reconsideration With Motion For Leave To Admit Explanation/Refutation of Complaint were a mere reiteration of matters previously considered, was "a *patent* untruth."

We disagree.

The OP decision, after quoting verbatim the findings and recommendation of the PAGC, adopted the same with a brief statement preceding the dispositive portion:

> After a circumspect study of the case, this Office fully agrees with the recommendation of PAGC and the legal premises as well as the factual findings that hold it together. Respondent failed to disclose in his 2001 and 2002 SSAL high-priced vehicles in breach of the prescription of the relevant provisions of RA No. 3019 in relation to RA No. 6713. He was, to be sure, afforded ample opportunity to explain his failure, but he opted to let the opportunity pass by.[18]

The relevant consideration is not the brevity of the above disquisition adopting fully the findings and recommendation

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[17] 69 Phil. 635 (1940).

[18] *Rollo,* p. 90.

of the PAGC as the investigating authority. It is rather the fact that the OP is not a court but an administrative body determining the liability of respondent who was administratively charged, in the exercise of its disciplinary authority over presidential appointees.

In *Solid Homes, Inc. v. Laserna*,[19] this Court ruled that the rights of parties in an administrative proceedings are not violated by the brevity of the decision rendered by the OP incorporating the findings and conclusions of the Housing and Land Use Regulatory Board (HLURB), for as long as the constitutional requirement of due process has been satisfied. Thus:

> It must be stated that Section 14, Article VIII of the 1987 Constitution need not apply to decisions rendered in **administrative proceedings**, as in the case a[t] bar. Said section applies only to decisions rendered in judicial proceedings. In fact, Article VIII is titled "Judiciary," and all of its provisions have particular concern only with respect to the judicial branch of government. Certainly, it would be error to hold or even imply that decisions of executive departments or administrative agencies are oblige[d] to meet the requirements under Section 14, Article VIII.
>
> **The rights of parties in administrative proceedings are not violated as long as the constitutional requirement of due process has been satisfied**. In the landmark case of *Ang Tibay v. CIR*, we laid down the cardinal rights of parties in administrative proceedings, as follows:
>
> 1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof.
>
> 2) The tribunal must consider the evidence presented.
>
> 3) The decision must have something to support itself.
>
> 4) The evidence must be substantial.
>
> 5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

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[19] G.R. No. 166051, April 8, 2008, 550 SCRA 613.

6) The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision.

7) The board or body should, in all controversial question, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.

As can be seen above, among these rights are "the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected"; and that the decision be rendered "in such a manner that the parties to the proceedings can know the various issues involved, and the reasons for the decisions rendered." Note that there is no requirement in *Ang Tibay* that the decision must express clearly and distinctly the facts and the law on which it is based. **For as long as the administrative decision is grounded on evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied.**

At bar, the Office of the President apparently considered the Decision of HLURB as correct and sufficient, and said so in its own Decision. **The brevity of the assailed Decision was not the product of willing concealment of its factual and legal bases**. Such bases, the assailed Decision noted, were already contained in the HLURB decision, and the parties adversely affected need only refer to the HLURB Decision in order to be able to interpose an informed appeal or action for *certiorari* under Rule 65.

x x x x x x x x x

Accordingly, based on close scrutiny of the Decision of the Office of the President, this Court rules that the said Decision of the Office of the President fully complied with both administrative due process and Section 14, Article VIII of the 1987 Philippine Constitution.

The Office of the President did not violate petitioner's right to due process when it rendered its one-page Decision. In the case at bar, it is safe to conclude that all the parties, including petitioner, were well-informed as to how the Decision of the Office of the President was arrived at, as well as the facts, the laws and the issues involved therein because the Office of the President attached to and made an integral part of its Decision the Decision of the HLURB Board of

Commissioners, which it adopted by reference. If it were otherwise, the petitioner would not have been able to lodge an appeal before the Court of Appeals and make a presentation of its arguments before said court without knowing the facts and the issues involved in its case.[20] (Emphasis supplied.)

Since respondent repeatedly refused to answer the administrative charge against him despite notice and warning by the PAGC, he submitted his evidence only after an adverse decision was rendered by the OP, attaching the same to his motion for reconsideration. That the OP denied the motion by sustaining the PAGC's findings without any separate discussion of respondent's arguments and belatedly submitted evidence only meant that the OP found the same lacking in merit and insufficient to overturn its ruling on respondent's administrative liability.

On the fourth ground cited by the respondent, we maintain that the penalty of dismissal from the service is justified as no acceptable explanation was given for the non-declaration of the two expensive cars in his 2001 and 2002 SSAL.

Pursuant to Section 11, paragraph (b) of R.A. No. 6713, any violation of the law "proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him." Respondent's deliberate attempt to evade the mandatory disclosure of all assets acquired during the period covered was evident when he first claimed that the vehicles were lumped under the entry "Machineries/Equipment" or still mortgaged, and later averred that these were already sold by the end of the year covered and the proceeds already spent.

Under this scheme, respondent would have acquired as many assets never to be declared at anytime. Such act erodes the function of requiring accuracy of entries in the SSAL which must be a *true and detailed* statement. It undermines the SSAL as "the means to achieve the policy of accountability of all

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[20] *Id.* at 626-627 and 629.

public officers and employees in the government" through which "the public are able to monitor movement in the fortune of a public official; [as] a valid check and balance mechanism to verify undisclosed properties and wealth."[21]

IN VIEW OF THE FOREGOING, the motion for reconsideration is *DENIED WITH FINALITY.*

Let entry of judgment be made in due course.

SO ORDERED.

Carpio Morales (Chairperson), Velasco, Jr.,[*] *del Castillo,*[**] and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 170575. June 8, 2011]

SPOUSES MANUEL AND FLORENTINA DEL ROSARIO, *petitioners, vs.* **GERRY ROXAS FOUNDATION, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; EXPLAINED; THE ALLEGATIONS, STATEMENTS OR ADMISSIONS CONTAINED IN A PLEADING ARE CONCLUSIVE AS AGAINST THE PLEADER.— "A judicial admission is one so made in pleadings filed or in the progress

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[21] *Ombudsman v. Valeroso,* G.R. No. 167828, April 2, 2007, 520 SCRA 140, 150.

[*] Designated Additional Member per Raffle dated April 12, 2011.

[**] Designated Additional Member per Raffle dated May 6, 2011.

of a trial as to dispense with the introduction of evidence otherwise necessary to dispense with some rules of practice necessary to be observed and complied with." Correspondingly, "facts alleged in the complaint are deemed admissions of the plaintiff and binding upon him." "The allegations, statements or admissions contained in a pleading are conclusive as against the pleader." In this case, petitioners judicially admitted that respondents took control and possession of subject property without their consent and authority and that respondent's use of the land was without any contractual or legal basis.

2. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; DISTINGUISHED FROM UNLAWFUL DETAINER.— This Court, in *Sumulong v. Court of Appeals*, differentiated the distinct causes of action in forcible entry *vis-à-vis* unlawful detainer, to wit: Forcible entry and unlawful detainer are two distinct causes of action defined in Section 1, Rule 70 of the Rules of Court. In forcible entry, one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the only issue is who has the prior possession *de facto*. In unlawful detainer, possession was originally lawful but became unlawful by the expiration or termination of the right to possess and the issue of rightful possession is the one decisive, for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.

3. ID.; ID.; ID.; WORDS "BY FORCE, INTIMIDATION, THREAT, STRATEGY OR STEALTH," EXPLAINED.— "The words 'by force, intimidation, threat, strategy or stealth' shall include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession, therefrom." "The foundation of the action is really the forcible exclusion of the original possessor by a person who has entered without right." "The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary." The employment of force, in this case, can be deduced from petitioners' allegation that respondent

took full control and possession of the subject property without their consent and authority. "'Stealth,' on the other hand, is defined as any secret, sly, or clandestine act to avoid discovery and to gain entrance into or remain within residence of another without permission," while strategy connotes the employment of machinations or artifices to gain possession of the subject property. The CA found that based on the petitioners' allegations in their complaint, "respondent's entry on the land of the petitioners was by stealth x x x." However, stealth as defined requires a clandestine character which is not availing in the instant case as the entry of the respondent into the property appears to be with the knowledge of the petitioners as shown by petitioners' allegation in their complaint that "[c]onsidering the personalities behind the defendant foundation and considering further that it is plaintiff's nephew, then the vice-mayor, and now the Mayor of the City of Roxas Antonio A. del Rosario, although without any legal or contractual right, who transacted with the foundation, plaintiffs did not interfere with the activities of the foundation using their property." To this Court's mind, this allegation if true, also illustrates strategy.

4. ID.; ID.; ID.; PROPER REMEDY TO RECOVER POSSESSION WHERE THE DEFENDANT'S POSSESSION OF THE PROPERTY WAS ILLEGAL FROM THE VERY BEGINNING; THE NATURE OF THE ACTION IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT AND THE CHARACTER OF THE RELIEF SOUGHT.— In *Spouses Huguete v. Spouses Embudo*, citing *Cañiza v. Court of Appeals*, this Court held that "what determines the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought." x x x. "In forcible entry, one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth. "[W]here the defendant's possession of the property is illegal *ab initio*," the summary action for forcible entry (*detentacion*) is the remedy to recover possession. In their Complaint, petitioners maintained that the respondent took possession and control of the subject property without any contractual or legal basis. Assuming that these allegations are true, it hence follows that respondent's possession was illegal from the very beginning. Therefore, the foundation of petitioners' complaint is one for forcible entry – that is "the forcible exclusion of the original possessor by a person who

has entered without right." Thus, and as correctly found by the CA, there can be no tolerance as petitioners alleged that respondent's possession was illegal at the inception. Corollarily, since the deprivation of physical possession, as alleged in petitioners' Complaint and as earlier discussed, was attended by strategy and force, this Court finds that the proper remedy for the petitioners was to file a Complaint for Forcible Entry and not the instant suit for unlawful detainer.

5. ID.; ID.; ID.; MUST BE FILED WITHIN ONE YEAR FROM THE TIME OF DISPOSSESSION.— Petitioners likewise alleged in their Complaint that respondent took possession and occupancy of subject property in 1991. Considering that the action for forcible entry must be filed within one year from the time of dispossession, the action for forcible entry has already prescribed when petitioners filed their Complaint in 2003. As a consequence, the Complaint failed to state a valid cause of action against the respondent. In fine, the MTCC properly dismissed the Complaint, and the RTC and the CA correctly affirmed said order of dismissal.

APPEARANCES OF COUNSEL

Arrojado Serrano & Calizo for petitioners.

D E C I S I O N

DEL CASTILLO, *J.*:

The allegations in the complaint and the reliefs prayed for are the determinants of the nature of the action[1] and of which court has jurisdiction over the action.[2]

This Petition for Review on *Certiorari* assails the April 26, 2005 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP

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[1] *Spouses Huguete v. Spouses Embudo,* 453 Phil. 170, 176-177 (2003).

[2] *Co Tiamco v. Diaz*, 75 Phil. 672, 683-684 (1946).

[3] CA *rollo*, pp. 98-104; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Vicente L. Yap and Enrico A. Lanzanas.

No. 87784 which dismissed the Petition for Review before it. Also assailed is the CA Resolution[4] dated November 15, 2005 denying the Motion for Reconsideration thereto.

Factual Antecedents

The controversy between petitioners Manuel and Florentina Del Rosario and respondent Gerry Roxas Foundation Inc. emanated from a Complaint for Unlawful Detainer filed by the former against the latter, the surrounding circumstances relative thereto as summarized by the CA in its assailed Decision are as follows:

> The petitioner Manuel del Rosario appears to be the registered owner of Lot 3-A of Psd-301974 located in Roxas City which is described in and covered by Transfer Certificate of Title No. T-18397 of the Registry of Deeds for the City of Roxas.
>
> Sometime in 1991, the respondent, as a legitimate foundation, took possession and occupancy of said land by virtue of a memorandum of agreement entered into by and between it and the City of Roxas. Its possession and occupancy of said land is in the character of being lessee thereof.
>
> In February and March 2003, the petitioners served notices upon the respondent to vacate the premises of said land. The respondent did not heed such notices because it still has the legal right to continue its possession and occupancy of said land.[5]

On July 7, 2003, petitioners filed a Complaint[6] for Unlawful Detainer against the respondent before the Municipal Trial Court in Cities (MTCC) of Roxas City, docketed as Civil Case No. V-2391. Said complaint contains, among others, the following significant allegations:

> 3. Plaintiffs are the true, absolute and registered owner[s] of a parcel of land, situated at Dayao, Roxas City and covered by and

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[4] *Id.* at 118-119.

[5] *Id.* at 99.

[6] *Rollo,* pp. 139-141.

described in Transfer Certificate of Title No. 18397 issued to the plaintiffs by the Register of Deeds for Roxas City as evidenced by a xerox copy thereof which is hereto attached as Annex "A".

4. Sometime in 1991, without the consent and authority of the plaintiffs, defendant took full control and possession of the subject property, developed the same and use[d] it for commercial purposes.

x x x x x x x x x

7. Plaintiffs have allowed the defendant for several years, to make use of the land without any contractual or legal basis. Hence, defendant's possession of the subject property is only by tolerance.

8. But [plaintiffs'] patience has come to its limits. Hence, sometime in the last quarter of 2002, plaintiffs made several demands upon said defendant to settle and/or pay rentals for the use of the property.

x x x x x x x x x

10. Notwithstanding receipt of the demand letters, defendant failed and refused, as it continues to fail and refuse to pay reasonable monthly rentals for the use and occupancy of the land, and to vacate the subject premises despite the lapse of the fifteen-day period specified in the said demand letters. Consequently, defendant is unlawfully withholding possession of the subject property from the plaintiffs, who are the owners thereof.[7]

Upon service of summons, respondent filed its Answer[8] dated July 31, 2003 where it averred that:

3. The defendant ADMITS the allegations set forth in paragraph 4 of the Complaint to the effect that the defendant "took full control and possession of the subject property, developed the same" and has been using the premises in accordance with its agreements with the City of Roxas and the purposes of the defendant corporation without any objection or opposition of any kind on the part of the plaintiffs for over twenty-two long years; the defendant specifically DENIES the allegations contained in the last part of this paragraph 4 of the Complaint that the defendant has used the property leased for

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[7] *Id.* at 140-141.

[8] *Id.* at 129-138.

commercial purposes, the truth of the matter being that the defendant has used and [is] still using the property only for civic non-profit endeavors hewing closely to purposes of the defendant Gerry Roxas Foundation Inc., *inter alia*, devoted to general welfare, protection, and upliftment of the people of Roxas City, Capiz, and in Panay Island, and elsewhere in the Philippines; that the Foundation has spent out of its own funds for the compliance of its avowed aims and purposes, up to the present, more than ₱25M, and that all the improvements, including a beautiful auditorium built in the leased premises of the Foundation "shall accrue to the CITY (of Roxas), free from any compensation whatsoever, upon the expiration of this Lease" (Memorandum of Agreement, Annex "2" hereof), eighteen (18) years hence;

x x x x x x x x x

5. The defendant specifically DENIES the allegations set forth in paragraph 7 of the Complaint, the truth being that the defendant took possession of the subject property by virtue of Memorandums of Agreement, photo-copies of which are hereto attached as Annexes "1" and "2" and made integral parts hereof, entered into by defendant and the City of Roxas, which is the true and lawful owner thereof; thus, the possession of the subject property by the defendant foundation is lawful, being a lessee thereof;

x x x x x x x x x

8. The defendant ADMITS the allegations set forth in paragraph 10 of the Complaint that defendant refused to pay monthly rental to the plaintiffs and to vacate the premises, but specifically DENIES the rest of the allegations thereof, the truth being that defendant has no obligation whatsoever, to the plaintiffs, as they are neither the owners or lessors of the land occupied by defendant;

x x x x x x x x x

As and by way of –

AFFIRMATIVE DEFENSE

The defendant repleads the foregoing allegations, and avers further that:

12. The plaintiffs have no cause of action against defendant.

The leased property does not belong to the plaintiffs. The property covered by Transfer Certificate of Title No. T-18397, [is] occupied by the [defendant] as [lessee] of the City of Roxas since 1991, the latter having acquired it by purchase from the plaintiffs way back on February 19, 1981, as evidenced by the Deed of Absolute Sale which is hereto attached as Annex "3" and made an integral part hereof. While, admittedly, the said certificate of title is still in the name of the plaintiffs, nevertheless, the ownership of the property covered therein has already transferred to the City of Roxas upon its delivery to it. Article 1496 of the Civil Code provides that, ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee. It is also provided under Article 1498 of the Civil Code 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. Upon execution of the Deed of Absolute Sale (Annex "3"), the plaintiffs have relinquished ownership of the property subject thereof in favor of the vendee, City of Roxas. Necessarily, the possession of the property subject of the said Deed of Absolute Sale now pertains to the City of Roxas and the plaintiffs have no more right, whatsoever, to the possession of the same. It is defendant foundation by virtue of the Memorandums of Agreement (Annexes "1" and "2" hereof), which has the legal right to have possession of the subject property;[9]

After the MTCC issued an Order setting the case for preliminary conference, respondent filed on October 20, 2003 a Motion to Resolve its Defenses on Forum Shopping and Lack of Cause of Action. Records show that before the instant case was filed, the City of Roxas had already filed a case against petitioners for "Surrender of Withheld Duplicate Certificate Under Section 107, [Presidential Decree No.] 1529" docketed as Special Case No. SPL-020-03 with the Regional Trial Court (RTC) of Roxas City. Subsequently, on October 27, 2003, petitioners filed their Opposition to the said Motion.

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[9] *Id.* at 129-132.

Ruling of the Municipal Trial Court in Cities

On November 24, 2003, the MTCC issued an Order[10] resolving the respondent's Motion. In the said Order, the MTCC held that:

> The plaintiffs [have] no cause of action against herein defendant. The defendant is the lessee of the City of Roxas of the parcel of land in question. There has been no previous contractual relationship between the plaintiffs Del Rosarios and the defendant Gerry Roxas Foundation, Inc. affecting the title of the land leased by the [Gerry] Roxas Foundation. The Gerry Roxas Foundation, Inc. has not unlawfully withheld the possession of the land it is leasing from its lessor. Its right to the physical possession of the land leased by it from the City of Roxas subsists and continues to subsist until the termination of the contract of lease according to its terms and pursuant to law.
>
> The defendant had presented as its main defense that the property was already sold by the plaintiffs to the present lessor of the property, the City of Roxas thru a Deed of Absolute Sale dated February 19, 1981 executed by herein [plaintiff] spouses as vendors.
>
> Plaintiffs had not directly and specifically shown that the purported Deed of Absolute Sale does not exist; rather, they contend that said document is merely defective. They had not even denied the signatories to the said Contract of Sale; specifically the authenticity of the spouses-plaintiffs signatures; all that plaintiffs did merely referred to it as null and void and highly questionable without any specifications.
>
> When the parties' pleadings fail to tender any issue of fact, either because all the factual allegations have been admitted expressly or impliedly; as when a denial is a general denial; there is no need of conducting a trial, since there is no need of presenting evidence anymore. The case is then ripe for judicial determination, either through a judgment on the pleadings (Rules of Court, Rule 34) or by summary judgment under Rule 35, Rules of Court.
>
> In the instant case, plaintiffs alleged that sometime in 1991, without the consent and authority of the plaintiffs, defendant took full control

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[10] CA *rollo*, pp. 69-73; penned by Acting Presiding Judge Filpia D. Del Castillo.

and possession of the subject property, developed the same and use[d] it for commercial purposes. x x x for so many years, plaintiffs patiently waited for someone to make representation to them regarding the use of the subject property, but the same never happened. Plaintiff[s] have allowed the defendant for several years, to make use of the land without any contractual or legal basis. Hence, defendant's possession of the subject property is only by tolerance.

x x x x x x x x x

Defendant admits the allegations of the plaintiffs that the defendant "took full control and possession of the subject property, developed the same" and has been using the premises in accordance with its agreements with the City of Roxas and the purposes of the defendant corporation without any objection or opposition of any kind on the part of the plaintiffs for over twenty-two long years.

That the defendant's possession of the subject property is by virtue of a contract of lease entered into by the defendant foundation with the City of Roxas which is the true and lawful owner, the latter having acquired said property by virtue of a Deed of Absolute Sale as early as February 19, 1981, long before the defendant foundation's occupation of the property. In *Alcos v. IAC* 162 SCRA 823 (1988), Buyer's immediate possession and occupation of the property was deemed corroborative of the truthfulness and authenticity of the deed of sale.

WHEREFORE, although this Court finds the defense on forum shopping interposed by the defendant to be untenable and unmeritorious, and hence, denied; this Court still finds the pleadings filed by the plaintiffs-spouses to be without a cause of action and hence, dismisses this instant complaint. With cost against the plaintiffs.

SO ORDERED.[11]

Ruling of the Regional Trial Court

On appeal, the RTC of Roxas City, Branch 17 rendered a Decision[12] dated July 9, 2004 affirming the MTCC Order.

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[11] *Id.* at 71-73.

[12] *Id.* at 22-27; penned by Judge Edward B. Contreras. The dispositive portion of the said Decision reads:

Ruling of the Court of Appeals

Aggrieved, petitioners filed with the CA a Petition for Review. However, the CA, in a Decision[13] dated April 26, 2005, dismissed the petition and affirmed the assailed Decision of the RTC.

Petitioners timely filed a Motion for Reconsideration[14] which was, however, denied in a Resolution[15] dated November 15, 2005.

Issues

Still undaunted, petitioners now come to this Court on a Petition for Review on *Certiorari* raising the following issues:

I. Whether x x x in determining if there is a case for unlawful detainer, a court should limit itself in interpreting a single phrase/ allegation in the complaint; and,

II. Whether x x x there exists an unlawful detainer in this case.[16]

Our Ruling

The petition is bereft of merit.

The allegations in petitioner's Complaint constitute judicial admissions.

Petitioners alleged in their Complaint before the MTCC, among others, that: (1) sometime in 1991, without their consent and authority, respondent took full control and possession of the subject property, developed the same and used it for commercial purposes; and (2) they allowed the respondent for

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Wherefore, premises considered, the instant appeal is denied for lack of merit, and the questioned Order of the court *a quo* in Civil Case No. V-2391 is affirmed.

[13] *Id.* at 98-104. The dispositive portion of which reads, to wit:

WHEREFORE, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the assailed decision and order of the RTC in Roxas City in Civil Case No. V-009-04.

[14] *Id.* at 105-111.

[15] *Id.* at 118-119.

[16] *Rollo*, p. 9.

several years, to make use of the land without any contractual or legal basis. Petitioners thus conclude that respondent's possession of subject property is only by tolerance.

Section 4, Rule 129 of the Rules of Court provides that:

> Sec. 4. *Judicial admissions.* – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. x x x

"A judicial admission is one so made in pleadings filed or in the progress of a trial as to dispense with the introduction of evidence otherwise necessary to dispense with some rules of practice necessary to be observed and complied with."[17] Correspondingly, "facts alleged in the complaint are deemed admissions of the plaintiff and binding upon him."[18] "The allegations, statements or admissions contained in a pleading are conclusive as against the pleader."[19]

In this case, petitioners judicially admitted that respondents took control and possession of subject property without their consent and authority and that respondent's use of the land was without any contractual or legal basis.

Nature of the action is determined by the judicial admissions in the Complaint.

In *Spouses Huguete v. Spouses Embudo*,[20] citing *Cañiza v. Court of Appeals*,[21] this Court held that "what determines the

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[17] FRANCISCO VICENTE J., *THE REVISED RULES OF COURT IN THE PHILIPPINES, EVIDENCE*, Volume VII Part I, 1997 edition, p. 90 citing 2 Jones on Evidence, Sec. 894; Anderson's Dict.; Bouv. Dict.; 1 Green on Evidence, Sec. 27.

[18] *Federation of Free Farmers v. Court of Appeals*, 194 Phil. 328, 401 (1981).

[19] *Alfelor v. Halasan*, G.R. No. 165987, March 31, 2006, 486 SCRA 451, 460.

[20] *Supra* note 1 at 175. Emphasis supplied.

[21] 335 Phil. 1107 (1997).

nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought."

This Court, in *Sumulong v. Court of Appeals*,[22] differentiated the distinct causes of action in forcible entry *vis-à-vis* unlawful detainer, to wit:

> Forcible entry and unlawful detainer are two distinct causes of action defined in Section 1, Rule 70 of the Rules of Court. In forcible entry, one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the only issue is who has the prior possession *de facto*. In unlawful detainer, possession was originally lawful but became unlawful by the expiration or termination of the right to possess and the issue of rightful possession is the one decisive, for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.[23]

"The words 'by force, intimidation, threat, strategy or stealth' shall include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession, therefrom."[24] "The foundation of the action is really the forcible exclusion of the original possessor by a person who has entered without right."[25]

"The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary."[26] The

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[22] G.R. No. 108817, May 10, 1994, 232 SCRA 372.

[23] *Id.* at 382-383, citing 3 MANUEL V. MORAN, *COMMENTS ON THE RULES OF COURT* 312 (1980 ed.). Emphasis supplied.

[24] *Mediran v. Villanueva*, 37 Phil 752, 756 (1918).

[25] *Id.*

[26] *Id.*

employment of force, in this case, can be deduced from petitioners' allegation that respondent took full control and possession of the subject property without their consent and authority.

"'Stealth,' on the other hand, is defined as any secret, sly, or clandestine act to avoid discovery and to gain entrance into or remain within residence of another without permission,"[27] while strategy connotes the employment of machinations or artifices to gain possession of the subject property.[28] The CA found that based on the petitioners' allegations in their complaint, "respondent's entry on the land of the petitioners was by stealth x x x."[29] However, stealth as defined requires a clandestine character which is not availing in the instant case as the entry of the respondent into the property appears to be with the knowledge of the petitioners as shown by petitioners' allegation in their complaint that "[c]onsidering the personalities behind the defendant foundation and considering further that it is plaintiff's nephew, then the vice-mayor, and now the Mayor of the City of Roxas Antonio A. del Rosario, although without any legal or contractual right, who transacted with the foundation, plaintiffs did not interfere with the activities of the foundation using their property."[30] To this Court's mind, this allegation if true, also illustrates strategy.

Taken in its entirety, the allegations in the Complaint establish a cause of action for forcible entry, and not for unlawful detainer.

"In forcible entry, one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth."[31] "[W]here the defendant's possession

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[27] *Sumulong v. Court of Appeals, supra* note 22 at 384.

[28] *Id.*

[29] *Rollo,* p. 23.

[30] *Id.* Emphasis supplied.

[31] *Sumulong v. Court of Appeals, supra* note 22 at 382.

of the property is illegal *ab initio*," the summary action for forcible entry (*detentacion*) is the remedy to recover possession.[32]

In their Complaint, petitioners maintained that the respondent took possession and control of the subject property without any contractual or legal basis.[33] Assuming that these allegations are true, it hence follows that respondent's possession was illegal from the very beginning. Therefore, the foundation of petitioners' complaint is one for forcible entry – that is "the forcible exclusion of the original possessor by a person who has entered without right."[34] Thus, and as correctly found by the CA, there can be no tolerance as petitioners alleged that respondent's possession was illegal at the inception.[35]

Corollarily, since the deprivation of physical possession, as alleged in petitioners' Complaint and as earlier discussed, was attended by strategy and force, this Court finds that the proper remedy for the petitioners was to file a Complaint for Forcible Entry and not the instant suit for unlawful detainer.

Petitioners should have filed a Complaint for Forcible Entry within the reglementary one-year period from the time of dispossession.

Petitioners likewise alleged in their Complaint that respondent took possession and occupancy of subject property in 1991. Considering that the action for forcible entry must be filed within one year from the time of dispossession,[36] the action for forcible entry has already prescribed when petitioners filed

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[32] *Javier v. Veridiano II*, G.R. No. 48050, October 10, 1994, 237 SCRA 565, 572 citing *Emilia v. Bado,* 131 Phil. 711 (1968).

[33] *Rollo*, p. 21.

[34] *Wong v. Carpio,* G.R. No. 50264, October 21, 1991, 203 SCRA 118, 124.

[35] *Muñoz v. Court of Appeals*, G.R. No. 102693, September 23, 1992, 214 SCRA 216, 224.

[36] RULES OF COURT, Rule 70, Section 1.

their Complaint in 2003. As a consequence, the Complaint failed to state a valid cause of action against the respondent.

In fine, the MTCC properly dismissed the Complaint, and the RTC and the CA correctly affirmed said order of dismissal.

WHEREFORE, the petition is *DENIED*. The Decision dated April 26, 2005 and the Resolution dated November 15, 2005 of the Court of Appeals in CA-G.R. SP No. 87784 are *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 171972. June 8, 2011]

LUCIA RODRIGUEZ AND PRUDENCIA RODRIGUEZ, *petitioners, vs.* **TERESITA V. SALVADOR,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; REQUISITES.— Agricultural tenancy exists when all the following requisites are present: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between landowner and tenant or agricultural lessee.

2. ID.; ID.; ID.; ELEMENT OF CONSENT; SELF-SERVING STATEMENT IS NOT SUFFICIENT TO PROVE CONSENT OF THE LANDOWNER; INDEPENDENT EVIDENCE IS NECESSARY.— The statements in the affidavits presented by the petitioners are not sufficient to prove the existence of an agricultural tenancy. As correctly found by the CA, the element of consent is lacking. Except for the self-serving affidavit of Lucia, no other evidence was submitted to show that respondent's predecessors-in-interest consented to a tenancy relationship with petitioners. Self-serving statements, however, will not suffice to prove consent of the landowner; independent evidence is necessary.

3. ID.; ID.; ID.; ELEMENT OF SHARING OF HARVEST; CLAIMANTS MUST PRESENT EVIDENCE TO PROVE SHARING OF HARVEST AND THE EXISTENCE OF AN AGREED SYSTEM OF SHARING BETWEEN THEM AND THE LANDOWNERS; AFFIDAVIT OF CLAIMANT'S NEIGHBORS, INSUFFICIENT.— Aside from consent, petitioners also failed to prove sharing of harvest. The affidavits of petitioners' neighbors declaring that respondent and her predecessors-in-interest received their share in the harvest are not sufficient. Petitioners should have presented receipts or any other evidence to show that there was sharing of harvest and that there was an agreed system of sharing between them and the landowners.

4. ID.; ID.; MERE OCCUPATION OR CULTIVATION OF AN AGRICULTURAL LAND WILL NOT *IPSO FACTO* MAKE THE TILLER AN AGRICULTURAL TENANT; ALL REQUISITES OF AGRICULTURAL TENANCY MUST BE PROVED.— As we have often said, mere occupation or cultivation of an agricultural land will not *ipso facto* make the tiller an agricultural tenant. It is incumbent upon a person who claims to be an agricultural tenant to prove by substantial evidence all the requisites of agricultural tenancy.

5. ID.; ID.; DEFENSE OF AGRICULTURAL TENANCY MUST FAIL WHERE THE PARTIES FAILED TO PROVE THE ELEMENTS OF CONSENT AND SHARING OF HARVEST; REMAND OF THE CASE TO THE MUNICIPAL TRIAL COURT, PROPER.— [P]etitioners failed to prove consent and sharing of harvest between the parties. Consequently, their

defense of agricultural tenancy must fail. The MTC has jurisdiction over the instant case. No error can therefore be attributed to the CA in reversing and setting aside the dismissal of respondent's complaint for lack of jurisdiction. Accordingly, the remand of the case to the MTC for the determination of the amount of damages due respondent is proper.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY OR UNLAWFUL DETAINER; THE ONLY DAMAGE WHICH MAY BE RECOVERED IS THE FAIR RENTAL VALUE OR THE REASONABLE COMPENSATION FOR THE USE AND OCCUPATION OF THE LEASED PROPERTY; REASON.— We must, however, clarify that "the only damage that can be recovered [by respondent] is the fair rental value or the reasonable compensation for the use and occupation of the leased property. The reason for this is that [in forcible entry or unlawful detainer cases], the only issue raised in ejectment cases is that of rightful possession; hence, the damages which could be recovered are those which the [respondent] could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property, and not the damages which [she] may have suffered but which have no direct relation to [her] loss of material possession."

APPEARANCES OF COUNSEL

Amado B. Bajarias, Sr. for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Agricultural tenancy is not presumed but must be proven by the person alleging it.

This Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assails the August 24, 2005 Decision[2] and the February

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[1] *Rollo,* pp. 3-134, with Annexes "A" to "R" inclusive.

[2] *Id.* at 23-32; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Vicente L. Yap and Enrico A. Lanzanas.

20, 2006 Resolution[3] of the Court of Appeals (CA) in CA G.R. SP No. 86599. However, per Resolution[4] of this Court dated August 30, 2006, the instant petition shall be treated as a Petition for Review on *Certiorari* under Rule 45 of the same Rules.

Factual Antecedents

On May 22, 2003, respondent Teresita V. Salvador filed a Complaint for Unlawful Detainer,[5] docketed as Civil Case No. 330, against petitioners Lucia (Lucia) and Prudencia Rodriguez, mother and daughter, respectively before the Municipal Trial Court (MTC) of Dalaguete, Cebu.[6] Respondent alleged that she is the absolute owner of a parcel of land covered by Original Certificate of Title (OCT) No. P-27140[7] issued by virtue of Free Patent No. (VII-5) 2646 in the name of the Heirs of Cristino Salvador represented by Teresita Salvador;[8] that petitioners acquired possession of the subject land by mere tolerance of her predecessors-in-interest;[9] and that despite several verbal and written demands made by her, petitioners refused to vacate the subject land.[10]

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[3] *Id.* at 40-41.

[4] *Id.* at 148. In the May 2, 2006 Resolution (*id.* at 136), the Court dismissed the petition for *certiorari* for being a wrong mode of appeal; the petition was evidently used as a substitute for the lost remedy of appeal; and for failure to sufficiently show that the Court of Appeals committed grave abuse of discretion in rendering the assailed Decision and Resolution. Petitioners moved for reconsideration which was granted in the August 30, 2006 Resolution. We thus reinstated the petition and treat the same as a petition for review on *certiorari* under Rule 45 of the Rules of Court.

[5] *Id.* at 42-52.

[6] *Id.* at 24.

[7] *Id.* at 47.

[8] *Id.* at 42.

[9] *Id.* at 43.

[10] *Id.* at 43-44.

In their Answer,[11] petitioners interposed the defense of agricultural tenancy. Lucia claimed that she and her deceased husband, Serapio, entered the subject land with the consent and permission of respondent's predecessors-in-interest, siblings Cristino and Sana Salvador, under the agreement that Lucia and Serapio would devote the property to agricultural production and share the produce with the Salvador siblings.[12] Since there is a tenancy relationship between the parties, petitioners argued that it is the Department of Agrarian Reform Adjudication Board (DARAB) which has jurisdiction over the case and not the MTC.[13]

On July 10, 2003, the preliminary conference was terminated and the parties were ordered to submit their respective position papers together with the affidavits of their witnesses and other evidence to support their respective claims.[14]

Ruling of the Municipal Trial Court

On September 10, 2003, the MTC promulgated a Decision[15] finding the existence of an agricultural tenancy relationship between the parties, and thereby, dismissing the complaint for lack of jurisdiction. Pertinent portions of the Decision read:

> Based on the facts presented, it is established that defendant Lucia Rodriguez and her husband Serapio Rodriguez were instituted as agricultural tenants on the lot in question by the original owner who was the predecessor-in-interest of herein plaintiff Teresita Salvador. The consent given by [the]original owner to constitute [defendants] as agricultural tenants of subject landholdings binds plaintiff who as successor-in-interest of the original owner Cristino Salvador steps into the latter's shoes acquiring not only his rights but also his obligations towards the herein defendants. In the instant case, the consent to tenurial arrangement between the parties is inferred from

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[11] *Id.* at 53-59.

[12] *Id.* at 54.

[13] *Id.* at 56-57.

[14] *Id.* at 60-61.

[15] *Id.* at 81-84; penned by Presiding Judge Thelma N. De Los Santos.

the fact that the plaintiff and her successors-in-interest had received their share of the harvests of the property in dispute from the defendants.

Moreover, dispossession of agricultural tenants can only be ordered by the Court for causes expressly provided under Sec. 36 of R.A. 3844. However, this Court has no jurisdiction over detainer case involving agricultural tenants as ejectment and dispossession of said tenants is within the primary and exclusive jurisdiction of the Department of Agrarian Reform and Agricultural Board (DARAB). ([S]ee Sec. 1(1.4) DARAB 2003 Rules of Procedure[.])

WHEREFORE, in view of the foregoing, the instant complaint is hereby ordered DISMISSED for lack of jurisdiction.

SO ORDERED.[16]

Aggrieved, respondent filed an appeal, docketed as Civil Case No. AV-1237, with the Regional Trial Court (RTC) of Argao, Cebu, Branch 26.[17]

Ruling of the Regional Trial Court

On January 12, 2004, the RTC rendered a Decision[18] remanding the case to the MTC for preliminary hearing to determine whether tenancy relationship exists between the parties.

Petitioners moved for reconsideration[19] arguing that the purpose of a preliminary hearing was served by the parties' submission of their respective position papers and other supporting evidence.

On June 23, 2004, the RTC granted the reconsideration and affirmed the MTC Decision dated September 10, 2003. The *fallo* of the new Decision[20] reads:

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[16] *Id.* at 84.

[17] *Id.* at 27.

[18] *Id.* at 99; penned by Judge Maximo A. Perez.

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

[20] *Id.* at 103-104.

WHEREFORE, the motion for reconsideration is GRANTED. The Decision dated September 10, 2003 of the Municipal Trial Court of Dalaguete, Cebu, is hereby **AFFIRMED**.

IT IS SO DECIDED.[21]

Respondent sought reconsideration[22] but it was denied by the RTC in an Order[23] dated August 18, 2004.

Thus, respondent filed a Petition for Review[24] with the CA, docketed as CA G.R. SP No. 86599.

Ruling of the Court of Appeals

On August 24, 2005, the CA rendered judgment in favor of respondent. It ruled that no tenancy relationship exists between the parties because petitioners failed to prove that respondent or her predecessors-in-interest consented to the tenancy relationship.[25] The CA likewise gave no probative value to the affidavits of petitioners' witnesses as it found their statements insufficient to establish petitioners' status as agricultural tenants.[26] If at all, the affidavits merely showed that petitioners occupied the subject land with the consent of the original owners.[27] And since petitioners are occupying the subject land by mere tolerance, they are bound by an implied promise to vacate the same upon demand by the respondent.[28] Failing to do so, petitioners are liable to pay damages.[29] Thus, the CA disposed of the case in this manner:

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[21] *Id.* at 104.

[22] Records, pp. 145-148.

[23] CA *rollo*, p. 66.

[24] *Rollo*, pp. 105-117.

[25] *Id.* at 29.

[26] *Id.* at 29-30.

[27] *Id.* at 30.

[28] *Id.* at 30-31.

[29] *Id.* at 31.

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered by us **SETTING ASIDE**, as we hereby set aside, the decision rendered by the RTC of Argao, Cebu on June 23, 2004 in Civil Case No. AV-1237 and **ORDERING** the remand of this case to the MTC of Dalaguete, Cebu for the purpose of determining the amount of actual damages suffered by the [respondent] by reason of the [petitioners'] refusal and failure to turn over to [respondent] the possession and enjoyment of the land and, then, to make such award of damages to the [respondent].

SO ORDERED.[30]

Issues

Hence, this petition raising the following issues:

I.

WHETHER X X X THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING THAT PETITIONERS-DEFENDANTS ARE NOT TENANTS OF THE SUBJECT LAND.

II.

WHETHER X X X SUCH RULING OF THE COURT OF APPEALS HAS FACTUAL AND LEGAL BASIS AND IS SUPPORTED WITH SUBSTANTIAL EVIDENCE.[31]

Petitioners' Arguments

Petitioners contend that under Section 5[32] of Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code, tenancy may be constituted by agreement of the parties either orally or in writing, expressly or impliedly.[33] In this case,

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[30] *Id.*

[31] *Id.* at 10.

[32] SECTION 5. Establishment of Agricultural Leasehold Relation. — The agricultural leasehold relation shall be established by operation of law in accordance with Section four of this Code and, in other cases, either orally or in writing, expressly or impliedly.

[33] *Rollo,* p. 178.

there was an implied consent to constitute a tenancy relationship as respondent and her predecessors-in-interest allowed petitioners to cultivate the land and share the harvest with the landowners for more than 40 years.[34]

Petitioners further argue that the CA erred in disregarding the affidavits executed by their witnesses as these are sufficient to prove the existence of a tenancy relationship.[35] Petitioners claim that their witnesses had personal knowledge of the cultivation and the sharing of harvest.[36]

Respondent's Arguments

Respondent, on the other hand, maintains that petitioners are not agricultural tenants because mere cultivation of an agricultural land does not make the tiller an agricultural tenant.[37] Respondent insists that her predecessors-in-interest merely tolerated petitioners' occupation of the subject land.[38]

Our Ruling

The petition lacks merit.

Agricultural tenancy relationship does not exist in the instant case.

Agricultural tenancy exists when all the following requisites are present: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the

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[34] *Id.* at 178-179.

[35] *Id.* at 180-183.

[36] *Id.* at 181.

[37] *Id.* at 193.

[38] *Id.* at 192.

harvest is shared between landowner and tenant or agricultural lessee.[39]

In this case, to prove that an agricultural tenancy relationship exists between the parties, petitioners submitted as evidence the affidavits of petitioner Lucia and their neighbors. In her affidavit,[40] petitioner Lucia declared that she and her late husband occupied the subject land with the consent and permission of the original owners and that their agreement was that she and her late husband would cultivate the subject land, devote it to agricultural production, share the harvest with the landowners on a 50-50 basis, and at the same time watch over the land. Witness Alejandro Arias attested in his affidavit[41] that petitioner Lucia and her husband, Serapio, have been cultivating the subject land since 1960; that after the demise of Serapio, petitioner Lucia and her children continued to cultivate the subject land; and that when respondent's predecessors-in-interest were still alive, he would often see them and respondent get some of the harvest. The affidavit[42] of witness Conseso Muñoz stated, in essence, that petitioner Lucia has been in peaceful possession and cultivation of the subject property since 1960 and that the harvest was divided into two parts, ½ for the landowner and ½ for petitioner Lucia.

The statements in the affidavits presented by the petitioners are not sufficient to prove the existence of an agricultural tenancy.

As correctly found by the CA, the element of consent is lacking.[43] Except for the self-serving affidavit of Lucia, no other evidence was submitted to show that respondent's predecessors-in-interest consented to a tenancy relationship with

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[39] *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc.*, G.R. No. 169589, June 16, 2009, 589 SCRA 236, 246.

[40] *Rollo,* pp. 75-76.

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

[42] *Id.* at 77-78.

[43] *Id.* at 29.

petitioners. Self-serving statements, however, will not suffice to prove consent of the landowner; independent evidence is necessary.[44]

Aside from consent, petitioners also failed to prove sharing of harvest. The affidavits of petitioners' neighbors declaring that respondent and her predecessors-in-interest received their share in the harvest are not sufficient. Petitioners should have presented receipts or any other evidence to show that there was sharing of harvest[45] and that there was an agreed system of sharing between them and the landowners.[46]

As we have often said, mere occupation or cultivation of an agricultural land will not *ipso facto* make the tiller an agricultural tenant.[47] It is incumbent upon a person who claims to be an agricultural tenant to prove by substantial evidence all the requisites of agricultural tenancy.[48]

In the instant case, petitioners failed to prove consent and sharing of harvest between the parties. Consequently, their defense of agricultural tenancy must fail. The MTC has jurisdiction over the instant case. No error can therefore be attributed to the CA in reversing and setting aside the dismissal of respondent's complaint for lack of jurisdiction. Accordingly, the remand of the case to the MTC for the determination of the amount of damages due respondent is proper.

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[44] *De Jesus v. Moldex Realty, Inc.*, G.R. No. 153595, November 23, 2007, 538 SCRA 316, 322.

[45] *Landicho v. Sia*, G.R. No. 169472, January 20, 2009, 576 SCRA 602, 621; *Adriano v. Tanco*, G.R. No. 168164, July 5, 2010, 623 SCRA 218, 229.

[46] *Heirs of Jose Barredo v. Besañes*, G.R. No. 164695, December 13, 2010, citing *De Jesus v. Moldex Realty, Inc., supra* at 323.

[47] *Landicho v. Sia*, *supra* at 620.

[48] *NICORP Management and Development Corporation v. De Leon*, G.R. Nos. 176942 & 177125, August 28, 2008, 563 SCRA 606, 612.

Respondent is entitled to the fair rental value or the reasonable compensation for the use and occupation of the subject land.

We must, however, clarify that "the only damage that can be recovered [by respondent] is the fair rental value or the reasonable compensation for the use and occupation of the leased property. The reason for this is that [in forcible entry or unlawful detainer cases], the only issue raised in ejectment cases is that of rightful possession; hence, the damages which could be recovered are those which the [respondent] could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property, and not the damages which [she] may have suffered but which have no direct relation to [her] loss of material possession."[49]

WHEREFORE, the petition is *DENIED*. The assailed August 24, 2005 Decision and the February 20, 2006 Resolution of the Court of Appeals in CA G.R. SP No. 86599 are *AFFIRMED*. This case is ordered *REMANDED* to the Municipal Trial Court of Dalaguete, Cebu, to determine the amount of damages suffered by respondent by reason of the refusal and failure of petitioners to turn over the possession of the subject land, with utmost dispatch consistent with the above disquisition.

SO ORDERED.

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

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[49] *Araos v. Court of Appeals*, G.R. No. 107057, June 2, 1994, 232 SCRA 770, 776.

FIRST DIVISION

[G.R. No. 175834. June 8, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROSAURO ASETRE *y* DURAN,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONIES OF THE RAPE VICTIM WITH RESPECT TO THE DATES AND PLACES THE OFFENSES WERE COMMITTED CREATE A REASONABLE DOUBT AS TO WHETHER SHE WAS IN FACT BEEN RAPED DURING THOSE OCCASIONS.— We have thoroughly reviewed the records of the case and we find that the evidence presented by the prosecution showed that appellant is guilty of only one count of rape, and not four counts. The Informations charged appellant with having raped "AAA" on the first week, second week, and third week, of March 2001, and on March 23, 2001. However, as argued by the defense, the testimony of "AAA" with regard to the first three incidents particularly on the dates when and the places where the offenses were supposedly committed contains disturbing discrepancies. x x x It will be recalled that in her direct examination, "AAA" testified that she was raped inside their tent in "BBB". However, in her re-direct examination, "AAA" testified that she was raped elsewhere. x x x We thus could not agree with the findings of the trial court and the CA that the inconsistencies in the testimony of "AAA" regarding the first three rape incidents are inconsequential. These inconsistencies create a reasonable doubt in our mind as to whether appellant did in fact rape "AAA" during those occasions. Consequently, we are constrained to acquit appellant of the charges of rape allegedly committed during the first week, second week, and third week, of March 2001 based on reasonable doubt.

2. CRIMINAL LAW; RAPE; ELEMENTS; ESTABLISHED.— As defined under Article 266-A of the Revised Penal Code, rape is committed – 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances: a. Through force, threat or intimidation; b. When the offended party is

deprived of reason or 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 As regards the March 23, 2001 incident, the prosecution established that appellant had carnal knowledge of "AAA" through force, threat or intimidation. "AAA's" confusion relative to the first three incidents does not warrant his acquittal as regards the March 23, 2001 incident; neither does it detract us from the fact that she was indeed raped by the appellant on March 23, 2001. Notably, "AAA's" testimony was corroborated by the medical findings of Dr. Barcena. Moreover, appellant could not ascribe any ill motive on the part of "AAA" on why she would charge appellant with such a serious crime.

3. ID.; ID.; PROPER PENALTY; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Under Article 266-B of the Revised Penal Code, the penalty for rape committed under the circumstances is *reclusion perpetua.* Moreover, pursuant to prevailing jurisprudence, "AAA" is entitled to an award of civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00, as well as exemplary damages of ₱30,000.00. Finally, an interest of six percent (6%) per annum should be imposed on all damages awarded from the finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.:*

On appeal is the September 1, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 00367 which affirmed in

[1] CA *rollo*, pp. 111-130; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid.

its entirety the March 8, 2004 Decision[2] of the Regional Trial Court (RTC) of Santiago City, Branch 21 finding appellant Rosauro Asetre *y* Duran guilty beyond reasonable doubt of four counts of the crime of rape.

Factual Antecedents

On June 11, 2001, four Informations[3] were filed charging appellant with four counts of rape. Except for the dates of commission, the Informations similarly read as follows:

> That on or about (the first week of March 2001,[4] the second week of March 2001,[5] the third week of March 2001,[6] the 23rd day of March 2001,[7]) at *Barangay* "BBB,"[8] "CCC," and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat, and intimidation, willfully, unlawfully, and feloniously did lie, and succeeded in having carnal knowledge of "AAA," a thirteen year-old minor.
>
> CONTRARY TO LAW.

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[2] Records, Vol. 1, pp. 96-107; penned by Judge Fe Albano Madrid.

[3] Records, Vol. 1, p. 1; Records, Vol. 2, p. 1; Records, Vol. 3, p. 1; Records, Vol. 4, p. 1.

[4] Records, Vol. 1, p. 1; docketed as Crim. Case No. 3516.

[5] Records, Vol. 2, p. 1; docketed as Crim. Case No. 3517.

[6] Records, Vol. 4, p. 1; docketed as Crim. Case No. 3519.

[7] Records, Vol. 3, p. 1; docketed as Crim. Case No. 3518.

[8] The identity of the victim or any information which could 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; and 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.

During his arraignment on September 26, 2001, appellant entered the plea of "not guilty".[9] Thereafter, the four cases were jointly tried. During the pre-trial conference, the defense admitted, among others, that "AAA" was born on March 23, 1988 as shown in her birth certificate[10] and was thus only 13-years of age when the alleged rape incidents happened.

Version of the Prosecution

The prosecution established that appellant was the common-law husband of "DDD", who is the aunt of "AAA". According to "AAA", she started living with "DDD" and appellant when she was still small.[11] "AAA" narrated that in March 2001, particularly during her summer vacation at "BBB", appellant raped her four times.[12] The first rape happened during the first week[13] of March 2001 at around noontime.[14] Appellant took off her clothes[15] then inserted his penis into her vagina.[16] "AAA" felt pain in her private parts.[17] "AAA" struggled against the advances of appellant[18] but to no avail. Appellant even threatened "AAA" that she and "DDD" would be killed if she would report the incident. Thereafter, appellant sexually molested "AAA" three more times. The second rape transpired during the second week of March 2001;[19] while the third rape was committed

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[9] Records, Vol. 1, p. 39.

[10] *Id.* at 36.

[11] TSN, November 15, 2001, p. 5.

[12] *Id.* at 11.

[13] *Id.*

[14] *Id.* at 12.

[15] *Id.* at 13.

[16] *Id.* at 15.

[17] *Id.*

[18] *Id.* at 14.

[19] *Id.* at 16.

shortly thereafter.[20] The fourth and last rape incident happened on March 23, 2001.[21]

Another witness for the prosecution was Dr. Jeffrey M. Barcena (Dr. Barcena) who testified that on April 25, 2001, he conducted a medical examination on "AAA".[22] He testified that "AAA" had multiple old hymenal lacerations which could have been caused by anything which penetrated her vagina.[23] He also noted a recent abrasion on the *labia minora*.[24]

Version of the Defense

The first witness for the defense was Rosita Clarin (Clarin) who testified that appellant was her neighbor for four years.[25] Clarin asserted that at the time the alleged rapes were committed, "AAA" was not in "BBB" but in "EEE" attending school,[26] hence appellant could not have raped her. Clarin averred that "AAA" arrived at "BBB" only on March 24, 2001,[27] or one day after the latest alleged rape was committed.

Romualdo Dulay (Dulay), another defense witness, testified that he was also a neighbor of the appellant.[28] He claimed that during the time material to this case, "AAA" was not in "BBB" but in "EEE" attending school.[29] He allegedly saw "AAA" in "BBB" only on March 25, 2001.[30]

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[20] *Id.* at 17-19.

[21] *Id.* at 19.

[22] TSN, December 10, 2001, p. 9.

[23] *Id.* at 13.

[24] *Id.*

[25] TSN, January 9, 2002, pp. 5-6.

[26] *Id.* at 8-10.

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

[28] TSN, January 14, 2002, p. 5.

[29] *Id.* at 7.

[30] *Id.* at 10.

The last witness for the defense was the appellant himself. He denied having raped "AAA". He claimed that from the first week up to the third week of March 2001, he was at "BBB" together with "DDD", his live-in partner, and his helpers. He averred that at that time, or until March 23, 2001, "AAA" was not in "BBB" but in "EEE" attending school.[31] Appellant insisted that "AAA" arrived at "BBB" only on March 24, 2001[32] at around 2 o'clock in the afternoon.[33]

Ruling of the Regional Trial Court

In its Decision dated March 8, 2004, the RTC rendered its Decision finding appellant guilty as charged. The trial court found "AAA's" testimony to be credible and without any showing of ulterior motive to falsely testify against the appellant.[34] The dispositive portion of the Decision reads:

> WHEREFORE, in the light of the foregoing considerations the Court finds the accused Rosauro Asetre *y* Duran GUILTY beyond reasonable doubt of four counts of rape and hereby sentences him to the penalty of *reclusion perpetua* in each of the four (4) cases. He is also ordered to pay "AAA" the sum of Fifty Thousand Pesos (₱50,000.00) in each of [these] cases or a total of Two Hundred Thousand Pesos (₱200,000.00).
>
> SO ORDERED.[35]

Appellant filed his Notice of Appeal;[36] hence, the trial court ordered the records of the case to be forwarded to the CA.[37]

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[31] TSN, September 11, 2002, pp. 6-11.

[32] *Id.* at 15.

[33] *Id.* at 16.

[34] Records, Vol. 1, p. 101.

[35] *Id.* at 107.

[36] *Id.* at 109-110.

[37] *Id.* at 111.

Ruling of the Court of Appeals

On September 1, 2006, the CA rendered its Decision dismissing the appeal and affirming in its entirety the Decision of the trial court. Just as the trial court disregarded appellant's arguments on the alleged inconsistencies in the testimony of "AAA" regarding the dates of the commission of the crimes, the appellate court likewise found the same to be inconsequential.

The appellate court also found no compelling reason to overturn the findings of the trial court on the credibility of "AAA",[38] more so because there was no evidence of any improper motive on her part.[39]

The dispositive portion of the CA Decision reads:

> WHEREFORE, in view of the foregoing, the instant APPEAL is hereby DISMISSED. Accordingly, the decision of Branch 21 of the Regional Trial Court of Santiago City, in Criminal Case Nos. 21-3516 to 21-3519, is hereby AFFIRMED.
>
> SO ORDERED.[40]

On February 19, 2007, we accepted appellant's appeal and required the parties to file their respective supplemental briefs.[41] However, on April 17, 2007[42] and May 7, 2007,[43] respectively, appellee and appellant manifested that they are no longer filing their supplemental briefs considering that they have already exhaustively discussed their arguments in their respective briefs filed before the CA. Hence, this appeal is being resolved based on the briefs submitted by the parties before the CA.

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[38] CA *rollo*, p. 127.

[39] *Id.*

[40] *Id.* at 129-130.

[41] *Rollo*, p. 22.

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

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

Issues

In his brief,[44] appellant assigns the following errors:

I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II. THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

Appellant argues that he deserves an acquittal considering the glaring inconsistencies in "AAA's" testimony regarding the dates of the commission of the offenses and the places where the crimes were allegedly committed.[45] Citing *People v. Ladrillo*,[46] appellant claims that contrary to the ruling of the trial court, the failure of "AAA" to specify the dates of the commission of the crimes creates serious doubts on whether she was indeed raped. Appellant also insists that "AAA" contradicted herself as to who reported the incidents to her aunt "DDD".

On the other hand, appellee insists that the issue boils down to the credibility of the witnesses and that the trial court did not err in giving full faith and credence to the testimony of "AAA"[47] which is consistent, candid and steadfast.[48] Appellee argues that any inconsistency in the testimony of "AAA" as regards the dates of the commission of the crimes is understandable considering her young age and the traumatic

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[44] CA *rollo*, pp. 36-50.

[45] *Id.* at 46.

[46] 377 Phil. 904 (1999).

[47] CA *rollo*, p. 82.

[48] *Id.* at 89.

experience she had undergone.[49] Besides, it claims that said inconsistencies did not discredit the credibility of "AAA" because "discrepancies on the exact dates of the sexual abuses are inconsequential, the exact date of the commission of the rape not being an essential element of the crime."[50]

Finally, appellee asserts that in addition to civil indemnity, "AAA" is likewise entitled to an award of moral damages as well as exemplary damages for each count of rape.[51]

Our Ruling

The appeal is partially meritorious.

We have thoroughly reviewed the records of the case and we find that the evidence presented by the prosecution showed that appellant is guilty of only one count of rape, and not four counts.

The Informations charged appellant with having raped "AAA" on the first week, second week, and third week, of March 2001, and on March 23, 2001. However, as argued by the defense, the testimony of "AAA" with regard to the first three incidents particularly on the dates when and the places where the offenses were supposedly committed contains disturbing discrepancies.

During her direct examination, "AAA" testified, *viz*:

Q You stated [that] you were staying with "DDD" and the [appellant] in the month of March, 2001 in a tent located in "BBB", "CCC", do you recall x x x any incident that happened?
A x x x I was raped, sir.

x x x x x x x x x

Q You stated that you were rape[d], who raped you?
A He was the one, sir.

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

[50] *Id.* at 92. Citations omitted.

[51] *Id.* at 103-104.

INTERPRETER:
Witness pointed to the accused x x x

PROS. DAMASEN:
Q When did the accused [rape] you?
A March 23, sir.

Q What year?
A 2001, sir.

Q Do you recall how many times the accused raped you?
A Four (4) times, sir.

Q When was the first time?
A During the first week, sir.

Q First week of what month?
A March, 2001, sir.

Q When the accused first raped you, where was that?
A In our tent at "BBB," sir.

x x x x x x x x x

Q How did he rape you?
A He took off my clothes, sir.

x x x x x x x x x

Q After the accused removed [your shorts], what happened?
A x x x [H]e raped me, sir.

x x x x x x x x x

Q How did he rape you?
A He just inserted his penis [into] my vagina, sir.

Q What did you do when the accused inserted his penis into [your] vagina?
A I continued struggling, sir.

x x x x x x x x x

Q You said you were raped four (4) times in the month of March, 2001[,] where did the second rape [happen]?
A x x x [A]t "BBB," sir.

x x x x x x x x x

Q Who raped you?
A Also my [stepfather], sir.

x x x x x x x x x

Q How about the 3rd time where did the rape [happen]?
A Also at "BBB," sir.[52]

However, during cross-examination, "AAA" testified that:

Q Madam Witness you said that you were raped by the accused x x x in the first week of March, 2001, isn't it?
A What I know, sir, that was March 23.

Q So the accused did not rape you in the first week of March, so you were only raped by the accused [on] the 23rd of March, is that correct Madam Witness?
A Yes, sir.

Q The accused also did not rape you on the second week of March, 2001?
A Yes, sir.

Q Also in the third week?
A Yes, sir.[53]

It will be recalled that in her direct examination, "AAA" testified that she was raped inside their tent in "BBB". However, in her re-direct examination, "AAA" testified that she was raped elsewhere, *viz*:

Q Now, you said you were raped four times in March 2001 where did the first rape [happen]?
A "FFF", sir.

Q How about the second rape where did it happen x x x?
A "EEE", Nueva Vizcaya, sir.

Q How about the third rape where did it [happen]?
A Also at "EEE," sir.[54]

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[52] TSN, November 15, 2001, pp. 9-18.

[53] TSN, November 22, 2001, p. 5.

[54] *Id.* at 23-24.

We thus could not agree with the findings of the trial court and the CA that the inconsistencies in the testimony of "AAA" regarding the first three rape incidents are inconsequential. These inconsistencies create a reasonable doubt in our mind as to whether appellant did in fact rape "AAA" during those occasions. Consequently, we are constrained to acquit appellant of the charges of rape allegedly committed during the first week, second week, and third week, of March 2001 based on reasonable doubt.

In contrast, "AAA's" testimony as regards the March 23, 2001 incident was candid and consistent. She never wavered in her narration that through threats and intimidation, appellant had carnal knowledge of her against her will. During her cross-examination, she testified, *viz*:

Q Madam Witness can you remember what time were you raped by the accused on that 23rd of March, 2001?
A That was evening because he came to fetch me from my place at about 2:00 o'clock, sir.

Q 2:00 o'clock in the morning or afternoon Ms. Witness?
A In the afternoon, sir.

Q Where did the accused fetch you in that afternoon of March 23, 2001?
A From our house, sir.

Q And that is in "EEE", isn't it?
A Yes, sir.

Q What time did you arrive at "BBB", "CCC" when you were fetche[d] by the accused in "EEE"?
A It is already night, sir.

Q Can you estimate the time?
A No, sir. I don't know.

Q When you arrived at "BBB", "CCC", isn't it that your [aunt] "DDD" was there?
A She was not there, sir.

Q Why is it that your [aunt] "DDD" was not there when you arrived from "EEE"?
A She went to attend [a] wedding x x x

Q When you arrived at "BBB" where did you go Ms. Witness together with the accused?
A At the place where [he] raped me, sir.

Q Where is that place?
A At the waiting shed which is covered, sir.

Q Covered with what Ms. Witness?
A Galvanize[d] iron, sir.

Q Isn't it that there are [other] tents near your tent where you stayed when you arrived from "EEE"?
A There was none, sir.

Q But when you arrived at the place where the tent is located there are other people around isn't it Ms. Witness?
A There was none, sir.

Q x x x [A]re there no houses around near the tent that you stayed on the night of March 23, 2001?
A There was none, sir.

Q How did the accused rape you?
A He removed my clothing, sir.

Q How did he [remove] your clothing?
A I was then wearing skirt and he removed my panty, sir.

Q And you voluntarily consented isn't it Ms. Witness?
A No, sir.

Q You did not shout isn't [it] Ms. Witness?
A I [shouted], sir. I even cried.

Q But isn't it that the accused when he raped you he was not arm[ed] x x x?
A There is none, sir.

Q He did not even tell you any threatening words, isn't it Ms. Witness?
A He threatened me, sir. He said that he is going to kill me if I will not accede to his desire.

Q You said that it was too painful when you were raped?
A Yes, sir.

Q And that was the reason why you cried because it was painful?
A Yes, sir.

Q And that was also the reason why you struggled because it was painful, isn't it?
A Yes, sir.[55]

In her re-direct examination, "AAA" remained consistent in her testimony that she was raped by the appellant. Thus:

Q Now, you stated that you were brought by your stepfather to "BBB", "CCC", in the month of March 2001, do you still recall when was that, when in March, 2001?
A March 23, sir.

Q And who was his companion when he fetch[ed] you in "EEE"?
A He was alone, sir.

x x x x x x x x x

Q Do you recall what time you left "EEE"?
A 2:00 o'clock, sir.

x x x x x x x x x

Q Why do you remember March 23, 2001 from among the three (3) rapes that happened earlier?
A Because that was the time when he fetch[ed] me from our house at "EEE", sir.

x x x x x x x x x

Q How about on March 23, 2001 when the accused raped you[,] where [did it happen]?
A Here at "BBB," sir.[56]

As defined under Article 266-A of the Revised Penal Code, rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

    a. Through force, threat or intimidation;

    b. When the offended party is deprived of reason or is otherwise unconscious;

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[55] TSN, November 22, 2001, pp. 6-10.

[56] *Id.* at 19-24.

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 x x x x x x

As regards the March 23, 2001 incident, the prosecution established that appellant had carnal knowledge of "AAA" through force, threat or intimidation. "AAA's" confusion relative to the first three incidents does not warrant his acquittal as regards the March 23, 2001 incident; neither does it detract us from the fact that she was indeed raped by the appellant on March 23, 2001. Notably, "AAA's" testimony was corroborated by the medical findings of Dr. Barcena. Moreover, appellant could not ascribe any ill motive on the part of "AAA" on why she would charge appellant with such a serious crime.

Under Article 266-B of the Revised Penal Code, the penalty for rape committed under the circumstances is *reclusion perpetua*. Moreover, pursuant to prevailing jurisprudence, "AAA" is entitled to an award of civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00, as well as exemplary damages of ₱30,000.00. Finally, an interest of six percent (6%) per annum should be imposed on all damages awarded from the finality of judgment until fully paid.[57]

WHEREFORE, the appeal is *PARTIALLY GRANTED.* Appellant Rosauro Asetre *y* Duran is hereby *ACQUITTED* of the three counts of rape docketed as Criminal Case Nos. 3516, 3517 and 3519 on reasonable doubt. He is, however, found *GUILTY* beyond reasonable doubt of one count of rape in Criminal Case No. 3518 and is sentenced to suffer the penalty of *reclusion perpetua* and to pay "AAA" ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages. All damages awarded in this case should

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[57] *People v. Olesco*, G.R. No. 174861, April 11, 2011.

be imposed with interest at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177099. June 8, 2011]

EDUARDO G. AGTARAP, *petitioner, vs.* **SEBASTIAN AGTARAP, JOSEPH AGTARAP, TERESA AGTARAP, WALTER DE SANTOS, and ABELARDO DAGORO,** *respondents.*

[G.R. No. 177192. June 8, 2011]

SEBASTIAN G. AGTARAP, *petitioner, vs.* **EDUARDO G. AGTARAP, JOSEPH AGTARAP, TERESA AGTARAP, WALTER DE SANTOS, and ABELARDO DAGORO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF THE DECEASED PERSON; THE JURISDICTION OF THE PROBATE COURT RELATES ONLY TO MATTERS HAVING TO DO WITH THE PROBATE OF THE WILL AND/OR SETTLEMENT OF THE ESTATE OF DECEASED PERSONS BUT DOES NOT EXTEND TO THE DETERMINATION OF QUESTIONS OF OWNERSHIP THAT ARISE DURING THE PROCEEDINGS; RATIONALE; EXCEPTIONS; PRESENT.— The general rule is that the jurisdiction of the

trial court, either as a probate or an intestate court, relates only to matters having to do with the probate of the will and/or settlement of the estate of deceased persons, but does not extend to the determination of questions of ownership that arise during the proceedings. The patent rationale for this rule is that such court merely exercises special and limited jurisdiction. As held in several cases, a probate court or one in charge of estate proceedings, whether testate or intestate, cannot adjudicate or determine title to properties claimed to be a part of the estate and which are claimed to belong to outside parties, not by virtue of any right of inheritance from the deceased but by title adverse to that of the deceased and his estate. All that the said court could do as regards said properties is to determine whether or not they should be included in the inventory of properties to be administered by the administrator. If there is no dispute, there poses no problem, but if there is, then the parties, the administrator, and the opposing parties have to resort to an ordinary action before a court exercising general jurisdiction for a final determination of the conflicting claims of title. However, this general rule is subject to exceptions as justified by expediency and convenience. First, the probate court may provisionally pass upon in an intestate or a testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to the final determination of ownership in a separate action. Second, if the interested parties are all heirs to the estate, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to resolve issues on ownership. Verily, its jurisdiction extends to matters incidental or collateral to the settlement and distribution of the estate, such as the determination of the status of each heir and whether the property in the inventory is conjugal or exclusive property of the deceased spouse. We hold that the general rule does not apply to the instant case considering that the parties are all heirs of Joaquin and that no rights of third parties will be impaired by the resolution of the ownership issue. More importantly, the determination of whether the subject properties are conjugal is but collateral to the probate court's jurisdiction to settle the estate of Joaquin.

2. ID.; ID.; ID.; THE PROBATE COURT HAS JURISDICTION TO DETERMINE WHETHER THE PROPERTIES OF THE

DECEASED SPOUSE ARE CONJUGAL AS IT HAD TO LIQUIDATE THE CONJUGAL PARTNERSHIP TO DETERMINE HIS ESTATE.— Section 2, Rule 73 of the Rules of Court provides that when the marriage is dissolved by the death of the husband or the wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid; in the testate or intestate proceedings of the deceased spouse, and if both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either. Thus, the RTC had jurisdiction to determine whether the properties are conjugal as it had to liquidate the conjugal partnership to determine the estate of the decedent. In fact, should Joseph and Teresa institute a settlement proceeding for the intestate estate of Lucia, the same should be consolidated with the settlement proceedings of Joaquin, being Lucia's spouse. Accordingly, the CA correctly distributed the estate of Lucia, with respect to the properties covered by TCT Nos. 38254 and 38255 subject of this case, to her compulsory heirs.

3. CIVIL LAW; LAND TITLES AND DEEDS; CERTIFICATE OF TITLE; SIMPLE POSSESSION THEREOF IS NOT NECESSARILY CONCLUSIVE OF A HOLDER'S TRUE OWNERSHIP OF PROPERTY; A CERTIFICATE OF TITLE AIMS TO PROTECT DOMINION BUT IT CANNOT BE USED AS AN INSTRUMENT FOR THE DEPRIVATION OF OWNERSHIP.— In light of the evidence, as correctly found by the RTC and the CA, the claim of Sebastian and Eduardo that TCT Nos. 38254 and 38255 conclusively show that the owners of the properties covered therein were Joaquin and Caridad by virtue of the registration in the name of Joaquin Agtarap *casado con* (married to) Caridad Garcia, deserves scant consideration. This cannot be said to be a collateral attack on the said TCTs. Indeed, simple possession of a certificate of title is not necessarily conclusive of a holder's true ownership of property. A certificate of title under the Torrens system aims to protect dominion; it cannot be used as an instrument for the deprivation of ownership. Thus, the fact that the properties were registered in the name of Joaquin Agtarap, married to Caridad Garcia, is not sufficient proof that the properties were acquired during the spouses' coverture. The phrase "married to Caridad Garcia" in the TCTs is merely descriptive of the civil status of Joaquin as the registered owner, and does not necessarily prove that the realties are their conjugal properties.

4. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF THE DECEASED PERSON; PAYMENT OF THE INHERITANCE TAX, *PER SE*, DOES NOT SETTLE THE ESTATE OF A DECEASED PERSON; DISTRIBUTION OF THE RESIDUE, WHEN ALLOWED.— Neither can Sebastian's claim that Joaquin's estate could have already been settled in 1965 after the payment of the inheritance tax be upheld. Payment of the inheritance tax, *per se*, does not settle the estate of a deceased person. As provided in Section 1, Rule 90 of the Rules of Court— SECTION 1. *When order for distribution of residue made.* x x x. No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs. Thus, an estate is settled and distributed among the heirs only after the payment of the debts of the estate, funeral charges, expenses of administration, allowance to the widow, and inheritance tax. The records of these cases do not show that these were complied with in 1965.

5. ID.; ID.; ID.; THE PROBATE COURT IS SPECIFICALLY GRANTED JURISDICTION TO DETERMINE WHO ARE THE LAWFUL HEIRS OF THE DECEDENT, AS WELL AS THEIR RESPECTIVE SHARES, AFTER PAYMENT OF THE OBLIGATIONS OF THE ESTATE.— This Court also differs from Eduardo's asseveration that the CA erred in settling, together with Joaquin's estate, the respective estates of Lucia, Jesus, Jose, Mercedes, and Gloria. A perusal of the November 21, 2006 CA Decision would readily show that the disposition of the properties related only to the settlement of the estate of Joaquin. Pursuant to Section 1, Rule 90 of the Rules of Court, x x x the RTC was specifically granted jurisdiction to determine who are the lawful heirs of Joaquin, as well as their respective shares after the payment of the obligations of the estate, as enumerated in the said provision. The inclusion of Lucia, Jesus, Jose, Mercedes, and Gloria in the distribution of the shares was merely a necessary consequence of the settlement of Joaquin's estate, they being his legal heirs.

6. REMEDIAL LAW; EVIDENCE; THE SUPREME COURT IS NOT A TRIER OF FACTS.— Indeed, this Court is not a trier of facts, and there appears no compelling reason to hold that

both courts erred in ruling that Joseph, Teresa, Walter de Santos, and Abelardo Dagoro rightfully participated in the estate of Joaquin. It was incumbent upon Sebastian to present competent evidence to refute his and Eduardo's admissions that Joseph and Teresa were heirs of Jose, and thus rightful heirs of Joaquin, and to timely object to the participation of Walter de Santos and Abelardo Dagoro. Unfortunately, Sebastian failed to do so. Nevertheless, Walter de Santos and Abelardo Dagoro had the right to participate in the estate in representation of the Joaquin's compulsory heirs, Gloria and Mercedes, respectively.

APPEARANCES OF COUNSEL

Joel Amos P. Alejandro for Ma. Teresa Agtarap and Agtarap.
Adolfo B. Ortiz for Sebastian G. Agtarap.
Antolin P. Camero for Eduardo Agtarap.
Albino B. Achas for A. Dagoro.
Marbibi and Associates Law Office for Walter de Santos and Wilfredo Keng.

D E C I S I O N

NACHURA, *J.*:

Before us are the consolidated petitions for review on *certiorari* of petitioners Sebastian G. Agtarap (Sebastian)[1] and Eduardo G. Agtarap (Eduardo),[2] assailing the Decision dated November 21, 2006[3] and the Resolution dated March 27, 2007[4] of the Court of Appeals (CA) in CA-G.R. CV No. 73916.

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[1] *Rollo* (G.R. No. 177192), pp. 3-15.

[2] *Rollo* (G.R. No. 177099), pp. 44-83.

[3] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Jose L. Sabio, Jr. and Rosalinda Asuncion-Vicente, concurring; *rollo* (G.R. No. 177192), pp. 16-37; *rollo* (G.R. No. 177099), pp. 85-106.

[4] *Id.* at 38-41, 108-111.

The antecedent facts and proceedings—

On September 15, 1994, Eduardo filed with the Regional Trial Court (RTC), Branch 114, Pasay City, a verified petition for the judicial settlement of the estate of his deceased father Joaquin Agtarap (Joaquin). It was docketed as Special Proceedings No. 94-4055.

The petition alleged that Joaquin died intestate on November 21, 1964 in Pasay City without any known debts or obligations. During his lifetime, Joaquin contracted two marriages, first with Lucia Garcia (Lucia),[5] and second with Caridad Garcia (Caridad). Lucia died on April 24, 1924. Joaquin and Lucia had three children—Jesus (died without issue), Milagros, and Jose (survived by three children, namely, Gloria,[6] Joseph, and Teresa[7]). Joaquin married Caridad on February 9, 1926. They also had three children—Eduardo, Sebastian, and Mercedes (survived by her daughter Cecile). At the time of his death, Joaquin left two parcels of land with improvements in Pasay City, covered by Transfer Certificates of Title (TCT) Nos. 873-(38254) and 874-(38255). Joseph, a grandson of Joaquin, had been leasing and improving the said realties and had been appropriating for himself ₱26,000.00 per month since April 1994.

Eduardo further alleged that there was an imperative need to appoint him as special administrator to take possession and charge of the estate assets and their civil fruits, pending the appointment of a regular administrator. In addition, he prayed that an order be issued (a) confirming and declaring the named compulsory heirs of Joaquin who would be entitled to participate in the estate; (b) apportioning and allocating unto the named heirs their aliquot shares in the estate in accordance with law; and (c) entitling the distributees the right to receive and enter

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[5] Also, Lucia Garcia Mendietta.

[6] Also, Gloria Agtarap-de Santos.

[7] Also, Maria Teresa Agtarap-Viriña.

into possession those parts of the estate individually awarded to them.

On September 26, 1994, the RTC issued an order setting the petition for initial hearing and directing Eduardo to cause its publication.

On December 28, 1994, Sebastian filed his comment, generally admitting the allegations in the petition, and conceding to the appointment of Eduardo as special administrator.

Joseph, Gloria, and Teresa filed their answer/opposition. They alleged that the two subject lots belong to the conjugal partnership of Joaquin with Lucia, and that, upon Lucia's death in April 1924, they became the *pro indiviso* owners of the subject properties. They said that their residence was built with the exclusive money of their late father Jose, and the expenses of the extensions to the house were shouldered by Gloria and Teresa, while the restaurant (Manong's Restaurant) was built with the exclusive money of Joseph and his business partner. They opposed the appointment of Eduardo as administrator on the following grounds: (1) he is not physically and mentally fit to do so; (2) his interest in the lots is minimal; and (3) he does not possess the desire to earn. They claimed that the best interests of the estate dictate that Joseph be appointed as special or regular administrator.

On February 16, 1995, the RTC issued a resolution appointing Eduardo as regular administrator of Joaquin's estate. Consequently, it issued him letters of administration.

On September 16, 1995, Abelardo Dagoro filed an answer in intervention, alleging that Mercedes is survived not only by her daughter Cecile, but also by him as her husband. He also averred that there is a need to appoint a special administrator to the estate, but claimed that Eduardo is not the person best qualified for the task.

After the parties were given the opportunity to be heard and to submit their respective proposed projects of partition, the

RTC, on October 23, 2000, issued an Order of Partition,[8] with the following disposition—

In the light of the filing by the heirs of their respective proposed projects of partition and the payment of inheritance taxes due the estate as early as 1965, and there being no claim in Court against the estate of the deceased, the estate of JOAQUIN AGTARAP is now consequently – ripe – for distribution among the heirs minus the surviving spouse Caridad Garcia who died on August 25, 1999.

Considering that the bulk of the estate property were acquired during the existence of the second marriage as shown by TCT No. (38254) and TCT No. (38255) which showed on its face that decedent was married to Caridad Garcia, which fact oppositors failed to contradict by evidence other than their negative allegations, the greater part of the estate is perforce accounted by the second marriage and the compulsory heirs thereunder.

The Administrator, Eduardo Agtarap rendered a true and just accounting of his administration from his date of assumption up to the year ending December 31, 1996 per Financial and Accounting Report dated June 2, 1997 which was approved by the Court. The accounting report included the income earned and received for the period and the expenses incurred in the administration, sustenance and allowance of the widow. In accordance with said Financial and Accounting Report which was duly approved by this Court in its Resolution dated July 28, 1998 – the deceased JOAQUIN AGTARAP left real properties consisting of the following:

I LAND:

Two lots and two buildings with one garage quarter located at #3030 Agtarap St., Pasay City, covered by Transfer Certificate of Title Nos. 38254 and 38255 and registered with the Registry of Deeds of Pasay City, Metro Manila, described as follows:

TCT NO.	LOT NO.	AREA/SQ.M.	ZONAL VALUE	AMOUNT
38254	745-B-1	1,335 sq. m.	₱5,000.00	₱6,675,000.00
38255	745-B-2	1,331 sq. m.	₱5,000.00	₱6,655,000.00
TOTAL				₱13,330,000.00

[8] *Rollo* (G.R. No. 177099), pp. 417-433.

II BUILDINGS AND IMPROVEMENTS:

BUILDING I (Lot # 745-B-1) ----------	₱350,000.00
BUILDING II (Lot # 745-B-2) ----------	320,000.00
Building Improvements ----------	97,500.00
Restaurant ----------	80,000.00
TOTAL ----------	₱847,500.00

TOTAL NET WORTH ---------- ₱14,177,500.00

WHEREFORE, the net assets of the estate of the late JOAQUIN AGTARAP with a total value of ₱14,177,500.00, together with whatever interest from bank deposits and all other incomes or increments thereof accruing after the Accounting Report of December 31, 1996, after deducting therefrom the compensation of the administrator and other expenses allowed by the Court, are hereby ordered distributed as follows:

TOTAL ESTATE – ₱14,177,500.00

CARIDAD AGTARAP – ½ of the estate as her conjugal share – ₱7,088,750.00, the other half of ₱7,088,750.00 – to be divided among the compulsory heirs as follows:

1) JOSE (deceased)	-	₱1,181,548.30
2) MILAGROS (deceased)	-	₱1,181,548.30
3) MERCEDES (deceased)	-	₱1,181,548.30
4) SEBASTIAN	-	₱1,181,548.30
5) EDUARDO	-	₱1,181,548.30
6) CARIDAD	-	₱1,181,548.30

The share of Milagros Agtarap as compulsory heir in the amount of ₱1,181,548.30 and who died in 1996 will go to Teresa Agtarap and Joseph Agtarap, Walter de Santos and half brothers Eduardo and Sebastian Agtarap in equal proportions.

TERESA AGTARAP	-	₱236,291.66
JOSEPH AGTARAP	-	₱236,291.66
WALTER DE SANTOS	-	₱236,291.66
SEBASTIAN AGTARAP	-	₱236,291.66
EDUARDO AGTARAP	-	₱236,291.66

Jose Agtarap died in 1967. His compulsory heirs are as follows:

COMPULSORY HEIRS:

1) GLORIA – (deceased) – represented by Walter de Santos – - ₱295,364.57
2) JOSEPH AGTARAP - ₱295,364.57
3) TERESA AGTARAP - ₱295,364.57
4) PRISCILLA AGTARAP - ₱295,364.57

Hence, Priscilla Agtarap will inherit ₱295,364.57.

Adding their share from Milagros Agtarap, the following heirs of the first marriage stand to receive the total amount of:

HEIRS OF THE FIRST MARRIAGE:

1) JOSEPH AGTARAP - ₱236,291.66 – share from Milagros Agtarap
₱295,364.57 – as compulsory heir of
₱531,656.23 Jose Agtarap

2) TERESA AGTARAP - ₱236,291.66 – share from Milagros Agtarap
₱295,364.57 – as compulsory heir of
₱531,656.23 Jose Agtarap

3) WALTER DE SANTOS - ₱236,291.66 – share from Milagros Agtarap
₱295,364.57 – as compulsory heir of
₱531,656.23 Jose Agtarap

HEIRS OF THE SECOND MARRIAGE:

a) CARIDAD AGTARAP - died on August 25, 1999
₱7,088,750.00 - as conjugal share
₱1,181,458.30 - as compulsory heir
Total of ₱8,270,208.30

b) SEBASTIAN AGTARAP - ₱1,181,458.38 – as compulsory heir
₱ 236,291.66 – share from Milagros

c) EDUARDO AGTARAP - ₱1,181,458.38 – as compulsory heir
₱ 236,291.66 – share from Milagros

d) MERCEDES - as represented by Abelardo Dagoro as the surviving spouse of a compulsory heir ₱1,181,458.38

REMAINING HEIRS OF CARIDAD AGTARAP:

1) SEBASTIAN AGTARAP
2) EDUARDO AGTARAP
   MERCEDES AGTARAP (Predeceased Caridad Agtarap)

In sum, Sebastian Agtarap and Eduardo Agtarap stand to inherit:

SEBASTIAN	–	₱4,135,104.10 – share from Caridad Garcia ₱1,181,458.30 – as compulsory heir ₱ 236,291.66 – share from Milagros ₱5,522,854.06
EDUARDO	–	₱4,135,104.10 – share from Caridad Garcia ₱1,181,458.30 – as compulsory heir ₱ 236,291.66 – share from Milagros ₱5,522,854.06

SO ORDERED.[9]

Eduardo, Sebastian, and oppositors Joseph and Teresa filed their respective motions for reconsideration.

On August 27, 2001, the RTC issued a resolution[10] denying the motions for reconsideration of Eduardo and Sebastian, and granting that of Joseph and Teresa. It also declared that the real estate properties belonged to the conjugal partnership of Joaquin and Lucia. It also directed the modification of the October 23, 2000 Order of Partition to reflect the correct sharing of the heirs. However, before the RTC could issue a new order of partition, Eduardo and Sebastian both appealed to the CA.

On November 21, 2006, the CA rendered its Decision, the dispositive portion of which reads—

WHEREFORE, premises considered, the instant appeals are **DISMISSED** for lack of merit. The assailed Resolution dated August 27, 2001 is **AFFIRMED** and pursuant thereto, the subject properties (Lot No. 745-B-1 [TCT No. 38254] and Lot No. 745-B-2 [TCT No.

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[9] *Id.* at 429-433.

[10] *Id.* at 434-438.

38255]) and the estate of the late Joaquin Agtarap are hereby partitioned as follows:

The two (2) properties, together with their improvements, embraced by TCT No. 38254 and TCT No. 38255, respectively, are first to be distributed among the following:

Lucia Mendietta	-	½ of the property. But since she is deceased, her share shall be inherited by Joaquin, Jesus, Milagros and Jose in equal shares.
Joaquin Agtarap	-	½ of the property and ¼ of the other half of the property which pertains to Lucia Mendietta's share.
Jesus Agtarap	-	¼ of Lucia Mendietta's share. But since he is already deceased (and died without issue), his inheritance shall, in turn, be acquired by Joaquin Agtarap.
Milagros Agtarap	-	¼ of Lucia Mendietta's share. But since she died in 1996 without issue, 5/8 of her inheritance shall be inherited by Gloria (represented by her husband Walter de Santos and her daughter Samantha), Joseph Agtarap and Teresa Agtarap, (in representation of Milagros' brother Jose Agtarap) and 1/8 each shall be inherited by Mercedes (represented by her husband Abelardo Dagoro and her daughter Cecile), Sebastian Eduardo, all surnamed Agtarap.
Jose Agtarap	-	¼ of Lucia Mendietta's share. But since he died in 1967, his inheritance shall be acquired by his wife Priscilla, and children Gloria (represented by her husband Walter de Santos and her daughter Samantha), Joseph

Agtarap and Teresa in equal shares.

Then, Joaquin Agtarap's estate, comprising three-fourths (3/4) of the subject properties and its improvements, shall be distributed as follows:

Caridad Garcia	-	1/6 of the estate. But since she died in 1999, her share shall be inherited by her children namely Mercedes Agtarap (represented by her husband Abelardo Dagoro and her daughter Cecilia), Sebastian Agtarap and Eduardo Agtarap in their own right, dividing the inheritance in equal shares.
Milagros Agtarap	-	1/6 of the estate. But since she died in 1996 without issue, 5/8 of her inheritance shall be inherited by Gloria (represented by her husband Walter de Santos and her daughter Samantha), Joseph Agtarap and Teresa Agtarap, (in representation of Milagros' brother Jose Agtarap) and 1/8 each shall be inherited by Mercedes (represented by her husband Abelardo Dagoro and her daughter Cecile), Sebastian and Eduardo, all surnamed Agtarap.
Jose Agtarap	-	1/6 of the estate. But since he died in 1967, his inheritance shall be acquired by his wife Priscilla, and children Gloria (represented by her husband Walter de Santos and her daughter Samantha), Joseph Agtarap and Teresa Agtarap in equal shares.
Mercedes Agtarap	-	1/6 of the estate. But since she died in 1984, her inheritance shall be acquired by her husband Abelardo Dagoro and her daughter Cecile in equal shares.

Sebastian Agtarap - 1/6 of the estate.

Eduardo Agtarap - 1/6 of the estate.

SO ORDERED.[11]

Aggrieved, Sebastian and Eduardo filed their respective motions for reconsideration.

In its Resolution dated March 27, 2007, the CA denied both motions. Hence, these petitions ascribing to the appellate court the following errors:

G.R. No. 177192

1. – The Court of Appeals erred in not considering the aforementioned important facts[12] which alter its Decision;

2. – The Court of Appeals erred in not considering the necessity of hearing the issue of legitimacy of respondents as heirs;

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[11] *Rollo* (G.R. No. 177192), pp. 33-36; (G.R. No. 177099), pp. 30-33.

[12] Sebastian claims that the CA ignored the following facts:

1. Sebastian's reply, dated October 1, 1996, questioning the legitimacy of oppositors Joseph and Teresa Agtarap and intervenor Abelardo Dagoro as heirs;
2. Sebastian's motion, dated January 3, 1997, to exclude Joseph, Teresa, and Abelardo Dagoro as heirs;
3. Sebastian's reply to the opposition to the motion to exclude, with a copy of TCT No. 8026 in the name of Milagros and Jose Agtarap, showing that the latter's wife is Presentacion and not Priscilla as claimed by Joseph and Teresa;
4. The Order, dated October 23, 2000, denying Sebastian's motion to exclude for his failure to present clear and convincing evidence on his allegations, and without a hearing conducted on the legitimacy issue;
5. The marriage contracts of Jose Agtarap, submitted by Joseph and Teresa, which are not admissible in evidence;
6. The brief belatedly filed by Joseph and Teresa was a reply brief; and
7. The failure of Abelardo Dagoro and Walter de Santos to oppose the motion to exclude, which operated as an implied admission of the allegations therein.

3. – The Court of Appeals erred in allowing violation of the law and in not applying the doctrines of collateral attack, estoppel, and *res judicata*.[13]

G.R. No. 177099

THE COURT OF APPEALS (FORMER TWELFTH DIVISION) DID NOT ACQUIRE JURISDICTION OVER THE ESTATE OF MILAGROS G. AGTARAP AND ERRED IN DISTRIBUTING HER INHERITANCE FROM THE ESTATE OF JOAQUIN AGTARAP NOTWITHSTANDING THE EXISTENCE OF HER LAST WILL AND TESTAMENT IN VIOLATION OF THE DOCTRINE OF PRECEDENCE OF TESTATE PROCEEDINGS OVER INTESTATE PROCEEDINGS.

II.

THE COURT OF APPEALS (FORMER TWELFTH DIVISION) ERRED IN DISMISSING THE DECISION APPEALED FROM FOR LACK OF MERIT AND IN AFFIRMING THE ASSAILED RESOLUTION DATED AUGUST 27, 2001 OF THE LOWER COURT HOLDING THAT THE PARCELS OF LAND COVERED BY TCT NO. 38254 AND TCT (NO.) 38255 OF THE REGISTRY OF DEEDS FOR THE CITY OF PASAY BELONG TO THE CONJUGAL PARTNERSHIP OF JOAQUIN AGTARAP MARRIED TO LUCIA GARCIA MENDIETTA NOTWITHSTANDING THEIR REGISTRATION UNDER THEIR EXISTING CERTIFICATES OF TITLE AS REGISTERED IN THE NAME OF JOAQUIN AGTARAP, *CASADO CON* CARIDAD GARCIA. UNDER EXISTING JURISPRUDENCE, THE PROBATE COURT HAS NO POWER TO DETERMINE THE OWNERSHIP OF THE PROPERTY DESCRIBED IN THESE CERTIFICATES OF TITLE WHICH SHOULD BE RESOLVED IN AN APPROPRIATE SEPARATE ACTION FOR A TORRENS TITLE UNDER THE LAW IS ENDOWED WITH INCONTESTABILITY UNTIL IT HAS BEEN SET ASIDE IN THE MANNER INDICATED IN THE LAW ITSELF.[14]

As regards his first and second assignments of error, Sebastian contends that Joseph and Teresa failed to establish by competent evidence that they are the legitimate heirs of their father Jose,

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[13] *Rollo* (G.R. No. 177192), p. 6.

[14] *Rollo* (G.R. No. 177099), pp. 57-58.

and thus of their grandfather Joaquin. He draws attention to the certificate of title (TCT No. 8026) they submitted, stating that the wife of their father Jose is Presentacion Garcia, while they claim that their mother is Priscilla. He avers that the marriage contracts proffered by Joseph and Teresa do not qualify as the best evidence of Jose's marriage with Priscilla, inasmuch as they were not authenticated and formally offered in evidence. Sebastian also asseverates that he actually questioned the legitimacy of Joseph and Teresa as heirs of Joaquin in his motion to exclude them as heirs, and in his reply to their opposition to the said motion. He further claims that the failure of Abelardo Dagoro and Walter de Santos to oppose his motion to exclude them as heirs had the effect of admitting the allegations therein. He points out that his motion was denied by the RTC without a hearing.

With respect to his third assigned error, Sebastian maintains that the certificates of title of real estate properties subject of the controversy are in the name of Joaquin Agtarap, married to Caridad Garcia, and as such are conclusive proof of their ownership thereof, and thus, they are not subject to collateral attack, but should be threshed out in a separate proceeding for that purpose. He likewise argues that estoppel applies against the children of the first marriage, since none of them registered any objection to the issuance of the TCTs in the name of Caridad and Joaquin only. He avers that the estate must have already been settled in light of the payment of the estate and inheritance tax by Milagros, Joseph, and Teresa, resulting to the issuance of TCT No. 8925 in Milagros' name and of TCT No. 8026 in the names of Milagros and Jose. He also alleges that *res judicata* is applicable as the court order directing the deletion of the name of Lucia, and replacing it with the name of Caridad, in the TCTs had long become final and executory.

In his own petition, with respect to his first assignment of error, Eduardo alleges that the CA erroneously settled, together with the settlement of the estate of Joaquin, the estates of Lucia, Jesus, Jose, Mercedes, Gloria, and Milagros, in contravention of the principle of settling only one estate in one proceeding. He particularly questions the distribution of the estate of Milagros

in the intestate proceedings despite the fact that a proceeding was conducted in another court for the probate of the will of Milagros, bequeathing all to Eduardo whatever share that she would receive from Joaquin's estate. He states that this violated the rule on precedence of testate over intestate proceedings.

Anent his second assignment of error, Eduardo contends that the CA gravely erred when it affirmed that the bulk of the realties subject of this case belong to the first marriage of Joaquin to Lucia, notwithstanding that the certificates of title were registered in the name of Joaquin Agtarap *casado con* ("married to") Caridad Garcia. According to him, the RTC, acting as an intestate court with limited jurisdiction, was not vested with the power and authority to determine questions of ownership, which properly belongs to another court with general jurisdiction.

The Court's Ruling

As to Sebastian's and Eduardo's common issue on the ownership of the subject real properties, we hold that the RTC, as an intestate court, had jurisdiction to resolve the same.

The general rule is that the jurisdiction of the trial court, either as a probate or an intestate court, relates only to matters having to do with the probate of the will and/or settlement of the estate of deceased persons, but does not extend to the determination of questions of ownership that arise during the proceedings.[15] The patent rationale for this rule is that such court merely exercises special and limited jurisdiction.[16] As held in several cases,[17] a probate court or one in charge of estate

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[15] *Sanchez v. Court of Appeals*, G.R. No. 108947, September 29, 1997, 279 SCRA 647; *Jimenez v. Intermediate Appellate Court*, G.R. No. 75773, April 17, 1990, 184 SCRA 367; *Ramos v. Court of Appeals*, G.R. No. 42108, December 29, 1989, 180 SCRA 635.

[16] *Heirs of Oscar R. Reyes v. Reyes*, G.R. No. 139587, November 22, 2000, 345 SCRA 541.

[17] *Sanchez v. Court of Appeals*, *supra* note 15; *Baybayan v. Aquino*, No. L-42678, April 9, 1987, 149 SCRA 186; *Morales v. Court of First Instance of Cavite*, G.R. No. L-47125, December 29, 1986, 146 SCRA 373; *Cuizon v. Ramolete*, G.R. No. 51291, May 29, 1984, 129 SCRA 495.

proceedings, whether testate or intestate, cannot adjudicate or determine title to properties claimed to be a part of the estate and which are claimed to belong to outside parties, not by virtue of any right of inheritance from the deceased but by title adverse to that of the deceased and his estate. All that the said court could do as regards said properties is to determine whether or not they should be included in the inventory of properties to be administered by the administrator. If there is no dispute, there poses no problem, but if there is, then the parties, the administrator, and the opposing parties have to resort to an ordinary action before a court exercising general jurisdiction for a final determination of the conflicting claims of title.

However, this general rule is subject to exceptions as justified by expediency and convenience.

First, the probate court may provisionally pass upon in an intestate or a testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to the final determination of ownership in a separate action.[18] Second, if the interested parties are all heirs to the estate, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to resolve issues on ownership.[19] Verily, its jurisdiction extends to matters incidental or collateral to the settlement and distribution of the estate, such as the determination of the status of each heir and whether the property in the inventory is conjugal or exclusive property of the deceased spouse.[20]

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[18] *Coca v. Pizarras Vda. de Pangilinan*, G.R. No. L-27082, January 31, 1978, 171 Phil. 246, 252; *Lachenal v. Salas*, L-42257, June 14, 1976, 71 SCRA 262, 266.

[19] *Coca v. Pizarras Vda. de Pangilinan, supra*; *Pascual v. Pascual*, 73 Phil. 561 (1942); *Alvarez v. Espiritu*, L-18833, August 14, 1965, 14 SCRA 892; *Cunanan v. Amparo*, 80 Phil. 227; Moran's Comments on the Rules of Court, 1970 Ed., p. 473.

[20] Regalado, *F.D. Remedial Law Compendium*. Vol. II, Eighth Revised Edition (2000), p. 11.

We hold that the general rule does not apply to the instant case considering that the parties are all heirs of Joaquin and that no rights of third parties will be impaired by the resolution of the ownership issue. More importantly, the determination of whether the subject properties are conjugal is but collateral to the probate court's jurisdiction to settle the estate of Joaquin.

It should be remembered that when Eduardo filed his verified petition for judicial settlement of Joaquin's estate, he alleged that the subject properties were owned by Joaquin and Caridad since the TCTs state that the lots were registered in the name of Joaquin Agtarap, married to Caridad Garcia. He also admitted in his petition that Joaquin, prior to contracting marriage with Caridad, contracted a first marriage with Lucia. Oppositors to the petition, Joseph and Teresa, however, were able to present proof before the RTC that TCT Nos. 38254 and 38255 were derived from a mother title, TCT No. 5239, dated March 17, 1920, in the name of *FRANCISCO VICTOR BARNES Y JOAQUIN AGTARAP, el primero casado con Emilia Muscat, y el Segundo con Lucia Garcia Mendietta* (FRANCISCO VICTOR BARNES *y* JOAQUIN AGTARAP, the first married to Emilia Muscat, and the second married to Lucia Garcia Mendietta).[21] When TCT No. 5239 was divided between Francisco Barnes and Joaquin Agtarap, TCT No. 10864, in the name of Joaquin Agtarap, married to Lucia Garcia Mendietta, was issued for a parcel of land, identified as Lot No. 745 of the Cadastral Survey of Pasay, Cadastral Case No. 23, G.L.R.O. Cadastral Record No. 1368, consisting of 8,872 square meters. This same lot was covered by TCT No. 5577 (32184)[22] issued on April 23, 1937, also in the name of Joaquin Agtarap, married to Lucia Garcia Mendietta.

The findings of the RTC and the CA show that Lucia died on April 24, 1924, and subsequently, on February 9, 1926, Joaquin married Caridad. It is worthy to note that TCT No. 5577 (32184) contained an annotation, which reads—

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[21] *Rollo* (G.R. No. 177099), pp. 389-390.

[22] *Id.* at 391-393.

Ap-4966 – *NOTA: Se ha enmendado el presente certificado de titulo, tal como aparece, tanchando las palabras "con Lucia Garcia Mendiet[t]a" y poniendo en su lugar, entre lineas y en tinta encarnada, las palabras "en segundas nupcias con Caridad Garcia", en complimiento de un orden de fecha 28 de abril de 1937, dictada por el Hon. Sixto de la Costa, juez del Juzgado de Primera Instancia de Rizal, en el expediente cadastal No. 23, G.L.R.O. Cad. Record No. 1368; copia de cual orden has sido presentada con el No. 4966 del Libro Diario, Tomo 6.0 y, archivada en el Legajo T-No. 32184.*

Pasig, Rizal, a 29 abril de 1937.[23]

Thus, per the order dated April 28, 1937 of Hon. Sixto de la Costa, presiding judge of the Court of First Instance of Rizal, the phrase *con Lucia Garcia Mendiet[t]a* was crossed out and replaced by *en segundas nuptias con Caridad Garcia*, referring to the second marriage of Joaquin to Caridad. It cannot be gainsaid, therefore, that prior to the replacement of Caridad's name in TCT No. 32184, Lucia, upon her demise, already left, as her estate, one-half (1/2) conjugal share in TCT No. 32184. Lucia's share in the property covered by the said TCT was carried over to the properties covered by the certificates of title derivative of TCT No. 32184, now TCT Nos. 38254 and 38255. And as found by both the RTC and the CA, Lucia was survived by her compulsory heirs – Joaquin, Jesus, Milagros, and Jose.

Section 2, Rule 73 of the Rules of Court provides that when the marriage is dissolved by the death of the husband or the wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid; in the testate or intestate proceedings of the deceased spouse, and if both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either. Thus, the RTC had jurisdiction to determine whether the properties are conjugal as it had to liquidate the conjugal partnership to determine the estate of the decedent. In fact, should Joseph and Teresa institute a settlement proceeding for the intestate estate of Lucia, the

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[23] *Id.* at 391.

same should be consolidated with the settlement proceedings of Joaquin, being Lucia's spouse.[24] Accordingly, the CA correctly distributed the estate of Lucia, with respect to the properties covered by TCT Nos. 38254 and 38255 subject of this case, to her compulsory heirs.

Therefore, in light of the foregoing evidence, as correctly found by the RTC and the CA, the claim of Sebastian and Eduardo that TCT Nos. 38254 and 38255 conclusively show that the owners of the properties covered therein were Joaquin and Caridad by virtue of the registration in the name of Joaquin Agtarap *casado con* (married to) Caridad Garcia, deserves scant consideration. This cannot be said to be a collateral attack on the said TCTs. Indeed, simple possession of a certificate of title is not necessarily conclusive of a holder's true ownership of property.[25] A certificate of title under the Torrens system aims to protect dominion; it cannot be used as an instrument for the deprivation of ownership.[26] Thus, the fact that the properties were registered in the name of Joaquin Agtarap, married to Caridad Garcia, is not sufficient proof that the properties were acquired during the spouses' coverture.[27] The phrase "married to Caridad Garcia" in the TCTs is merely descriptive of the civil status of Joaquin as the registered owner, and does not necessarily prove that the realties are their conjugal properties.[28]

Neither can Sebastian's claim that Joaquin's estate could have already been settled in 1965 after the payment of the

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[24] *Bernardo, et al. v. CA, et al.*, L-18148, Feb. 28, 1963, cited in Regalado, F.D. *Remedial Law Compendium*, Vol. II, Eighth Revised Edition (2000), p. 9.

[25] *Bejoc v. Cabreros*, G.R. No. 145849, July 22, 2005, 464 SCRA 78, 87.

[26] *Joaquino v. Reyes*, G.R. No. 154645, July 13, 2004, 434 SCRA 260, 273.

[27] *Jocson v. Court of Appeals*, G.R. No. 55322, February 16, 1989, 170 SCRA 333, 345.

[28] *Magallon v. Montejo*, G.R. No. 73733, December 16, 1986, 146 SCRA 282, 292.

inheritance tax be upheld. Payment of the inheritance tax, *per se*, does not settle the estate of a deceased person. As provided in Section 1, Rule 90 of the Rules of Court—

> SECTION 1. *When order for distribution of residue made.* — When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive share to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.
>
> No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

Thus, an estate is settled and distributed among the heirs only after the payment of the debts of the estate, funeral charges, expenses of administration, allowance to the widow, and inheritance tax. The records of these cases do not show that these were complied with in 1965.

As regards the issue raised by Sebastian on the legitimacy of Joseph and Teresa, suffice it to say that both the RTC and the CA found them to be the legitimate children of Jose. The RTC found that Sebastian did not present clear and convincing evidence to support his averments in his motion to exclude them as heirs of Joaquin, aside from his negative allegations. The RTC also noted the fact of Joseph and Teresa being the children of Jose was never questioned by Sebastian and Eduardo, and the latter two even admitted this in their petitions, as well

as in the stipulation of facts in the August 21, 1995 hearing.[29] Furthermore, the CA affirmed this finding of fact in its November 21, 2006 Decision.[30]

Also, Sebastian's insistence that Abelardo Dagoro and Walter de Santos are not heirs to the estate of Joaquin cannot be sustained. Per its October 23, 2000 Order of Partition, the RTC found that Gloria Agtarap de Santos died on May 4, 1995, and was later substituted in the proceedings below by her husband Walter de Santos. Gloria begot a daughter with Walter de Santos, Georgina Samantha de Santos. The RTC likewise noted that, on September 16, 1995, Abelardo Dagoro filed a motion for leave of court to intervene, alleging that he is the surviving spouse of Mercedes Agtarap and the father of Cecilia Agtarap Dagoro, and his answer in intervention. The RTC later granted the motion, thereby admitting his answer on October 18, 1995.[31] The CA also noted that, during the hearing of the motion to intervene on October 18, 1995, Sebastian and Eduardo did not interpose any objection when the intervention was submitted to the RTC for resolution.[32]

Indeed, this Court is not a trier of facts, and there appears no compelling reason to hold that both courts erred in ruling that Joseph, Teresa, Walter de Santos, and Abelardo Dagoro rightfully participated in the estate of Joaquin. It was incumbent upon Sebastian to present competent evidence to refute his and Eduardo's admissions that Joseph and Teresa were heirs of Jose, and thus rightful heirs of Joaquin, and to timely object to the participation of Walter de Santos and Abelardo Dagoro. Unfortunately, Sebastian failed to do so. Nevertheless, Walter de Santos and Abelardo Dagoro had the right to participate in

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[29] October 23, 2000 Order of Partition and August 27, 2001 Resolution, *rollo* (G.R. No. 177099), pp. 422 and 437, respectively.

[30] *Id.* at 21.

[31] *Id.* at 419-420.

[32] *Id.* at 21.

the estate in representation of the Joaquin's compulsory heirs, Gloria and Mercedes, respectively.[33]

This Court also differs from Eduardo's asseveration that the CA erred in settling, together with Joaquin's estate, the respective estates of Lucia, Jesus, Jose, Mercedes, and Gloria. A perusal of the November 21, 2006 CA Decision would readily show that the disposition of the properties related only to the settlement of the estate of Joaquin. Pursuant to Section 1, Rule 90 of the Rules of Court, as cited above, the RTC was specifically granted jurisdiction to determine who are the lawful heirs of Joaquin, as well as their respective shares after the payment of the obligations of the estate, as enumerated in the said provision. The inclusion of Lucia, Jesus, Jose, Mercedes, and Gloria in the distribution of the shares was merely a necessary consequence of the settlement of Joaquin's estate, they being his legal heirs.

However, we agree with Eduardo's position that the CA erred in distributing Joaquin's estate pertinent to the share allotted in favor of Milagros. Eduardo was able to show that a separate proceeding was instituted for the probate of the will allegedly executed by Milagros before the RTC, Branch 108, Pasay City.[34] While there has been no showing that the alleged will of Milagros, bequeathing all of her share from Joaquin's estate in favor of Eduardo, has already been probated and approved, prudence dictates that this Court refrain from distributing Milagros' share in Joaquin's estate.

It is also worthy to mention that Sebastian died on January 15, 2010, per his Certificate of Death.[35] He is survived by his wife Teresita B. Agtarap (Teresita) and his children Joaquin

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[33] CIVIL CODE, Art. 970.

Art. 970. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited.

[34] *Rollo* (G.R. No. 177099), pp. 137-165.

[35] *Id.* at 490.

Julian B. Agtarap (Joaquin Julian) and Ana Ma. Agtarap Panlilio (Ana Ma.).

Henceforth, in light of the foregoing, the assailed November 21, 2006 Decision and the March 27, 2007 Resolution of the CA should be affirmed with modifications such that the share of Milagros shall not yet be distributed until after the final determination of the probate of her purported will, and that Sebastian shall be represented by his compulsory heirs.

WHEREFORE, the petition in G.R. No. 177192 is *DENIED* for lack of merit, while the petition in G.R. No. 177099 is *PARTIALLY GRANTED*, such that the Decision dated November 21, 2006 and the Resolution dated March 27, 2007 of the Court of Appeals are *AFFIRMED* with the following *MODIFICATIONS*: that the share awarded in favor of Milagros Agtarap shall not be distributed until the final determination of the probate of her will, and that petitioner Sebastian G. Agtarap, in view of his demise on January 15, 2010, shall be represented by his wife Teresita B. Agtarap and his children Joaquin Julian B. Agtarap and Ana Ma. Agtarap Panlilio.

These cases are hereby remanded to the Regional Trial Court, Branch 114, Pasay City, for further proceedings in the settlement of the estate of Joaquin Agtarap. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178409. June 8, 2011]

YOLITO FADRIQUELAN, ARTURO EGUNA, ARMANDO MALALUAN, DANILO ALONSO, ROMULO DIMAANO, ROEL MAYUGA, WILFREDO RIZALDO, ROMEO SUICO, DOMINGO ESCAMILLAS and DOMINGO BAUTRO, *petitioners, vs.* **MONTEREY FOODS CORPORATION,** *respondent.*

[G.R. No. 178434. June 8, 2011]

MONTEREY FOODS CORPORATION, *petitioner, vs.* **BUKLURAN NG MGA MANGGAGAWA SA MONTEREY-ILAW AT BUKLOD NG MANGGAGAWA, YOLITO FADRIQUELAN, CARLITO ABACAN, ARTURO EGUNA, DANILO ROLLE, ALBERTO CASTILLO, ARMANDO MALALUAN, DANILO ALFONSO, RUBEN ALVAREZ, ROMULO DIMAANO, ROEL MAYUGA, JUANITO TENORIO, WILFREDO RIZALDO, JOHN ASOTIGUE, NEMESIO AGTAY, ROMEO SUICO, DOMINGO ESCAMILLAS and DOMINGO BAUTRO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKE; A STRIKE CONDUCTED AFTER THE SECRETARY OF LABOR ASSUMED JURISDICTION OVER THE LABOR DISPUTE IS ILLEGAL AND ANY UNION OFFICER WHO KNOWINGLY PARTICIPATES IN THE SAME MAY BE DECLARED AS HAVING LOST HIS EMPLOYMENT.— The law is explicit: no strike shall be declared after the Secretary of Labor has assumed jurisdiction over a labor dispute. A strike conducted after such assumption is illegal and any union officer who knowingly participates in the same may be declared as having lost his employment. Here, what is involved is a slowdown strike. Unlike other forms of strike, the employees involved in

a slowdown do not walk out of their jobs to hurt the company. They need only to stop work or reduce the rate of their work while generally remaining in their assigned post. The Court finds that the union officers and members in this case held a slowdown strike at the company's farms despite the fact that the DOLE Secretary had on May 12, 2003 already assumed jurisdiction over their labor dispute. The evidence sufficiently shows that union officers and members simultaneously stopped work at the company's Batangas and Cavite farms at 7:00 a.m. on May 26, 2003.

2. **ID.; ID.; ID.; LIABILITY OF THE ORDINARY WORKERS AND THE UNION OFFICERS WHO PARTICIPATED IN THE ILLEGAL STRIKE, DISTINGUISHED.—** A distinction exists, however, between the ordinary workers' liability for illegal strike and that of the union officers who participated in it. The ordinary worker cannot be terminated for merely participating in the strike. There must be proof that he committed illegal acts during its conduct. On the other hand, a union officer can be terminated upon mere proof that he knowingly participated in the illegal strike.

3. **ID.; TERMINATION OF EMPLOYMENT; DISMISSAL OF THE EMPLOYEE IS UNJUSTIFIED WHERE THE EMPLOYER FAILED TO PROVE THAT THE SAME WAS FOR JUST CAUSE.—** In termination cases, the dismissed employee is not required to prove his innocence of the charges against him. The burden of proof rests upon the employer to show that the employee's dismissal was for just cause. The employer's failure to do so means that the dismissal was not justified. Here, the company failed to show that all 17 union officers deserved to be dismissed.

4. **ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT AND BACKWAGES; GRANT OF SEPARATION PAY, IN LIEU OF REINSTATEMENT, PROPER WHERE REINSTATEMENT IS NO LONGER PRACTICAL OR WILL BE FOR THE BEST INTEREST OF THE PARTIES; AWARD OF 10% ATTORNEY'S FEES, WARRANTED.—** Ordinarily, the illegally dismissed employees are entitled to two reliefs: reinstatement and backwages. Still, the Court has held that the grant of separation pay, instead of reinstatement, may be proper especially when as in this case such reinstatement is no longer

practical or will be for the best interest of the parties. But they shall likewise be entitled to attorney's fees equivalent to 10% of the total monetary award for having been compelled to litigate in order to protect their interests.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for Monterey Food Corp.

Pro-Labor Legal Assistance Center for Bukluran ng Manggagawa, Y. Fadriquelan, *et al.*

D E C I S I O N

ABAD, *J.*:

These cases are about the need to clearly identify, for establishing liability, the union officers who took part in the illegal slowdown strike after the Department of Labor and Employment (DOLE) Secretary assumed jurisdiction over the labor dispute.

The Facts and the Case

On April 30, 2002 the three-year collective bargaining agreement or CBA between the union *Bukluran ng Manggagawa sa* Monterey-*Ilaw at Buklod ng Manggagawa* (the union) and Monterey Foods Corporation (the company) expired. On March 28, 2003 after the negotiation for a new CBA reached a deadlock, the union filed a notice of strike with the National Conciliation and Mediation Board (NCMB). To head off the strike, on April 30, 2003 the company filed with the DOLE a petition for assumption of jurisdiction over the dispute in view of its dire effects on the meat industry. In an Order dated May 12, 2003, the DOLE Secretary assumed jurisdiction over the dispute and enjoined the union from holding any strike. It also directed the union and the company to desist from taking any action that may aggravate the situation.

On May 21, 2003 the union filed a second notice of strike before the NCMB on the alleged ground that the company

committed unfair labor practices. On June 10, 2003 the company sent notices to the union officers, charging them with intentional acts of slowdown. Six days later or on June 16 the company sent new notices to the union officers, informing them of their termination from work for defying the DOLE Secretary's assumption order.

On June 23, 2003, acting on motion of the company, the DOLE Secretary included the union's second notice of strike in his earlier assumption order. But, on the same day, the union filed a third notice of strike based on allegations that the company had engaged in union busting and illegal dismissal of union officers. On July 7, 2003 the company filed a petition for certification of the labor dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration but the DOLE Secretary denied the motion. He, however, subsumed the third notice of strike under the first and second notices.

On November 20, 2003 the DOLE rendered a decision that, among other things, upheld the company's termination of the 17 union officers. The union and its officers appealed the decision to the Court of Appeals (CA).

On May 29, 2006 the CA rendered a decision, upholding the validity of the company's termination of 10 union officers but declaring illegal that of the other seven. Both parties sought recourse to this Court, the union in G.R. 178409 and the company in G.R. 178434.

The Issues Presented

The issues these cases present are:

1. Whether or not the CA erred in holding that slowdowns actually transpired at the company's farms; and

2. Whether or not the CA erred in holding that union officers committed illegal acts that warranted their dismissal from work.

The Rulings of the Court

First. The law is explicit: no strike shall be declared after the Secretary of Labor has assumed jurisdiction over a labor

dispute. A strike conducted after such assumption is illegal and any union officer who knowingly participates in the same may be declared as having lost his employment.[1] Here, what is involved is a slowdown strike. Unlike other forms of strike, the employees involved in a slowdown do not walk out of their jobs to hurt the company. They need only to stop work or reduce the rate of their work while generally remaining in their assigned post.

The Court finds that the union officers and members in this case held a slowdown strike at the company's farms despite the fact that the DOLE Secretary had on May 12, 2003 already assumed jurisdiction over their labor dispute. The evidence sufficiently shows that union officers and members simultaneously stopped work at the company's Batangas and Cavite farms at 7:00 a.m. on May 26, 2003.

The union of course argues that it merely held assemblies to inform members of the developments in the CBA negotiation, not protest demonstrations over it. But as the CA correctly observed, if the meetings had really been for the stated reason, why did the union officers and members from separate company farms choose to start and end their meetings at the same time and on the same day? And if they did not intend a slowdown, why did they not hold their meetings after work. There is no allegation that the company prevented the union from holding meetings after working hours.

Second. A distinction exists, however, between the ordinary workers' liability for illegal strike and that of the union officers who participated in it. The ordinary worker cannot be terminated for merely participating in the strike. There must be proof that he committed illegal acts during its conduct. On the other hand, a union officer can be terminated upon mere proof that he knowingly participated in the illegal strike.[2]

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[1] LABOR CODE, Article 264 (a).

[2] *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.*, G.R. No. 140992, March 25, 2004, 426 SCRA 319, 328.

Still, the participating union officers have to be properly identified.[3] The CA held that the company illegally terminated union officers Ruben Alvarez, John Asotigue, Alberto Castillo, Nemesio Agtay, Carlito Abacan, Danilo Rolle, and Juanito Tenorio, there being no substantial evidence that would connect them to the slowdowns. The CA said that their part in the same could not be established with certainty.

But, although the witnesses did not say that Asotigue, Alvarez, and Rolle took part in the work slowdown, these officers gave no credible excuse for being absent from their respective working areas during the slowdown. Tenorio allegedly took a break and never went back to work. He claimed that he had to attend to an emergency but did not elaborate on the nature of such emergency. In Abacan's case, however, he explained that he was not feeling well on May 26, 2003 and so he decided to take a two-hour rest from work. This claim of Abacan is consistent with the report[4] that only one officer (Tenorio) was involved in the slowdown at the Calamias farm.

At the Quilo farm, the farm supervisor did not include Castillo in the list of employees who failed to report for work on May 26, 2003.[5] In Agtay's case, the evidence is that he was on his rest day. There is no proof that the union's president, Yolito Fadriquelan, did not show up for work during the slowdowns. The CA upheld his dismissal, relying solely on a security guard's report that the company submitted as evidence. But, notably, that report actually referred to a Rolly Fadrequellan, another employee who allegedly took part in the Lipa farm slowdown. Besides, Yolito Fadriquelan was then assigned at the General Trias farm in Cavite, not at the Lipa farm. In fact, as shown in the sworn statements[6] of the Cavite farm employees,

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[3] *Sukhothai Cuisine and Restaurant v. Court of Appeals*, G.R. No. 150437, July 17, 2006, 495 SCRA 336, 355.

[4] *Rollo* (G.R. 178409), p. 188.

[5] *Rollo* (G.R. 178434), pp. 49-50.

[6] *Rollo* (G.R. 178409), pp. 23-26.

Fadriquelan even directed them not to do anything which might aggravate the situation. This clearly shows that his dismissal was mainly based on his being the union president.

The Court sustains the validity of the termination of the rest of the union officers. The identity and participations of Arturo Eguna,[7] Armando Malaluan,[8] Danilo Alonso,[9] Romulo Dimaano,[10] Roel Mayuga,[11] Wilfredo Rizaldo,[12] Romeo Suico,[13] Domingo Escamillas,[14] and Domingo Bautro[15] in the slowdowns were properly established. These officers simply refused to work or they abandoned their work to join union assemblies.

In termination cases, the dismissed employee is not required to prove his innocence of the charges against him. The burden of proof rests upon the employer to show that the employee's dismissal was for just cause. The employer's failure to do so means that the dismissal was not justified.[16] Here, the company failed to show that all 17 union officers deserved to be dismissed.

Ordinarily, the illegally dismissed employees are entitled to two reliefs: reinstatement and backwages. Still, the Court has held that the grant of separation pay, instead of reinstatement, may be proper especially when as in this case such reinstatement is no longer practical or will be for the best interest of the

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[7] Annex "C-27", CA *rollo*, p. 292.

[8] Annex "C-3", *id.* at 268; Annex "C-4", *id.* at 269; Annex "C-8", *id.* at 273.

[9] *Id.*

[10] Annex "C-36", *id.* at 302.

[11] Annex "C-35", *id.* at 301.

[12] *Supra* note 8.

[13] *Supra* note 7.

[14] Annex "C-8", CA *rollo*, p. 273.

[15] Annex "C-29", *id.* at 294.

[16] *Lima Land, Inc. v. Cuevas*, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 45.

parties.[17] But they shall likewise be entitled to attorney's fees equivalent to 10% of the total monetary award for having been compelled to litigate in order to protect their interests.[18]

WHEREFORE, the Court *MODIFIES* the decision of the Court of Appeals in CA-G.R. SP 82526, *DECLARES* Monterey Foods Corporation's dismissal of Alberto Castillo, Nemesio Agtay, Carlito Abacan, and Yolito Fadriquelan illegal, and *ORDERS* payment of their separation pay equivalent to one month salary for every year of service up to the date of their termination. The Court also *ORDERS* the company to pay 10% attorney's fees as well as interest of 6% *per annum* on the due amounts from the time of their termination and 12% *per annum* from the time this decision becomes final and executory until such monetary awards are paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178771. June 8, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALBERTO ANTICAMARA *y* CABILLO and FERNANDO CALAGUAS FERNANDEZ *a.k.a.* LANDO CALAGUAS,** *appellants.*

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[17] *Malig-on v. Equitable General Services, Inc.*, G.R. No. 185269, June 29, 2010, 622 SCRA 326, 331.

[18] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; REQUISITES TO BE SUFFICIENT TO SUSTAIN CONVICTION; PRESENT.— Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. Circumstantial evidence is sufficient to sustain conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator. In this case, the circumstantial evidence presented by the prosecution, when analyzed and taken together, lead to the inescapable conclusion that the appellants are responsible for the death of Sulpacio.

2. CRIMINAL LAW; CONSPIRACY; WHEN PRESENT; EXPLAINED.— Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.

3. ID.; EXEMPTING CIRCUMSTANCE; UNDER THE COMPULSION OF AN IRRESISTIBLE FORCE OR UNDER THE IMPULSE OF AN UNCONTROLLABLE

FEAR OF EQUAL OR GREATER INJURY; REQUISITES TO PROSPER; NOT PRESENT.— Appellant Al attempts to evade criminal liability by alleging that he was only forced to participate in the commission of the crime because he and his family were threatened to be killed. Al's defense fails to impress us. Under Article 12 of the Revised Penal Code, a person is exempt from criminal liability if he acts under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear of equal or greater injury, because such person does not act with freedom. To avail of this exempting circumstance, the evidence must establish: (1) the existence of an uncontrollable fear; (2) that the fear must be real and imminent; and (3) the fear of an injury is greater than, or at least equal to, that committed. For such defense to prosper, the duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough. There is nothing in the records to substantiate appellant Al's insistence that he was under duress from his co-accused while participating in the crime that would suffice to exempt him from incurring criminal liability.x x x. [A]l did not make any effort to perform an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof that would exempt himself from criminal liability. Therefore, it is obvious that he willingly agreed to be a part of the conspiracy.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION OF THE TESTIMONY OF THE WITNESSES IS GIVEN GREAT WEIGHT.— Appellant Lando denied having committed the crime charged and interposed alibi as a defense. He claims that at the time of the incident he was in his house at Tarlac, together with his family. On the other hand, the appellants were positively identified by AAA, as two (2) of the six (6) malefactors who forcibly took her and Sulpacio from the Estrella house in the early morning of May 7, 2002. Both the trial court and the CA found the testimony of AAA credible. The Court gives great weight to the trial court's evaluation of the testimony of a witness because it had the opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying; thus, making it in a better position to determine whether a witness is lying or telling the truth.

5. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, ARE NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW.— Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellants.

6. ID.; ID.; DEFENSE OF ALIBI; TO PROSPER, THE ACCUSED MUST PROVE PHYSICAL IMPOSSIBILITY TO BE AT THE *LOCUS CRIMINIS* AT THE TIME OF THE INCIDENT; POSITIVE IDENTIFICATION DESTROYS THE DEFENSE OF ALIBI AND RENDERS IT IMPOTENT, ESPECIALLY WHERE SUCH IDENTIFICATION IS CREDIBLE AND CATEGORICAL.— As to the defense of alibi. Aside from the testimony of appellant Lando that he was in Tarlac at the time of the incident, the defense was unable to show that it was physically impossible for Lando to be at the scene of the crime. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail. During the trial of the case, Lando testified that the distance between his house in Brgy. Maligaya, San Miguel, Tarlac to the town of Rosales, Pangasinan is only around forty (40) kilometers. Such distance can be traversed in less than 30 minutes using a private car and when the travel is continuous. Thus, it was not physically impossible for the appellant Lando to be at the *locus criminis*

at the time of the incident. In addition, positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.

7. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; CONDITIONS TO EXIST; PRESENT.— In convicting the appellants, the courts *a quo* appreciated treachery in qualifying the killing to murder and evident premeditation in imposing the penalty of death. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. Two conditions must concur for treachery to exist, namely, (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted. In the case at bar, it was proven that when AAA boarded the vehicle, she saw Sulpacio tied and blindfolded. Later, when they reached the fishpond, Sulpacio, still tied and blindfolded, was led out of the vehicle by the group. When the remains of Sulpacio was thereafter found by the authorities, the autopsy report indicated that a piece of cloth was found wrapped around the eye sockets and tied at the back of the skull and another cloth was also found tied at the left wrist of the victim. There is no question therefore, that the victim's body, when found, still had his hands tied and blindfolded. This situation of the victim when found shows without doubt that he was killed while tied and blindfolded; hence, the qualifying aggravating circumstance of treachery was present in the commission of the crime.

8. ID.; ID.; EVIDENT PREMEDITATION; REQUISITES; ESTABLISHED.— The circumstance of evident premeditation requires proof showing: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act. The essence of premeditation is that the execution of the act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. From the time the group met at the landing field

at around 6:30 p.m. of May 6, 2002, and discussed the possibility of killing anyone who stands on their way, up to the time they took Sulpacio away from the Estrellas' house and eventually killed him thereafter at around past 3:00 a.m., more than eight hours had elapsed – sufficient for the appellants to reflect on the consequences of their actions and desist from carrying out their evil scheme, if they wished to. Instead, appellants evidently clung to their determination and went ahead with their nefarious plan.

9. ID.; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS.— The Court finds appellant Lando guilty of the special complex crime of kidnapping and serious illegal detention with rape, defined in and penalized under Article 267 of the Revised Penal Code. The elements of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.

10. ID.; ID.; ESSENCE THEREOF IS THE ACTUAL DEPRIVATION OF THE VICTIM'S LIBERTY, COUPLED WITH INDUBITABLE PROOF OF THE INTENT OF THE ACCUSED TO EFFECT SUCH DEPRIVATION.— It is settled that the crime of serious illegal detention consists not only of placing a person in an enclosure, but also in detaining him or depriving him in any manner of his liberty. For there to be kidnapping, it is enough that the victim is restrained from going home. Its essence is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation. Although AAA was not confined in an enclosure, she was restrained and deprived of her liberty, because every time appellant Lando and his wife went out of the house, they brought AAA with them. The foregoing only shows that AAA was constantly guarded by appellant Lando and his family.

11. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE VICTIM'S TESTIMONY IS CREDIBLE, IT MAY BE THE SOLE BASIS FOR THE ACCUSED'S CONVICTION.— The crime of rape was also established by the prosecution. Appellant Lando succeeded in having carnal knowledge of AAA through the use of threat and intimidation. AAA testified that on May 9, 2002, appellant Lando brought her to a hotel to hide her from Fred and Bert, who intended to kill her. Appellant Lando told her to follow his orders, otherwise, he will give her to Fred and Bert. While in the hotel, appellant Lando raped her. Clearly, for fear of being delivered to Fred and Bert and of losing her life, AAA had no choice but to give in to appellant Lando's lustful assault. In rape cases, the credibility of the victim's testimony is almost always the single most important factor. When the victim's testimony is credible, it may be the sole basis for the accused's conviction. This is so because owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party.

12. CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION WITH RAPE; THE MAXIMUM PENALTY SHALL BE IMPOSED WHEN THE VICTIM IS KILLED OR DIES AS A CONSEQUENCE OF THE DETENTION, OR IS RAPED OR SUBJECTED TO TORTURE OR DEHUMANIZING ACTS.— The last paragraph of Article 267 of the Revised Penal Code provides that if the victim is killed or dies as a consequence of the detention, or is raped or subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. In *People v. Larrañaga*, this provision gives rise to a special complex crime. Thus, We hold that appellant Lando is guilty beyond reasonable doubt of the special complex crime of kidnapping and serious illegal detention with rape in Criminal Case No. 4481-R.

13. ID.; ID.; A CONSPIRATOR CANNOT BE HELD LIABLE FOR THE SUBSEQUENT COMMISSION OF THE CRIME OF RAPE WHERE THERE IS NO EVIDENCE TO PROVE THAT HE WAS AWARE THAT HIS CO-CONSPIRATOR RAPED THE VICTIM AFTER THEY KIDNAPPED HER, SO THAT HE COULD HAVE PREVENTED THE SAME.— [T]he Court does not agree with the CA and trial court's judgment finding appellant Alliable for Rape in Criminal Case No. 4481-

R. In *People v. Canturia,* the Court held that: x x x For while the evidence does convincingly show a conspiracy among the accused, it also as convincingly suggests that the agreement was to commit robbery only; and there is no evidence that the other members of the band of robbers were aware of Canturia's lustful intent and his consummation thereof so that they could have attempted to prevent the same. x x x The foregoing principle is applicable in the present case because the crime of robbery with rape is a special complex crime defined in and penalized under Article 294, paragraph 1 of the Revised Penal Code, and the crime of kidnapping with rape in this case is likewise a special complex crime as held in the case of *People v. Larrañaga.* There is no evidence to prove that appellant Al was aware of the subsequent events that transpired after the killing of Sulpacio and the kidnapping of AAA. Appellant Al could not have prevented appellant Lando from raping AAA, because at the time of rape, he was no longer associated with appellant Lando. AAA even testified that only Fred and appellant Lando brought her to Tarlac, and she never saw appellant Al again after May 7, 2002, the day she was held captive. She only saw appellant Al once more during the trial of the case. Thus, appellant Al cannot be held liable for the subsequent rape of AAA.

14. ID.; MURDER; IMPOSABLE PENALTY WHERE THE COMMISSION OF THE CRIME WAS ATTENDED BY THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION.— In Criminal Case No. 4498-R, the attendant circumstance of treachery qualified the killing to murder. The penalty for murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. Since the aggravating circumstance of evident premeditation was alleged and proven, the imposable penalty upon the appellants is death, pursuant to Article 63, paragraph 1, of the Revised Penal Code. In view, however, of the passage of R.A. No. 9346, prohibiting the imposition of the death penalty, the penalty of death is reduced to *reclusion perpetua*, without eligibility for parole.

15. ID.; ID.; CIVIL LIABILITY OF THE ACCUSED-APPELLANTS.— In Criminal Case No. 4498-R, the award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. In *People v. Quiachon*, even if the penalty of death is not to be imposed because of the prohibition in R.A. 9346, the

civil indemnity of ₱75,000.00 is proper, because it is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. As explained in *People v. Salome*, while R.A. No. 9346 prohibits the imposition of the death penalty, the fact remains that the penalty provided for by law for a heinous offense is still death, and the offense is still heinous. Accordingly, the award of civil indemnity in the amount of ₱75,000.00 is proper. Anent moral damages, the same are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. However, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00. The award of exemplary damages is in order, because of the presence of the aggravating circumstances of treachery and evident premeditation in the commission of the crime. The Court awards the amount of ₱30,000.00, as exemplary damages, in line with current jurisprudence on the matter. Actual damages is also warranted. Modesta Abad, the spouse of victim Sulpacio, incurred expenses in the amount of ₱57,122.30, which was duly supported by receipts.

16. ID.; KIDNAPPING AND SERIOUS ILLEGAL DETENTION WITH RAPE; PROPER PENALTY.— In Criminal Case No. 4481-R, the penalty for the special complex crime of kidnapping and serious illegal detention with rape is death. In view of R.A. No. 9346, the penalty of death is reduced to *reclusion perpetua*, without eligibility for parole. Accordingly, the imposable penalty for appellant Lando is *reclusion perpetua.*

17. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS.— In Criminal Case No. 4481-R, AAA is entitled to civil indemnity in line with prevailing jurisprudence that civil indemnification is mandatory upon the finding of rape. Applying prevailing jurisprudence, AAA is entitled to ₱75,000.00 as civil indemnity. In addition, AAA is entitled to moral damages pursuant to Article 2219 of the Civil Code, without the necessity of additional pleadings or proof other than the fact of rape. Moral damages is granted in recognition of the victim's injury necessarily resulting from the odious crime of rape. Such award is separate and distinct from the civil indemnity. However, the amount of

₱100,000.00 awarded as moral damages is reduced to ₱75,000.00, in line with current jurisprudence. The award of exemplary damages to AAA in the amount of ₱50,000 is hereby reduced to ₱30,000.00 in accordance with recent jurisprudence.

18. ID.; SERIOUS ILLEGAL DETENTION; PROPER PENALTY.— As to appellant Al, the prescribed penalty for serious illegal detention under Article 267 of the Revised Penal Code is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance in the commission of the offense, the proper penalty to be imposed is *reclusion perpetua*, pursuant to Article 63 of the Revised Penal Code.

19. ID.; ID.; CIVIL LIABILITY OF ACCUSED APPELLANT.— As to appellant Al. In the absence of conspiracy, the liability of the accused is individual and not collective. Since appellant Al is liable only for the crime of serious illegal detention, he is jointly and severally liable only to pay the amount of ₱50,000.00 as civil indemnity. For serious illegal detention, the award of civil indemnity is in the amount of ₱50,000.00, in line with prevailing jurisprudence. Along that line, appellant Al's liability for moral damages is limited only to the amount of ₱50,000.00. Pursuant to Article 2219 of the Civil Code, moral damages may be recovered in cases of illegal detention. This is predicated on AAA's having suffered serious anxiety and fright when she was detained for almost one (1) month.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00556, affirming the trial court's

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Ricardo R. Rosario, concurring; *rollo*, pp. 2-21.

judgment finding appellants Fernando Calaguas Fernandez (Lando) and Alberto Cabillo Anticamara (Al) guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 4498-R and of the crime of Kidnapping and Serious Illegal Detention in Criminal Case No. 4481-R.

Lando, Al, Dick Tañedo (Dick), Roberto Tañedo (Bert), Marvin Lim (Marvin), Necitas Ordeñiza-Tañedo (Cita), and Fred Doe are charged with the crimes of Murder and of Kidnapping/Serious Illegal Detention in two separate Informations, which read:

For Murder (Criminal Case No. 4498-R)

That on or about the early morning of May 7, 2002, in Sitio Rosalia, Brgy. San Bartolome, Municipality of Rosales, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a hand gun, conspiring, confederating and mutually helping one another, with intent to kill, with treachery, evident premeditation and superior strength, did then and there, willfully, unlawfully and feloniously take Sulpacio Abad, driver of the Estrellas, hog tied (sic) him, brought (sic) to a secluded place, shoot and bury in a shallow grave, to the damage and prejudice of the heirs of the victim.

Contrary to Article 248, Revised Penal Code.

For Kidnapping/Serious Illegal Detention (Criminal Case No. 4481-R)

That on or about the 7th day of May 2002, more or less 3:00 o'clock in the early morning, at the Estrella Compound, Brgy. Carmen East, Municipality of Rosales, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, who are private persons, conspiring, confederating and mutually helping one another, armed with firearms, did then and there willfully, unlawfully and feloniously kidnap Sulpacio Abad and AAA,[2] both employees of the Estrellas, thereby depriving them of their liberty, all against their will for a period of twenty-seven (27) days.

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[2] In view of our ruling in *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419, the real name and identity of the rape victim are withheld.

That in the course of the kidnapping, Sulpacio Abad was killed and buried in Brgy. Carmen, Rosales, Pangasinan and AAA was raped for several times by her abductors.

Contrary to Article 267 of the Revised Penal Code, in relation to RA 7659.

When arraigned of the aforementioned crimes, Lando, Al and Cita all pleaded not guilty, while Dick, Bert, Marvin and Fred Doe remained at-large. Thereafter, a joint trial ensued.

As summarized in the People's brief, the facts as established by the evidence of the prosecution are as follows:

About 3 o'clock in the early morning of May 7, 2002, househelper AAA and driver Abad Sulpacio were sleeping in their employers' house located in Barangay Carmen East, Rosales, Pangasinan. Their employers, Conrado Estrella and his wife, were out of the house at that time (TSN, December 4, 2002, pp. 4-7). Momentarily, AAA was jolted from sleep when she heard voices saying, "We will kill her, kill her now" and another voice saying, "Not yet!" Hiding under her blanket, AAA later heard someone saying, "We only need money, we only need money." Thereafter, she heard someone talking in Ilocano which she could not understand. Then she heard somebody say, "Cebuana yan, Cebuana yan, kararating lang galing Cebu." AAA heard the persons conversing which she estimated about four to five meters away (TSN, *ibid*., pp. 11-12).

Thereafter, AAA observed about six (6) persons enter the house, who she later identified as accused Dick Tañedo, Marvin Lim, Bert Tañedo, a certain Fred and appellants Alberto Anticamara *alias* "Al Camara," and Fernando Fernandez alias "Lando Calaguas." One of the intruders approached her and told her not to move (TSN, *ibid*., p. 8).

Later, when AAA thought that the intruders were already gone, she attempted to run but to her surprise, someone wearing a bonnet was watching her. Someone, whom she later recognized as Dick Tañedo, tapped her shoulder. AAA asked Tañedo, "Why Kuya?" Tañedo replied, "Somebody will die." After a brief commotion, appellant *alias* "Lando Calaguas" asked the group saying, "What shall we do now?" They then decided to tie AAA. Later, AAA was untied and led her outside the house. Outside, AAA saw Abad, who was also tied and blindfolded, seated inside a vehicle (TSN, April 26, 2004, pp. 6-10).

The group later brought AAA and Abad to the fishpond owned by their employers. AAA saw Cita Tañedo there. The group brought Abad outside the vehicle and led him away (TSN, December 2, 2002, pp. 13-18; TSN, February 17, 2003, pp. 5-8).

Later, *alias* "Fred" returned telling the group, "Make the decision now, Abad has already four bullets in his body, and the one left is for this girl." When Cita Tañedo made a motion of cutting her neck, appellant *alias* "Lando Calaguas" and "Fred" boarded the vehicle taking along with them AAA. They later proceeded towards San Miguel Tarlac, where Lando Calaguas resided. They stayed in Lando's house where they kept AAA from May 7 to May 9, 2002 (TSN, December 4, 2002, pp. 18-22; TSN, February 17, 2003, pp. 7-9).

On May 9, 2002, appellant Lando Calaguas told AAA that Fred and Bert Tañedo would kill her. Lando then brought AAA to a hotel in Tarlac, telling AAA that he would leave her there as soon as Fred and Bert Tañedo leave the place. However, once inside the hotel room, appellant Lando Calaguas sexually molested AAA. Lando told AAA to follow what he wanted, threatening her that he would turn her over to Fred and Bert Tañedo. After Lando raped AAA, he brought her back to his house. Later, Fred, Bert Tañedo and Lando Calaguas transferred AAA to Riles, Tarlac (TSN, *ibid*., pp. 9-13).

AAA was brought to the residence of Fred's niece, a certain Minda, where Fred kept AAA as his wife. At nighttime, Fred would repeatedly ravish AAA, threatening her that he would give her back to appellant Lando Calaguas who, AAA knew, killed Abad Sulpacio. She was afraid Lando might also kill her (TSN, *ibid*., pp. 14-16).

On May 22, 2002, Fred brought AAA to Carnaga (should be Kananga), Leyte, together with his wife Marsha and their children. AAA stayed in the house of Marsha's brother Sito, where she was made as a house helper (TSN, *ibid*., p. 17).

On June 4, 2002, AAA escaped from the house of Sito. She proceeded to Isabel, Leyte and sought the help of her friend Susana Ilagan. After hearing AAA's plight, Susana called AAA's brother in Cebu, who later fetched AAA in Isabel, Leyte and brought her to Mandaue City. When they arrived in Mandaue City, they immediately reported the incident to the police authorities. On June 23, 2002, AAA executed a Sworn Statement (Exh. "D", TSN, *ibid*., pp. 18-20).

Meanwhile, Dr. Ronald Bandonil, Medico-Legal Officer of the National Bureau of Investigation (NBI), conducted an autopsy on

the cadaver of Sulpacio Abad. Dr. Bandonil prepared Autopsy Report No. N-T2-23-P (Exh. "A") which contains the following findings, to wit:

> x Remains placed in a sealed metal coffin, wrapped in two (2) layers of black, plastic garbage bags, and covered in (sic) a red-stripped cotton blanker. A thick layer of lime embeds the whole torso.
>
> x Remains in a far advanced state of decomposition, with the head completely devoid of soft tissue. A cloth is wrapped around the eyesockets and tied to the back of the skull. The skull does not show any signs of dents, chips nor fractures. The other recognizable body part is the chest area which retained a few soft tissues and skin, but generally far advanced in decomposition. The whole gamut of internal organs have undergone liquefaction necrosis and have been turned into grayish-black pultaceous masses. Worn on top of the remaining chest is a sando shirt with observable holes at the left side, both front and back. A large hole is seen at the area of the left nipple, with traces of burning at its edges and inward in direction. A tied cloth is also observable at the remnants of the left wrist.
>
> x At the upper chest, which is the most recognizable, remaining and intact part of the torso, a hole, 1.0 cm. x 2.0 cms., with signs of burning, edges inverted, is seen at the left anterior axillary line just below the left nipple. Another hole is seen 1.5 cms. x 2.5 cms. in diameter, edged averted (sic) at the right chest, along the right anterior axillary line, 5.0 cms. below the right nipple. A 3rd hole, almost unrecognizable is seen at the left groin area.
>
> x The other parts of the cadaver are too far advanced in decomposition to have remarkable findings.
>
> CAUSE OF DEATH:
>
> GUNSHOT WOUNDS, TRUNK[3]

In his defense, Lando denied having committed the crimes charged and interposed alibi as a defense. He claims that at the time of the incident on May 7, 2002, he was in Barangay Maligaya, San Miguel, Tarlac, with his family. He denied ever

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[3] CA *rollo*, pp. 210-215.

going to the Estrella farm in Sitio Rosalia, Barangay San Bartolome, Rosales, Pangasinan.

Al claimed that he acted as a lookout and was tasked to report to his companions if any person or vehicle would approach the house of the Estrellas. He said that he was forced to follow what was ordered of him and did not report the matter to the police because he was threatened to be killed, including the members of his family who were in Cebu.

On August 23, 2004, the Regional Trial Court (RTC) of Rosales, Pangasinan, Branch 53, rendered its Decision,[4] the dispositive portion of which states:

> WHEREFORE, judgment is hereby rendered as follows:
>
> I. In Criminal Case No. 4498-R for Murder:
>
> A. Accused Nicetas "Cita" Tañedo is hereby acquitted of the crime charged for insufficiency of evidence;
>
> B. Accused Fernando Calaguas Fernandez (*alyas* Lando Calaguas) and Alberto Anticamara (*alyas* Al Camara) are hereby found guilty beyond reasonable doubt, as principal, of the crime of Murder qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code. Considering the presence of aggravating circumstance of pre-meditation, with no mitigating circumstance to offset the same, the penalty of DEATH is hereby imposed upon the two (2) accused Fernando Calaguas Fernandez (Lando Calaguas) and Alberto Anticamara (Al Camara). They are also ordered jointly and severally [to] pay the heirs of the victim Abad Sulpacio the following:
>
> 1) Fifty Thousand Pesos (₱50,000.00) as moral damages;
>
> 2) Seventy-Five Thousand Pesos (₱75,000.00) as indemnity for the death of the victim;
>
> 3) Fifty-Seven Thousand One Hundred Twenty-Two Pesos and Thirty Centavos (₱57,122.30) as actual damages; and
>
> 4) The cost of suit.

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[4] *Id.* at 4-41.

II. Criminal Case No. 4481-R for Kidnapping/Serious Illegal Detention:

A) Accused Nicetas "Cita" Tañedo is hereby acquitted of the crime charged for insufficiency of evidence;

B) Accused Fernando Calaguas Fernandez (*alyas* Lando Calaguas) and Alberto Anticamara (*alyas* Al Camara) are hereby found guilty beyond reasonable doubt, as principal, of the crime of Kidnapping/ Serious Illegal Detention of the victim AAA as charged, defined and penalized under Article 267 of the Revised Penal Code, as amended by R.A. 7659. Considering that the victim AAA was raped during her detention, the maximum penalty of DEATH is hereby imposed upon the two accused, Fernando Calaguas Fernandez (Lando Calaguas) and Alberto Anticamara (Al Camara). The two accused are also ordered to pay, jointly and severally, the victim AAA the amount of:

1) One Hundred Thousand Pesos (₱100,000.00) as moral damages;

2) Fifty Thousand Pesos (₱50,000.00) as exemplary damages; and

3) Cost of suit.

As to the rest of the accused who are still at-large, let this case be set to the archives until they are apprehended.

SO ORDERED.[5]

In light of the Court's ruling in *People v. Mateo*,[6] the records of the cases were forwarded by the RTC to the CA for its review. The CA rendered a Decision dated December 15, 2006, affirming the decision of the RTC in Criminal Case Nos. 4498-R and 4481-R. However, in view of the abolition of the death penalty pursuant to Republic Act (R.A.) No. 9346, which was approved on June 24, 2006, the appellants were sentenced to *reclusion perpetua*.

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[5] *Id.* at 38-41.

[6] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, modifying Sections 3 and 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125 of the Revised Rules on Criminal Procedure.

On January 9, 2007, Lando, through the Public Attorney's Office (PAO), appealed the Decision of the CA to this Court. Lando had assigned the following errors in his appeal initially passed upon by the CA, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT CONSPIRACY EXISTED BETWEEN AND AMONG THE ALLEGED PERPETRATORS OF THE CRIME.

II

ASSUMING THAT THE ACCUSED-APPELLANT IS GUILTY, THE LOWER COURT GRAVELY ERRED IN CONVICTING HIM OF THE CRIME OF MURDER INSTEAD OF HOMICIDE.

III

THE TRIAL COURT GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH FOR THE CRIME OF KIDNAPPING/SERIOUS ILLEGAL DETENTION, AGGRAVATED BY RAPE, IN SPITE OF THE FACT THAT THE CRIME OF RAPE WAS NOT DULY PROVEN BEYOND REASONABLE DOUBT.

IV

THE TRIAL COURT GRAVELY ERRED IN GIVING SCANT CONSIDERATION TO THE EVIDENCE PRESENTED BY THE ACCUSED-APPELLANT WHICH IS MORE CREDIBLE THAN THAT OF THE PROSECUTION.

V

THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[7]

On January 9, 2007, Al, through the PAO, appealed the Decision of the CA to this Court. Al had assigned the following errors, to wit:

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[7] CA *rollo*, pp. 122-123.

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF KIDNAPPING/ SERIOUS ILLEGAL DETENTION IN SPITE OF THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT HE CONSPIRED WITH HIS CO-ACCUSED TO COMMIT THE CRIME CHARGED.

II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING UPON THE ACCUSED THE SUPREME PENALTY OF DEATH FOR THE SPECIAL COMPLEX CRIME OF KIDNAPPING/SERIOUS ILLEGAL DETENTION WITH RAPE, IN SPITE OF THE FACT THAT HE HAD NO PARTICIPATION IN THE COMMISSION OF [TWO] SEXUAL ABUSES AGAINST THE VICTIM.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER IN SPITE OF THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT HE CONSPIRED WITH HIS CO-ACCUSED TO COMMIT THE SAME.[8]

In capsule, the main issue is whether the appellants are guilty of the crimes charged.

In Criminal Case No. 4498-R for Murder:

Circumstantial Evidence

The trial court found that although there was no direct eyewitness in the killing of Sulpacio in the early morning of May 7, 2002 at Sitio Rosalia, Barangay San Bartolome, Rosales, Pangasinan, the prosecution adduced sufficient circumstantial evidence to establish with moral certainty the identities and guilt of the perpetrators of the crime.

Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact

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

may be inferred according to reason and common experience.[9] Circumstantial evidence is sufficient to sustain conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[10] A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.[11]

In this case, the circumstantial evidence presented by the prosecution, when analyzed and taken together, lead to the inescapable conclusion that the appellants are responsible for the death of Sulpacio. The Court quotes with approval the lower court's enumeration of those circumstantial evidence:

> The testimony of AAA had clearly established the following facts:
>
> 1. At about 3:00 in the early morning of May 7, 2002, while she and the victim Abad Sulpacio were sleeping inside the house of the Estrella family in Barangay Carmen, Rosales, Pangasinan several persons entered to rob the place;
>
> 2. Inside the house, she saw and recognized the accused Lando Calaguas and Dick Tañedo, and heard the latter uttering "somebody will die";
>
> 3. Bringing her outside the house, Lando pushed her into the Revo where she saw inside Abad Sulpacio who was blindfolded and with his hands tied;
>
> 4. Inside the Revo, she recognized the accused Dick Tañedo, Lando Calaguas, Marvin Lim, Roberto Tañedo, Alberto Anticamara and Fred;
>
> 5. The Revo then proceeded towards the fishpond owned by the Estrellas in Sitio Rosalia, Brgy. San Bartolome, Rosales, Pangasinan;

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[9] *Diega v. Court of Appeals*, G.R. Nos. 173510 and 174099, March 15, 2010, 615 SCRA 399, 407.

[10] Rules of Court, Rule 133, Sec. 4.

[11] *Diega v. Court of Appeals, supra* note 9, at 408.

6. The last time that she saw Abad Sulpacio was when he was dragged out from the vehicle by Lando, Fred, Marvin and Al upon reaching Sitio Rosalia. At that, time Dick Tañedo stayed with her in the vehicle;

7. Thereafter, when Fred returned to the vehicle, she heard him uttered (sic): "Make a decision now. Abad has already four (4) bullets in his body, and the one left is for this girl."[12]

In addition to these circumstances, the trial court further found that AAA heard Fred utter "*Usapan natin pare, kung sino ang masagasaan, sagasaan.*" (*Our agreement is that whoever comes our way should be eliminated*). Moreover, NBI Agent Gerald V. Geralde testified that on June 23, 2002, appellant Al admitted his participation as lookout and naming his companions Dick, Lando, Fred, Marvin and Bert as the ones who took AAA and Sulpacio from the house of the Estrellas and brought them to the fishpond. Al also pointed and led the authorities to a shallow grave in Sitio Rosalia, Barangay San Bartolome, Rosales, Pangasinan, where the remains of Sulpacio were buried. The autopsy conducted on the body, prepared by the Medico Legal Officer Dr. Bandonil, shows that several holes were found on various parts of the body of the victim and Dr. Bandonil concluded that the cause of the victim's death was the gunshot wounds. The report also indicates that a piece of cloth was found wrapped around the eye sockets and tied at the back of the skull, and another cloth was also found tied at the remnants of the left wrist.

In the case at bar, although no one directly saw the actual killing of Sulpacio, the prosecution was able to paint a clear picture that the appellants took Sulpacio away from the house of the Estrellas, tied and blindfolded him, and brought him to another place where he was repeatedly shot and buried.

Conspiracy

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the

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[12] CA *rollo*, pp. 19-20.

acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.[13] To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[14]

In the present case, prior to the commission of the crime, the group met at the landing field in Carmen, Pangasinan and discussed their plan to rob the house of the Estrellas with the agreement that whoever comes their way will be eliminated.[15] Appellant Al served as a lookout by posting himself across the house of the Estrellas with the task of reporting any movements outside. Fred then climbed the old unserviceable gate of the Estrella compound and then opened the small door and the rest of the group entered the house of the Estrellas through that opening.[16] After almost an hour inside the house, they left on board a vehicle with AAA and Sulpacio. AAA and Sulpacio were brought to Sitio Rosalia, Brgy. San Bartolome, Rosales, Pangasinan. In that place, Sulpacio was killed and AAA was brought to another place and deprived of her liberty. These circumstances establish a community of criminal design between the malefactors in committing the crime. Clearly, the group conspired to rob the house of the Estrellas and kill any person

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[13] *Go v. Fifth Division, Sandiganbayan*, G.R. No. 172602, April 13, 2007, 521 SCRA 270, 290.

[14] *People v. De Jesus*, 473 Phil. 405, 429 (2004).

[15] Sworn statement of AAA. (Records, Vol. II, p. 10)

[16] Sworn statement of appellant Al. (Records, Vol. II, p. 15)

who comes their way. The killing of Sulpacio was part of their conspiracy. Further, Dick's act of arming himself with a gun constitutes direct evidence of a deliberate plan to kill should the need arise.

Appellant Al attempts to evade criminal liability by alleging that he was only forced to participate in the commission of the crime because he and his family were threatened to be killed. Al's defense fails to impress us. Under Article 12[17] of the Revised Penal Code, a person is exempt from criminal liability if he acts under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear of equal or greater injury, because such person does not act with freedom.[18] To avail of this exempting circumstance, the evidence must establish: (1) the existence of an uncontrollable fear; (2) that the fear must be real and imminent; and (3) the fear of an injury is greater than, or at least equal to, that committed.[19] For such defense to prosper, the duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done. A threat of future injury is not enough.[20]

There is nothing in the records to substantiate appellant Al's insistence that he was under duress from his co-accused while participating in the crime that would suffice to exempt him

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[17] *Circumstances which exempt from criminal liability*. - The following are exempt from criminal liability:

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5. Any person who acts under the compulsion of an irresistible force.

6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

x x x x x x x x x

[18] *People v. Anod,* G.R. No. 186420, August 25, 2009, 597 SCRA 205, 210.

[19] *People v. Baron,* G.R. No. 185209, June 28, 2010, 621 SCRA 646, 663.

[20] *People v. Anod, supra* note 18.

from incurring criminal liability. The evidence shows that Al was tasked to act as a lookout and directed to station himself across the house of the Estrellas. Al was there from 7:30 p.m. to 1:00 a.m.[21] of the following day, while the rest of the group was waiting in the landing field. Thus, while all alone, Al had every opportunity to escape since he was no longer subjected to a real, imminent or reasonable fear. However, he opted to stay across the house of the Estrellas for almost six (6) hours,[22] and thereafter returned to the landing field where the group was waiting for his report. Subsequently, the group proceeded to the Estrellas' house. When the group entered the house, Al stayed for almost one (1) hour outside to wait for his companions. Later, when the group left the house aboard a vehicle, Al rode with them in going to Sitio Rosalia, Brgy. San Bartolome, Rosales, Pangasinan, bringing with them Sulpacio and AAA.[23] Clearly, appellant Al had ample opportunity to escape if he wished to, but he never did. Neither did he request for assistance from the authorities or any person passing by the house of the Estrellas during the period he was stationed there. Clearly, Al did not make any effort to perform an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof that would exempt himself from criminal liability.[24] Therefore, it is obvious that he willingly agreed to be a part of the conspiracy.

Alibi and Denial

Appellant Lando denied having committed the crime charged and interposed alibi as a defense. He claims that at the time of the incident he was in his house at Tarlac, together with his family. On the other hand, the appellants were positively identified by AAA, as two (2) of the six (6) malefactors who forcibly took her and Sulpacio from the Estrella house in the

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[21] Sworn Statement of Alberto Anticamara, records, Vol. II, p. 15.

[22] *Id.*

[23] *Id.* at 16.

[24] *People v. De Jesus, supra* note 14.

early morning of May 7, 2002. Both the trial court and the CA found the testimony of AAA credible. The Court gives great weight to the trial court's evaluation of the testimony of a witness because it had the opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying; thus, making it in a better position to determine whether a witness is lying or telling the truth.[25]

Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.[26] Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellants.[27]

As to the defense of alibi. Aside from the testimony of appellant Lando that he was in Tarlac at the time of the incident, the defense was unable to show that it was physically impossible for Lando to be at the scene of the crime. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility

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[25] *People v. Pillas*, 458 Phil. 347, 369 (2003).

[26] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 573-574.

[27] *Gan v. People*, G.R. No. 165884, April 23, 2007, 521 SCRA 550, 575.

of access between the two places.[28] Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[29] During the trial of the case, Lando testified that the distance between his house in Brgy. Maligaya, San Miguel, Tarlac to the town of Rosales, Pangasinan is only around forty (40) kilometers. Such distance can be traversed in less than 30 minutes using a private car and when the travel is continuous.[30] Thus, it was not physically impossible for the appellant Lando to be at the *locus criminis* at the time of the incident. In addition, positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[31]

Qualifying and Aggravating Circumstances

In convicting the appellants, the courts *a quo* appreciated treachery in qualifying the killing to murder and evident premeditation in imposing the penalty of death. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make.[32] Two conditions must concur for treachery to exist, namely, (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.[33]

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[28] *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

[29] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 439.

[30] TSN, September 17, 2003, pp. 10-11.

[31] *People v. Casitas, Jr.*, 445 Phil. 407, 425 (2003).

[32] Revised Penal Code, Art. 14, par. 16.

[33] *People v. Lopez*, G.R. No. 176354, August 3, 2010, 626 SCRA 485, 500.

In the case at bar, it was proven that when AAA boarded the vehicle, she saw Sulpacio tied and blindfolded. Later, when they reached the fishpond, Sulpacio, still tied and blindfolded, was led out of the vehicle by the group. When the remains of Sulpacio was thereafter found by the authorities, the autopsy report indicated that a piece of cloth was found wrapped around the eye sockets and tied at the back of the skull and another cloth was also found tied at the left wrist of the victim. There is no question therefore, that the victim's body, when found, still had his hands tied and blindfolded. This situation of the victim when found shows without doubt that he was killed while tied and blindfolded; hence, the qualifying aggravating circumstance of treachery was present in the commission of the crime. In *People v. Osianas,*[34] the Court held that:

> x x x In the case at bar, the means used by the accused-appellants to insure the execution of the killing of the victims, so as to afford the victims no opportunity to defend themselves, was the act of tying the hands of the victims. Teresita saw the accused-appellants hog-tie the victims and take them away with them. Later that night, Dionisio Palmero saw the victims, still hog-tied, walking with the accused-appellants. The following day, the victims were found dead, still hog-tied. Thus, no matter how the stab and hack wounds had been inflicted on the victims in the case at bar, we are sure beyond a reasonable doubt that Jose, Ronilo and Reymundo Cuizon had no opportunity to defend themselves because the accused-appellants had earlier tied their hands. The fact that there were twelve persons who took and killed the Cuizons further assured the attainment of accused-appellants' plans without risk to themselves.[35]

The aggravating circumstance of superior strength cannot be separately appreciated because it is absorbed by treachery.[36]

The circumstance of evident premeditation requires proof showing: (1) the time when the accused determined to commit

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[34] G.R. No. 182548, September 30, 2008, 567 SCRA 319.

[35] *People v. Osianas, supra*.

[36] *People v. Banhaon,* 476 Phil. 7, 39 (2004).

the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[37] The essence of premeditation is that the execution of the act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[38] From the time the group met at the landing field at around 6:30 p.m. of May 6, 2002, and discussed the possibility of killing anyone who stands on their way, up to the time they took Sulpacio away from the Estrellas' house and eventually killed him thereafter at around past 3:00 a.m., more than eight hours had elapsed – sufficient for the appellants to reflect on the consequences of their actions and desist from carrying out their evil scheme, if they wished to. Instead, appellants evidently clung to their determination and went ahead with their nefarious plan.

In Criminal Case No. 4481-R for Kidnapping and Serious Illegal Detention.

The Court finds appellant Lando guilty of the special complex crime of kidnapping and serious illegal detention with rape, defined in and penalized under Article 267 of the Revised Penal Code. The elements of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code[39] are: (1) the

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[37] *People v. Agudez,* G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692, 709.

[38] *People v. PO3 Tan*, 411 Phil. 813, 837 (2001).

[39] ART. 267. *Kidnapping and serious illegal detention.* - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death;

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.[40]

The crime of kidnapping was proven beyond reasonable doubt by the prosecution. Appellants Lando and Al, both private individuals, forcibly took AAA, a female, away from the house of the Estrellas and held her captive against her will. Thereafter, appellant Lando brought AAA to his house in San Miguel Tarlac, whereby she was deprived of her liberty for almost one month. It is settled that the crime of serious illegal detention consists not only of placing a person in an enclosure, but also in detaining him or depriving him in any manner of his liberty.[41] For there to be kidnapping, it is enough that the victim is restrained from going home.[42] Its essence is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.[43] Although AAA was not confined

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4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were presented in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[40] *People v. Nuguid*, 465 Phil. 495, 510 (2004).

[41] *People v. Domasian*, G.R. No. 95322, March 1, 1993, 219 SCRA 245, 253.

[42] *People v. Acbangin*, 392 Phil. 232, 240 (2000).

[43] *People v. Obeso*, 460 Phil. 625, 634 (2003).

in an enclosure, she was restrained and deprived of her liberty, because every time appellant Lando and his wife went out of the house, they brought AAA with them. The foregoing only shows that AAA was constantly guarded by appellant Lando and his family.

The crime of rape was also established by the prosecution. Appellant Lando succeeded in having carnal knowledge of AAA through the use of threat and intimidation. AAA testified that on May 9, 2002, appellant Lando brought her to a hotel to hide her from Fred and Bert, who intended to kill her. Appellant Lando told her to follow his orders, otherwise, he will give her to Fred and Bert. While in the hotel, appellant Lando raped her.[44] Clearly, for fear of being delivered to Fred and Bert and of losing her life, AAA had no choice but to give in to appellant Lando's lustful assault. In rape cases, the credibility of the victim's testimony is almost always the single most important factor. When the victim's testimony is credible, it may be the sole basis for the accused's conviction.[45] This is so because owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party.[46]

The last paragraph of Article 267 of the Revised Penal Code provides that if the victim is killed or dies as a consequence of the detention, or is raped or subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. In *People v. Larrañaga*,[47] this provision gives rise to a special complex crime.

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[44] CA *rollo*, p. 34.

[45] *People v. Talan*, G.R. No. 177354, November 14, 2008, 571 SCRA 211, 217.

[46] *People v. Gan*, No. L-33446, August 18, 1972, 46 SCRA 667, 678.

[47] 466 Phil. 324, 386-387 (2004).

Where the law provides a single penalty for two or more component offenses, the resulting crime is called a special complex crime. Some of the special complex crimes under the Revised Penal Code are (1) robbery with homicide, (2) robbery with rape, (3) kidnapping with serious physical injuries, (4) kidnapping with murder or homicide, and (5) rape with homicide. In a

Thus, We hold that appellant Lando is guilty beyond reasonable doubt of the special complex crime of kidnapping and serious illegal detention with rape in Criminal Case No. 4481-R.

However, the Court does not agree with the CA and trial court's judgment finding appellant Al liable for Rape in Criminal Case No. 4481-R. In *People v. Suyu*,[48] We ruled that once conspiracy is established between several accused in the commission of the crime of robbery, they would all be equally culpable for the rape committed by anyone of them on the occasion of the robbery, unless anyone of them proves that he endeavored to prevent the others from committing rape.[49] Also, in *People v. Canturia*,[50] the Court held that:

> x x x For while the evidence does convincingly show a conspiracy among the accused, it also as convincingly suggests that the agreement was to commit robbery only; and there is no evidence that the other members of the band of robbers were aware of Canturia's lustful intent and his consummation thereof so that they could have attempted to prevent the same. x x x

The foregoing principle is applicable in the present case because the crime of robbery with rape is a special complex crime defined in and penalized under Article 294, paragraph 1 of the Revised Penal Code, and the crime of kidnapping with rape in this case is likewise a special complex crime as held in the case of *People v. Larrañaga*.[51] There is no evidence to

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special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints. As earlier mentioned, R.A. No. 7659 amended Article 267 of the Revised Penal Code by adding thereto this provision: "When the victim is killed or dies as a consequence of the detention, or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed; and that this provision gives rise to a special complex crime. (Italics in the original)

[48] *People v. Suyu*, G.R. No. 170191, August 16, 2006, 499 SCRA 177.

[49] *Id.* at 202.

[50] 315 Phil. 278, 290-291 (1995).

[51] *Supra* note 47.

prove that appellant Al was aware of the subsequent events that transpired after the killing of Sulpacio and the kidnapping of AAA. Appellant Al could not have prevented appellant Lando from raping AAA, because at the time of rape, he was no longer associated with appellant Lando. AAA even testified that only Fred and appellant Lando brought her to Tarlac,[52] and she never saw appellant Al again after May 7, 2002, the day she was held captive. She only saw appellant Al once more during the trial of the case.[53] Thus, appellant Al cannot be held liable for the subsequent rape of AAA.

The Penalties

In Criminal Case No. 4498-R, the attendant circumstance of treachery qualified the killing to murder. The penalty for murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. Since the aggravating circumstance of evident premeditation was alleged and proven, the imposable penalty upon the appellants is death, pursuant to Article 63, paragraph 1, of the Revised Penal Code.[54] In view, however, of the passage of R.A. No. 9346,[55] prohibiting the imposition of the death penalty, the penalty of death is reduced to *reclusion perpetua*,[56] without eligibility for parole.[57]

In Criminal Case No. 4481-R, the penalty for the special complex crime of kidnapping and serious illegal detention with rape is death. In view of R.A. No. 9346, the penalty of death

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[52] TSN, February 17, 2003, p. 8.

[53] TSN, February 24, 2003, p. 24.

[54] x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. x x x

[55] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[56] R.A. 9346, Sec. 2.

[57] R.A. 9346, Sec. 3.

is reduced to *reclusion perpetua*,[58] without eligibility for parole.[59] Accordingly, the imposable penalty for appellant Lando is *reclusion perpetua.*

As to appellant Al, the prescribed penalty for serious illegal detention under Article 267 of the Revised Penal Code is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance in the commission of the offense, the proper penalty to be imposed is *reclusion perpetua*, pursuant to Article 63[60] of the Revised Penal Code.

The Damages

In Criminal Case No. 4498-R, the award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[61] In *People v. Quiachon*,[62] even if the penalty of death is not to be imposed because of the prohibition in R.A. 9346, the civil indemnity of ₱75,000.00 is proper, because it is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. As explained in *People v. Salome*,[63] while R.A. No. 9346 prohibits the imposition of the death penalty, the fact remains that the penalty provided for by law for a heinous offense is still death, and the offense is still heinous. Accordingly, the award of civil indemnity in the amount of ₱75,000.00 is proper.

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[58] R.A. 9346, Sec. 2.

[59] R.A. 9346, Sec. 3.

[60] x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof: x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. x x x

[61] *People v. Molina*, G.R. No. 184173, March 13, 2009, 581 SCRA 519, 542.

[62] G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719.

[63] 500 Phil. 659, 676 (2006).

Anent moral damages, the same are mandatory in cases of murder, without need of allegation and proof other than the death of the victim.[64] However, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00.[65]

The award of exemplary damages is in order, because of the presence of the aggravating circumstances of treachery and evident premeditation in the commission of the crime.[66] The Court awards the amount of ₱30,000.00, as exemplary damages, in line with current jurisprudence on the matter.[67]

Actual damages is also warranted. Modesta Abad, the spouse of victim Sulpacio, incurred expenses in the amount of ₱57,122.30, which was duly supported by receipts.[68]

In Criminal Case No. 4481-R, AAA is entitled to civil indemnity in line with prevailing jurisprudence that civil indemnification is mandatory upon the finding of rape.[69] Applying prevailing jurisprudence, AAA is entitled to ₱75,000.00 as civil indemnity.[70]

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[64] *People v. Molina, supra* note 61, at 542.

[65] *People v. Regalario*, G.R. No. 174483, March 31, 2009, 582 SCRA 738, 760-761.

[66] *People v. Balais*, G.R. No. 173242, September 17, 2008, 565 SCRA 555, 571-572.

[67] *People v. Ortiz, Jr.*, G.R. No. 188704, July 7, 2010, 624 SCRA 533, 541.

[68] Records, Vol. I, pp. 115-117.

[69] *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 621.

[70] *Id.*

In addition, AAA is entitled to moral damages pursuant to Article 2219 of the Civil Code,[71] without the necessity of additional pleadings or proof other than the fact of rape.[72] Moral damages is granted in recognition of the victim's injury necessarily resulting from the odious crime of rape.[73] Such award is separate and distinct from the civil indemnity.[74] However, the amount of ₱100,000.00 awarded as moral damages is reduced to ₱75,000.00, in line with current jurisprudence.[75]

The award of exemplary damages to AAA in the amount of ₱50,000 is hereby reduced to ₱30,000.00 in accordance with recent jurisprudence.[76]

As to appellant Al. In the absence of conspiracy, the liability of the accused is individual and not collective.[77] Since appellant Al is liable only for the crime of serious illegal detention, he is jointly and severally liable only to pay the amount of ₱50,000.00 as civil indemnity. For serious illegal detention, the award of civil indemnity is in the amount of ₱50,000.00, in line with prevailing jurisprudence.[78]

Along that line, appellant Al's liability for moral damages is limited only to the amount of ₱50,000.00.[79] Pursuant to Article 2219 of the Civil Code, moral damages may be recovered in

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[71] CIVIL CODE, Art. 2219. Moral damages may be recovered in the following and analogous cases: x x x

(3) Seduction, abduction, rape, or other lascivious acts; x x x.

[72] *People v. Ospig,* 461 Phil. 481, 496 (2003).

[73] *Id.* at 496-497.

[74] *People v. Sabardan,* G.R. No. 132135, May 21, 2004, 429 SCRA 9, 29.

[75] *People v. Madsali, supra* note 69, at 621-622.

[76] *People v. Anguac,* G.R. No. 176744, June 5, 2009, 588 SCRA 716, 726.

[77] *People v. Miana, Sr.,* 414 Phil. 755, 770 (2001).

[78] *People v. Solangon,* G.R. No. 172693, November 21, 2007, 537 SCRA 746, 758.

[79] In line with recent jurisprudence, the amount of moral damages to be awarded is ₱50,000.00 (*People v. Madsali, supra* note 69, at 622.)

cases of illegal detention. This is predicated on AAA's having suffered serious anxiety and fright when she was detained for almost one (1) month.[80]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00556 is *AFFIRMED* with *MODIFICATIONS* as follows:

(a) In Criminal Case No. 4498-R, appellants Fernando Calaguas Fernandez *alias* "Lando" and Alberto Cabillo Anticamara *alias* "Al" are found *GUILTY* beyond reasonable doubt of the crime of Murder and are sentenced to suffer the penalty of *Reclusion Perpetua*, without eligibility of parole, and to pay, jointly and severally, the heirs of Sulpacio Abad the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱57,122.30 as actual damages.

(b) In Criminal Case No. 4481-R, appellant Fernando Calaguas Fernandez *alias* "Lando" is found *GUILTY* beyond reasonable doubt of the special complex crime of kidnapping and serious illegal detention with rape and is sentenced to suffer the penalty of *Reclusion Perpetua*, without eligibility of parole, and to pay the offended party AAA, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages. Appellant Alberto Cabillo Anticamara *alias* "Al" is found *GUILTY* beyond reasonable doubt of the crime of kidnapping and serious illegal detention and is sentenced to suffer the penalty of *Reclusion Perpetua.* He is also directed to pay, jointly and severally, with appellant Fernando Calaguas Fernandez *alias* "Lando," the victim AAA the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

SO ORDERED.

Corona, C.J.,[*] *Carpio (Chairperson), Abad,* and *Mendoza, JJ.,* concur.

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[80] *People v. Madsali, supra* note 69, at 621.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated March 11, 2009.

SECOND DIVISION

[G.R. No. 179673. June 8, 2011]

NATIVIDAD STA. ANA VICTORIA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PD 1529); REQUISITES FOR REGISTRATION OF TITLE.— Section 14(1) of the Property Registration Decree has three requisites for registration of title: (a) that the property in question is alienable and disposable land of the public domain; (b) that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and (c) that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier. A similar right is granted under Sec. 48(b) of the Public Land Act. There are no material differences between Sec. 14(1) of the Property Registration Decree and Sec. 48(b) of the Public Land Act. Sec. 14(1) operationalizes the registration of such lands of the public domain.

2. ID.; ID.; ID.; ID.; APPLICANT FOR REGISTRATION OF TITLE MUST ESTABLISH THE EXISTENCE OF A POSITIVE ACT OF THE GOVERNMENT DECLARING THE SUBJECT PROPERTY ALIENABLE AND DISPOSABLE LAND OF PUBLIC DOMAIN; PROOF TO ESTABLISH THE STATUS OF THE PROPERTY SUBJECT OF APPLICATION FOR REGISTRATION.— To prove that the land subject of the application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or statute. The applicant may secure a certification from the government that the lands applied for are alienable and disposable, but the certification must show that the DENR Secretary had approved the land classification and released the land of the pubic domain as alienable and disposable, and that the land subject of the

application for registration falls within the approved area per verification through survey by the PENRO or CENRO. The applicant must also present a copy of the original classification of the land into alienable and disposable, as declared by the DENR Secretary or as proclaimed by the President.

3. ID.; ID.; ID.; DENIAL OF THE APPLICATION FOR REGISTRATION FOR FAILURE OF THE APPLICANT TO FORMALLY OFFER IN EVIDENCE BEFORE THE COURT BELOW THE PROOF OF THE STATUS OF THE SUBJECT LAND, NOT PROPER; THE COURT IS EMPOWERED TO SUSPEND THE APPLICATION OF THE RULES OF PROCEDURE TO A PARTICULAR CASE WHEN ITS RIGID APPLICATION TENDS TO FRUSTRATE RATHER THAN PROMOTE THE ENDS OF JUSTICE.— Since the OSG does not contest the authenticity of the DENR Certification, it seems too hasty for the CA to altogether disregard the same simply because it was not formally offered in evidence before the court below. More so when even the OSG failed to present any evidence in support of its opposition to the application for registration during trial at the MeTC. The attack on Victoria's proof to establish the nature of the subject property was made explicit only when the case was at the appeal stage in the Republic's appellant's brief. Only then did Victoria find it necessary to present the DENR Certification, since she had believed that the notation in the Conversion/Subdivision Plan of the property was sufficient. In *Llanes v. Republic*, this Court allowed consideration of a CENRO Certification though it was only presented during appeal to the CA to avoid a patent unfairness. The rules of procedure being mere tools designed to facilitate the attainment of justice, the Court is empowered to suspend their application to a particular case when its rigid application tends to frustrate rather than promote the ends of justice. Denying the application for registration now on the ground of failure to present proof of the status of the land before the trial court and allowing Victoria to re-file her application would merely unnecessarily duplicate the entire process, cause additional expense and add to the number of cases that courts must resolve. It would be more prudent to recognize the DENR Certification and resolve the matter now.

4. ID.; ID.; ID.; APPLICATION FOR REGISTRATION MUST BE GRANTED WHERE THE APPLICANT HAS AMPLY

ESTABLISHED HER RIGHT TO HAVE THE SUBJECT PROPERTY REGISTERED IN HER NAME AND HAS MET ALL THE REQUISITES FOR REGISTRATION OF TITLE UNDER THE LAW.— The CA also erred in not affirming the decision of the MeTC especially since Victoria has, contrary to the Solicitor General's allegation, proved that she and her predecessors-in-interest had been in possession of the subject lot continuously, uninterruptedly, openly, publicly, adversely and in the concept of owners since the early 1940s. In fact, she has submitted tax declarations covering the land way back in 1948 that appeared in her father's name. We find no reason to disturb the conclusion of the trial court that Victoria amply established her right to have the subject property registered in her name, given that she has met all the requisites for registration of title under the Property Registration Decree.

APPEARANCES OF COUNSEL

Nancy Villanueva Teylan for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the need for an applicant for registration of title to land to prove that the same has been officially declared alienable and disposable land of the public domain.

The Facts and the Case

On November 2, 2004 petitioner Natividad Sta. Ana Victoria applied for registration under the law[1] of a 1,729-square meter lot in Bambang, City of Taguig, before the Metropolitan Trial Court (MeTC) of that city. The Office of the Solicitor General (OSG), representing the respondent Republic of the Philippines, opposed the application in the usual form.

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[1] Act 496, now Presidential Decree 1529 or the Property Registration Decree.

Victoria testified and offered documentary evidence to show that the subject lot, known as Lot 5176-D, Mcadm-590-D of the Taguig Cadastral Mapping is a portion of a parcel of land with an area of 17,507 sq m originally owned by Victoria's father Genaro Sta. Ana and previously declared in his name for tax purposes. Upon Genaro's death, Victoria and her siblings inherited the land and divided it among themselves *via* a deed of partition.

The Conversion/Subdivision Plan Victoria presented in evidence showed that the land is inside the alienable and disposable area under Project 27-B as per L.C. Map 2623, as certified by the Bureau of Forest Development on January 3, 1968. Victoria testified that she and her predecessors-in-interest have been in possession of the property continuously, uninterruptedly, openly, publicly, adversely and in the concept of owners since the early 1940s or for more than 30 years and have been declared as owners for taxation purposes for the last 30 years. The Republic did not present any evidence in support of its opposition.

On January 25, 2006 the MeTC rendered a decision,[2] granting the application for registration and finding that Victoria sufficiently established her claim and right under the land registration law to have the subject property registered in her name.

The Republic appealed the MeTC decision to the Court of Appeals (CA), pointing out in its brief that Victoria failed to present evidence that the subject property is alienable and disposable land of the public domain and that she failed to establish the kind of possession required for registration.

In her brief, Victoria replied that the Conversion/Subdivision Plan she submitted carried a notation that the subject property is within alienable and disposable area. Further, she attached to her brief a Certification[3] dated November 6, 2006 issued by

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[2] *Rollo*, pp. 84-89. Penned by Judge Maria Paz R. Reyes-Yson.

[3] CA *rollo*, pp. 42-43.

the Department of Environment and Natural Resources (DENR), verifying the subject property as within the alienable and disposable land of the public domain.

On June 19, 2007 the CA rendered judgment, reversing and setting aside the MeTC decision because Victoria failed to prove that the subject lot is alienable and disposable land of the public domain. She could not, said the CA, rely on the notation in the Conversion/Subdivision Plan she submitted before the MeTC, although it carried a notation that the land is alienable and disposable as certified by the Chief of Survey of the Land Management Services of the DENR on January 3, 1968, because such notation was made only in connection with the approval of the plan.

On the other hand, the CA could not take cognizance of the DENR Certification of November 6, 2006 that she submitted together with her appellee's brief even if it were to the same effect since she did not offer it in evidence during the hearing before the trial court. The CA found it unnecessary to pass upon the evidence of Victoria's possession and occupation of the subject property. It denied Victoria's motion for reconsideration on September 11, 2007.

Issues Presented

The issues in this case are:

1. Whether or not Victoria amply proved that the subject lot is alienable and disposable land of the public domain; and

2. Whether or not she has amply proved her claim of ownership of the property.

Court's Ruling

Section 14(1)[4] of the Property Registration Decree has three requisites for registration of title: (a) that the property in question

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[4] The provision reads: "Sec. 14. *Who may apply.*—The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized

is alienable and disposable land of the public domain; (b) that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and (c) that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.[5]

A similar right is granted under Sec. 48(b) of the Public Land Act.[6] There are no material differences between Sec. 14(1) of the Property Registration Decree and Sec. 48(b) of the Public Land Act.[7] Sec. 14(1) operationalizes the registration of such lands of the public domain.[8]

Here, the only reason the CA gave in reversing the decision of the MeTC is that Victoria failed to submit the November 6, 2006 Certification issued by the DENR, verifying the subject property as within the alienable and disposable land of the public

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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"

[5] *Republic of the Philippines v. Court of Appeals*, 489 Phil. 405, 413 (2005).

[6] The provision reads: "The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such land or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act [*now Property Registration Decree*], to wit: 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 alienable and disposable 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 majeur*. 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."

[7] *Republic of the Philippines v. Court of Appeals*, *supra* note 5, at 417.

[8] *Heirs of Mario Malabanan v. Republic of the Philippines*, G.R. No. 179987, April 29, 2009, 587 SCRA 172, 189.

domain, during the hearing before the MeTC. She belatedly submitted it on appeal.

To prove that the land subject of the application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or statute.[9] The applicant may secure a certification from the government that the lands applied for are alienable and disposable, but the certification must show that the DENR Secretary had approved the land classification and released the land of the pubic domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO.[10] The applicant must also present a copy of the original classification of the land into alienable and disposable, as declared by the DENR Secretary or as proclaimed by the President.[11]

The DENR Certification submitted by Victoria reads:

This is to certify that the tract of land as shown and described at the reverse side of this Conversion/Subdivision Plan of Lot 5176 MCadm 590-D, Taguig Cadastral Mapping, Csd-00-000648, containing an area of 17,507 square meters, situated at Bambang, Taguig City, Metro Manila, as surveyed by Geodetic Engineer Justa M. de las Alas for Marissa S. Estopalla, *et al*., was verified to be within the Alienable or Disposable Land, under Project No. 27-B, Taguig City, Metro Manila as per LC Map 2623, approved on January 3, 1968.[12]

On July 28, 2010 the Court issued a resolution requiring the OSG to verify from the DENR whether the Senior Forest

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[9] *Republic of the Philippines v. Court of Appeals*, 440 Phil. 697, 710-711 (2002).

[10] *Republic v. Heirs of Juan Fabio*, G.R. No. 159589, December 23, 2008, 575 SCRA 51, 77.

[11] *Id.*

[12] CA *rollo*, p. 49.

Management Specialist of its National Capital Region, Office of the Regional Technical Director for Forest Management Services, who issued the Certification in this case, is authorized to issue certifications on the status of public lands as alienable and disposable, and to submit a copy of the administrative order or proclamation that declares as alienable and disposable the area where the property involved in this case is located, if any there be.[13]

In compliance, the OSG submitted a certification from the DENR stating that Senior Forest Management Specialist Corazon D. Calamno, who signed Victoria's DENR Certification, is authorized to issue certifications regarding status of public land as alienable and disposable land.[14] The OSG also submitted a certified true copy of Forestry Administrative Order 4-1141 dated January 3, 1968,[15] signed by then Secretary of Agriculture and Natural Resources Arturo R. Tanco, Jr., which declared portions of the public domain covered by Bureau of Forestry Map LC-2623, approved on January 3, 1968, as alienable and disposable.

Since the OSG does not contest the authenticity of the DENR Certification, it seems too hasty for the CA to altogether disregard the same simply because it was not formally offered in evidence before the court below. More so when even the OSG failed to present any evidence in support of its opposition to the application for registration during trial at the MeTC. The attack

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[13] *Rollo*, p. 203.

[14] *Id.* at 229. Certification of such authority issued on November 23, 2010 by Rolando G. Malamug, Chief, Forest Utilization and Law Enforcement Division, and Ibarra G. Calderon, In-Charge, Office of the Regional Technical Director, Forest Management Service, of the DENR.

[15] *Id.* at 220. The subject of the order reads: "Land Classification. – Declaring Certain Portions of the Public Domain Situated in the Municipalities of Taytay, Las Piñas, Muntinlupa, Parañaque, Taguig, and Pateros, Province of Rizal and in the Municipalities of Bacoor and Imus, Province of Cavite, Under Project Nos. 5-B, 13-A, 22, 25, 27-B, 29, 6 and 12-A Respectively, as Alienable or Disposable."

on Victoria's proof to establish the nature of the subject property was made explicit only when the case was at the appeal stage in the Republic's appellant's brief. Only then did Victoria find it necessary to present the DENR Certification, since she had believed that the notation in the Conversion/Subdivision Plan of the property was sufficient.

In *Llanes v. Republic*,[16] this Court allowed consideration of a CENRO Certification though it was only presented during appeal to the CA to avoid a patent unfairness. The rules of procedure being mere tools designed to facilitate the attainment of justice, the Court is empowered to suspend their application to a particular case when its rigid application tends to frustrate rather than promote the ends of justice.[17] Denying the application for registration now on the ground of failure to present proof of the status of the land before the trial court and allowing Victoria to re-file her application would merely unnecessarily duplicate the entire process, cause additional expense and add to the number of cases that courts must resolve. It would be more prudent to recognize the DENR Certification and resolve the matter now.

Besides, the record shows that the subject property was covered by a cadastral survey of Taguig conducted by the government at its expense. Such surveys are carried out precisely to encourage landowners and help them get titles to the lands covered by such survey. It does not make sense to raise an objection after such a survey that the lands covered by it are inalienable land of the public domain, like a public forest. This is the City of Taguig in the middle of the metropolis.

The CA also erred in not affirming the decision of the MeTC especially since Victoria has, contrary to the Solicitor General's allegation, proved that she and her predecessors-in-interest had been in possession of the subject lot continuously, uninterruptedly, openly, publicly, adversely and in the concept

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[16] G.R. No. 177947, November 27, 2008, 572 SCRA 258, 268-269.

[17] *Id.* at 269.

of owners since the early 1940s. In fact, she has submitted tax declarations covering the land way back in 1948 that appeared in her father's name.

We find no reason to disturb the conclusion of the trial court that Victoria amply established her right to have the subject property registered in her name, given that she has met all the requisites for registration of title under the Property Registration Decree.

WHEREFORE, the Court *GRANTS* the petition, *REVERSES and SETS ASIDE* the June 19, 2007 decision and the September 11, 2007 resolution of the Court of Appeals, and *REINSTATES* the January 25, 2006 decision of the Metropolitan Trial Court, Branch 74 of the City of Taguig.

SO ORDERED.

Carpio, Peralta, Perez,[*] and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 179675. June 8, 2011]

SPOUSES JUANITO MAHUSAY and FRANCISCA MAHUSAY, *petitioners, vs.* **B.E. SAN DIEGO, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; FINAL JUDGMENT; IMMUTABLE AND UNALTERABLE BUT CLARIFICATION

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated June 6, 2011.

IS ALLOWED WHEN WHAT IS INVOLVED IS A CLERICAL ERROR OR NOT A CORRECTION OF AN ERRONEOUS JUDGMENT OR DISPOSITIVE PORTION OF THE DECISION.— It is a settled rule is that a judgment which has acquired finality becomes immutable and unalterable; hence, it may no longer be modified in any respect except only to correct clerical errors or mistakes. Clarification after final judgment is, however, allowed when what is involved is a clerical error, or not a correction of an erroneous judgment, or dispositive portion of the Decision. Where there is an ambiguity caused by an omission or mistake in the dispositive portion, the court may clarify such ambiguity, mistake, or omission by an amendment; and in so doing, it may resort to the pleadings filed by the parties, the court's findings of facts and conclusions of law as expressed in the body of the decision.

2. ID.; ID.; ID.; ID.; THE APPELLATE COURT'S CLARIFICATION OF ITS ORIGINAL DECISION TO INCLUDE THE PAYMENT OF PENALTIES AND INTEREST DUE ON THE UNPAID AMORTIZATIONS AS PROVIDED IN THE CONTRACT, AFFIRMED; ABSENT ANY QUESTION ON THE VALIDITY OF THE CONTRACT OR ANY FINDINGS THAT THE SAME MAY BE CONTRARY TO LAW, MORALS, PUBLIC ORDER, OR PUBLIC POLICY, A STIPULATION REQUIRING THE PAYMENT OF INTEREST/PENALTY AT THE RATE AGREED UPON BY THE PARTIES IS NOT UNLAWFUL.— [T]he Court finds no reversible error in the CA Resolution dated September 11, 2007, denying the Motion to Withdraw the Resolution. Likewise, the CA committed no reversible error in its Resolution dated October 11, 2004, clarifying the original Decision. Respondent's Motion for Clarification did not really partake of the nature of a motion for reconsideration, as to amend the December 20, 2001 Decision. There was nothing substantial to vary, considering that the issues between the parties were deemed resolved and laid to rest. It is unmistakably clear that petitioners do not deny the execution of the Contracts to Sell and, in fact, admit their liability for the unpaid amortizations of the lots purchased. The persistent violations of the contracts and the continuous delay in petitioners' payments cannot simply be overlooked. There was a compelling reason for the CA to clarify its original Decision to include the payment of all penalties and interest due on the unpaid

amortizations, as provided in the contracts. Considering that the validity of the contracts was never put in question, and there is nothing on record to suggest that the same may be contrary to law, morals, public order, or public policy, there is nothing unlawful in the stipulation requiring the payment of interest/ penalty at the rate agreed upon in the contract of the parties.

3. CIVIL LAW; HUMAN RELATIONS; THE PARTIES' CONTINUED POSSESSION AND USE OF THE PROPERTIES, EVEN ABSENT FULL PAYMENT OF ITS PURCHASE PRICE, IS TANTAMOUNT TO UNJUST ENRICHMENT.— The Court further notes that petitioners are in actual/physical possession of the properties and enjoying the beneficial use thereof, despite the payment of only ₱133,872.76, as of January 30, 1979. It would be grossly unfair for respondent to be deprived of the amount it would have received from the sale of their properties, while petitioners benefited from the use and continued possession of the properties even if no payments were made by them since October 1978. It is a basic rule in law that no one shall unjustly enrich oneself at the expense of another. Indeed, to allow petitioners to keep the properties without paying for them in full amounts to unjust enrichment on their part. The fair market value of the land has tremendously increased over the past years. It is, therefore, just, fair, and equitable that petitioners be made to pay interest/penalty for the delay in their payments.

4. ID.; SPECIAL CONTRACTS; SALES; REMEDY OF AN UNPAID SELLER; PAYMENT OF LEGAL INTEREST AT THE RATE OF 12% PER ANNUM, WARRANTED.— [T]he Court notes that this case has dragged on for many years since 1978. In order to writ finis to this protracted litigation between the parties, we resolve the case in accordance with jurisprudence on the matter. Undeniably, the instant case is a sale of real property where the purchase price is not paid in full. The unpaid seller's remedy is either an action to collect the balance or to rescind the contract within the time allowed by law. Since rescission is no longer an option considering that petitioners have been in possession of the properties for a considerable period of time, substantial justice dictates that respondent be entitled to receive the unpaid balance of the purchase price, plus legal interest thereon. In line with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*, the legal interest to

be paid on the amount shall be 12% per annum, which shall commence from April 18, 1990, when respondent filed the Complaint for Specific Performance with the RTC, Branch 73, Malabon, in Civil Case No. 1433-MN, which shall be considered as judicial demand, until the finality of this Decision. Another 12% interest per annum shall be paid on the amount due and owing as of and from the date of finality of the Decision until full payment.

APPEARANCES OF COUNSEL

Rodriguez Laluces Ecarma & Diaz Law Offices for petitioners.
J.V. Natividad & Associates and *Carmelita Bautista-Lozada* for respondent.

D E C I S I O N

NACHURA, *J.*:

The instant petition assails the Resolution[1] dated September 11, 2007 of the Court of Appeals (CA), denying petitioners' Motion to Delete and Withdraw Resolution of October 11, 2004, which allegedly amended and modified the original Decision of the CA promulgated on December 20, 2001.

The antecedent facts are, as follows:

Petitioner spouses Juanito and Francisca Mahusay purchased several lots in Aurora Subdivision, Malabon, Metro Manila, owned by respondent B.E. San Diego, Inc. The transactions were covered by two (2) contracts: Contract to Sell No. 831,[2] executed on May 14, 1973, for the total price of ₱33,000.00; and Contract to Sell No. 874[3] dated August 1, 1975, for the price of ₱197,040.00, plus interest of 12% per annum, payable

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[1] *Rollo,* pp. 33-36.

[2] Lot No. 29, Block 29, with an area of 330 sq m; *id.* at 53.

[3] Lot Nos. 2, 3, 4, 5 & 6, Block 29, with a total area of about 1,642 sq m; *id.* at 55.

in monthly installments. Due to petitioners' nonpayment of the monthly amortizations since October 1978, respondent was constrained to file a case for cancellation of contracts. The case was dismissed by the trial court for lack of jurisdiction. Thereafter, a Compromise Agreement was entered into by the parties on October 13, 1989, whereby petitioners agreed to pay respondent the remaining balance of the purchase price of all the lots in the manner and under the terms agreed upon by the parties. Petitioners failed to comply with the terms embodied in the Compromise Agreement; thus, on April 18, 1990, respondent filed a Complaint for Specific Performance with the Regional Trial Court (RTC), Branch 73, Malabon, docketed as Civil Case No. 1433-MN.[4]

On November 29, 1995, the RTC ruled in favor of respondent, ordering petitioners to comply with the provisions of the Compromise Agreement, and to pay the amounts of ₱1,000,000.00 as actual damages and ₱50,000.00 as attorney's fees.[5]

Petitioners appealed the decision to the CA on two grounds: (1) it was the Housing and Land Use Regulatory Board and not the RTC which had jurisdiction over the subject matter of the action; and (2) the Compromise Agreement was unenforceable because it was only Francisca Mahusay who signed the Agreement on October 13, 1989, without the consent of her husband Juanito Mahusay.

In its Decision dated December 20, 2001, the CA upheld the jurisdiction of the RTC. The CA ratiocinated that respondent's action was one for Specific Performance with Damages, which is in the nature of ordinary money claims filed by the unpaid seller against the buyer, that should be litigated in the regular court. Besides, petitioners were estopped from questioning the court's jurisdiction since, by the act of filing an answer and other pleadings, they were deemed to have

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[4] *Id.* at 109.

[5] *Id.* at 63.

submitted themselves to the jurisdiction of the court.[6] The CA, however, saw merit in the contention that the Compromise Agreement dated October 13, 1989 was not valid considering that it was entered into by petitioner Francisca Mahusay alone. Since the Agreement involved the conjugal properties of petitioners, Francisca could not bind her husband, who never gave his consent to the Agreement.

But the CA noted that petitioners never denied the execution of the contracts to sell and they admitted the debts owing to respondent. Thus, it ruled that petitioners should pay respondent the unpaid amortizations for the lots they purchased from it. The dispositive portion of the CA Decision reads, as follows:

> WHEREFORE, premises considered[,] the appealed **Decision** dated November 29, 1995, Regional Trial Court of Malabon, Branch 73, in Civil Case No. 1433-MN is hereby **AFFIRMED with MODIFICATION**, declaring the Agreement on October 13, 1989 or Exhibit "C" to be **NULL AND VOID *AB INITIO*** and **DELETING** the award of actual damages in the amount of ₱1,000,000.00. Accordingly, Appellants are hereby ordered to pay Appellee all the unpaid amortization including amortization yet to be paid until the expiration of the contract to sell. Costs against Appellants.[7]

The CA Decision became final and executory, and entry of judgment was made in due course on January 19, 2002.[8] Thereafter, in the execution of the Decision, the parties disagreed, particularly in the computation of the amount to be paid by petitioners.

On May 6, 2004, respondent filed a Motion for Clarification of the CA Decision. It prayed for the inclusion of the penalties and interest in the computation of unpaid amortizations, which it claimed is customary in real estate business and compliant with the Contracts to Sell, for the proper execution and implementation of the CA Decision.

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[6] *Id.* at 115.

[7] *Id.* at 119.

[8] *Id.* at 120.

Petitioners opposed the motion by way of a Reply dated May 15, 2004.[9]

On October 11, 2004, the CA issued a Resolution, as follows:

> Upon consideration of the Motion for Clarification[,] dated May 6, 2004, of the plaintiff-appellee, and the Reply of the defendants-appellants dated May 15, 2004, the Court holds by way of clarification of the dispositive portion of our Decision of December 20, 2001, which reads:
>
> > "WHEREFORE, premises considered[,] the appealed **Decision** dated November 29, 1995, Regional Trial Court of Malabon, Branch 73, in Civil Case No. 1433-MN is hereby **AFFIRMED with MODIFICATION**, declaring the Agreement on October 13, 1989 or Exhibit "C" to be **NULL AND VOID *AB INITIO*** and **DELETING** the award of actual damages in the amount of ₱1,000,000.00. Accordingly, Appellants are hereby ordered to pay Appellee all the unpaid amortization including amortization yet to be paid until the expiration of the contract to sell. Costs against Appellants.
> >
> > SO ORDERED."
>
> that the said decision includes the payment of all penalties and interest due on the unpaid amortizations, under [C]ontract to [S]ell No. 874 dated August 1, 1975 and [C]ontract to [S]ell No. 831 dated May 14, 1973, which is customary in the real [e]state business and in accordance with the provisions of the contracts.[10]

On November 9, 2004, petitioners filed a Motion to Delete and Withdraw the Resolution for the Amendment and Modification of Original Decision.[11] Petitioners contended that a simple reading of the Motion for Clarification would show that it was not intended to clarify but to amend the Decision to include the payment of 12% interest/penalty per annum in the payment of the amortizations. They argued that the inclusion of 12% interest per annum is a very serious and material

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[9] *Id.* at 124.

[10] *Id.* at 126-127.

[11] *Id.* at 128.

amendment, because under the original Decision, petitioners would be required to pay only ₱352,992.00, which is the amount of the unpaid amortizations for the said lots; while in the Amended Decision, they would be liable for ₱5,175,688.59, per computation made by respondent. The motion, ostensibly for clarification, filed by respondent more than two (2) years after the receipt of the original Decision, should not have been granted, according to petitioners.

On July 7, 2005, the CA issued a Resolution denying the aforesaid Motion to Delete and Withdraw the Resolution for lack of merit. The appellate court said that the Decision promulgated on December 20, 2001 has not been amended but only clarified in the Resolution dated October 11, 2004.[12] Undaunted, petitioners again filed an Amended Motion to Delete and Withdraw the Resolution for the Amendment and Modification of the Original Decision on July 14, 2005, and another motion to delete on July 27, 2005.

Acting on the twin motions, the CA issued the assailed Resolution on September 11, 2007, denying the same on the ground that the allegations set forth by petitioners therein were all considered and passed upon by the court in its Resolution dated October 11, 2004.[13]

Aggrieved, petitioners filed the instant petition.

Petitioners claim that respondent's Motion for Clarification, which was belatedly filed, does not really intend to clarify, but to reconsider, alter, and amend the original Decision of the CA, in contravention of the principle of immutability of judgments. Thus, they argue that the CA Resolution of October 11, 2004 unduly expanded and amended its final and executory Decision of December 20, 2001, in gross violation of this principle.

We disagree.

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[12] *Id.* at 47.

[13] *Id.* at 33.

It is a settled rule is that a judgment which has acquired finality becomes immutable and unalterable; hence, it may no longer be modified in any respect except only to correct clerical errors or mistakes.[14] Clarification after final judgment is, however, allowed when what is involved is a clerical error, or not a correction of an erroneous judgment, or dispositive portion of the Decision.[15] Where there is an ambiguity caused by an omission or mistake in the dispositive portion, the court may clarify such ambiguity, mistake, or omission by an amendment; and in so doing, it may resort to the pleadings filed by the parties, the court's findings of facts and conclusions of law as expressed in the body of the decision.[16]

In the case at bar, there is no dispute that, in 1973 and 1975, petitioners entered into two Contracts to Sell with respondent, respectively for the purchase of several lots in Aurora Subdivision, Malabon, Metro Manila. Petitioners' obligation to pay the purchase price for the lots was never denied. Accordingly, the contractual stipulation that petitioners shall pay the monthly amortizations is binding and enforceable. It is the law between the parties.

Petitioners stopped paying the amortizations in October 1978, leaving a total unpaid balance of ₱352,992.00 as of January 30, 1979.[17] Since rescission of the contracts was not an option for petitioners, the latter negotiated with respondent for a final chance to pay off their obligations. Thus, a settlement was arrived at and a Compromise Agreement was executed, which, unfortunately, was signed by Francisca Mahusay alone. The terms of the Compromise Agreement were again breached by petitioners, prompting respondent to file an action for Specific

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[14] *Johnson & Johnson (Phils.),Inc. v. Court of Appeals and Alejo M. Vinluan,* G.R. No. 102692, September 23, 1996, 330 Phil. 856, 857.

[15] *Department of Budget and Management v. City Government of Cebu,* G.R. No. 127301, March 14, 2007, 518 SCRA 300, 314.

[16] *Ilacad v. Court of Appeals,* 168 Phil. 465, 474 (1977).

[17] *Rollo,* p. 130.

Performance. As it turned out, the CA nullified the Compromise Agreement, but held petitioners liable for the payment of all the unpaid amortizations, including amortizations yet to be paid, until the expiration of the contract. Apparently, the CA was silent on the payment of the interest/penalty for the delay in payments, which led to the Motion for Clarification filed by respondent.

Based on the foregoing facts and circumstances, the Court finds no reversible error in the CA Resolution dated September 11, 2007, denying the Motion to Withdraw the Resolution. Likewise, the CA committed no reversible error in its Resolution dated October 11, 2004, clarifying the original Decision. Respondent's Motion for Clarification did not really partake of the nature of a motion for reconsideration, as to amend the December 20, 2001 Decision. There was nothing substantial to vary, considering that the issues between the parties were deemed resolved and laid to rest. It is unmistakably clear that petitioners do not deny the execution of the Contracts to Sell and, in fact, admit their liability for the unpaid amortizations of the lots purchased. The persistent violations of the contracts and the continuous delay in petitioners' payments cannot simply be overlooked. There was a compelling reason for the CA to clarify its original Decision to include the payment of all penalties and interest due on the unpaid amortizations, as provided in the contracts. Considering that the validity of the contracts was never put in question, and there is nothing on record to suggest that the same may be contrary to law, morals, public order, or public policy, there is nothing unlawful in the stipulation requiring the payment of interest/penalty at the rate agreed upon in the contract of the parties.[18]

The Court further notes that petitioners are in actual/physical possession of the properties and enjoying the beneficial use thereof, despite the payment of only ₱133,872.76, as of January 30, 1979.[19] It would be grossly unfair for respondent to be

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[18] *Castelo v. CA*, G.R. No. 96372, May 22, 1995, 244 SCRA 180.

[19] *Rollo*, p. 59.

deprived of the amount it would have received from the sale of their properties, while petitioners benefited from the use and continued possession of the properties even if no payments were made by them since October 1978. It is a basic rule in law that no one shall unjustly enrich oneself at the expense of another. Indeed, to allow petitioners to keep the properties without paying for them in full amounts to unjust enrichment on their part.[20] The fair market value of the land has tremendously increased over the past years. It is, therefore, just, fair, and equitable that petitioners be made to pay interest/penalty for the delay in their payments.

Finally, the Court notes that this case has dragged on for many years since 1978. In order to writ finis to this protracted litigation between the parties, we resolve the case in accordance with jurisprudence on the matter. Undeniably, the instant case is a sale of real property where the purchase price is not paid in full. The unpaid seller's remedy is either an action to collect the balance or to rescind the contract within the time allowed by law. Since rescission is no longer an option considering that petitioners have been in possession of the properties for a considerable period of time, substantial justice dictates that respondent be entitled to receive the unpaid balance of the purchase price, plus legal interest thereon.[21] In line with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[22] the legal interest to be paid on the amount shall be 12% per annum, which shall commence from April 18, 1990, when respondent filed the Complaint for Specific Performance with the RTC, Branch 73, Malabon, in Civil Case No. 1433-MN, which shall be considered as judicial demand, until the finality of this Decision. Another 12% interest per annum shall be paid on the amount due and owing as of and from the date of finality of the Decision until full payment.

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[20] *Soliva v. The Intestate Estate of Marcelo M. Villalba*, G.R. No. 154017, December 8, 2003, 417 SCRA 277.

[21] *Id.* at 279.

[22] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

WHEREFORE, the petition is *DENIED*. The Resolution of the Court of Appeals dated September 11, 2007 is *AFFIRMED* with *MODIFICATION*. The trial court is directed to compute the unpaid balance of the purchase price of each contract (which is the unpaid amortization including amortizations yet to be paid until the expiration of the Contracts to Sell) with dispatch. The legal interest to be paid on said amount is TWELVE PERCENT (12%) per annum, which shall commence from April 18, 1990, when judicial demand was made on petitioners. Another 12% interest per annum shall be paid on the amount due and owing as and from the date of finality of this Decision until full payment would have actually been made.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181812. June 8, 2011]

FELICIANO GAITERO and NELIA GAITERO, *petitioners, vs.* **GENEROSO ALMERIA and TERESITA ALMERIA,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; A REGISTERED TITLE CANNOT BE IMPUGNED, ALTERED, CHANGED, MODIFIED, ENLARGED, OR DIMINISHED, EXCEPT IN A DIRECT PROCEEDING PERMITTED BY LAW; VIOLATION IN CASE AT BAR.— Possession is an essential attribute of ownership. Necessarily, whoever owns the property has the right to possess it. Here, between the Almerias' registered title of ownership and Gaitero's verbal claim to the same, the

former's title is far superior. Since Gaitero was unable to prove that fraud attended the titling of the disputed area, the Almerias' right over the same became indefeasible and incontrovertible a year from registration. The Court cannot consider Gaitero's claim of ownership of the disputed area, based on his alleged continuous possession of the same, without running afoul of the rule that bars collateral attacks of registered titles. Gaitero's action before the MCTC is one for recovery of possession of the disputed area. An adjudication of his claim of ownership over the same would be out of place in such kind of action. A registered title cannot be impugned, altered, changed, modified, enlarged, or diminished, except in a direct proceeding permitted by law. Otherwise, reliance on registered titles would be lost. Gaitero's action is prohibited by law and should be dismissed.

2. ID.; ID.; ID.; LACHES IS A CONSIDERATION IN EQUITY AND ANYONE WHO INVOKES THE SAME MUST COME TO COURT WITH CLEAN HANDS; NOT PRESENT IN CASE AT BAR.— Gaitero's theory of *laches* cannot vest on him the ownership of the disputed area. To begin with, laches is a consideration in equity and therefore, anyone who invokes it must come to court with clean hands, for he who has done inequity shall not have equity. Here, Gaitero's claim of laches against the Almerias can be hurled against him. When the lot that the Almerias acquired (Lot 9964) was registered in 1979, Gaitero had constructive, if not actual, notice that the cadastral survey included the disputed area as part of the land that Leon Asenjo claimed. Yet, neither Gaitero nor his mother complained or objected to such inclusion. Worse, when Gaitero saw the subdivision plan covering Tomagan's original Lot 9960 in 1993, it showed that the disputed area fell outside the boundaries of Lot 9960-A which he claimed. Still, Gaitero did nothing to correct the alleged mistake. He is by his inaction clearly estopped from claiming ownership of the disputed area. He cannot avail himself of the law of equity.

APPEARANCES OF COUNSEL

Robin P. Rubinos for petitioners.
Rolly O. Pedriña for respondents.

D E C I S I O N

ABAD, *J.*:

Will laches, a rule of equity, benefit one who himself slept on his supposed right?

The Facts and the Case

Following a cadastral survey in *Barangay* Ysulat, Tobias Fornier, Antique, a land registration court issued an original certificate of title[1] to Rosario O. Tomagan (Tomagan) covering a 10,741 square-meter land, designated as Lot 9960.[2] Subsequently in 1993, Tomagan subdivided the lot awarded to her into four: Lot 9960-A[3] covering 3,479 sq m; Lot 9960-B covering 1,305 sq m; Lot 9960-C[4] covering 3,073 sq m; and Lot 9960-D covering the remaining 2,884 sq m. Tomagan waived her rights over Lots 9960-A and 9960-C in favor of petitioner Feliciano Gaitero (Gaitero) and Lot 9960-B in favor of *Barangay* Ysulat, Tobias Fornier. She retained Lot 9960-D.[5]

Lot 9960-A that went to Gaitero adjoined Lot 9964 which belonged to respondent spouses Generoso and Teresita Almeria (the Almerias) and was covered by OCT P-14556. In June 2000, the Almerias commissioned a relocation survey of their lot and were astonished to find that Gaitero, who owned adjoining Lot 9960-A, intruded into their lot by as much as 737 sq m (the disputed area).

On August 9, 2000, apparently to settle the dispute, the Almerias waived their rights over a 158 sq m portion of the disputed area in Gaitero's favor but maintained their claim over the remaining 579 sq m. Subsequently, however, Gaitero filed

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[1] OCT P-14601.

[2] *Rollo*, pp. 171-172.

[3] Eventually covered by TCT T-2544.

[4] Eventually covered by TCT T-2545.

[5] *Rollo*, p. 173.

an affidavit of adverse claim on the Almerias' title over the remaining 579 sq m.[6]

When *barangay* conciliation proceedings failed to settle the differences between the two neighbors, Gaitero filed an action for recovery of possession against the Almerias[7] before the Municipal Circuit Trial Court (MCTC) of Tobias Fornier-Anini-Y-Hamtic. Gaitero prayed for the return of the possession of the remaining 579 sq m, moral damages of ₱100,000.00, exemplary damages of ₱25,000.00, attorney's fees of ₱15,000.00, and litigation expenses of ₱10,000.00.

Gaitero claimed that he was the registered owner of Lot 9960-A, which was covered by TCT T-2544 and had an assessed value of ₱11,050.00; that he inherited the same from his mother, Maria Obay, who in turn inherited it from her father, Bonifacio Obay; that before the cadastral survey, Lot 9960-A was erroneously lumped with Lot 9960 in Tomagan's name; that, acknowledging the mistake, Tomagan subdivided Lot 9960 into four lots and waived her rights over Lots 9960-A and 9960-C in Gaitero's favor; that the Almerias claimed a portion of Lot 9960-A by virtue of a relocation survey and fenced it close to Gaitero's house, obstructing the latter's passageway; and that while the Almerias returned 158 sq m of the disputed portion, they refused to return to him the remaining 579 sq m.

Answering the complaint and instituting a counterclaim, the Almerias alleged that they bought Lot 9964[8] in 1985 by virtue of an Extra-Judicial Settlement of Estate and Sale; that it was Gaitero who unlawfully encroached on the 737 sq m portion of Lot 9964; and that, while they had waived a portion of the disputed area, Gaitero's incessant claim to the remaining 579 sq m prompted them to cancel their previous waiver of the 158 sq m.[9] The Almerias prayed for the dismissal of the complaint and the award of damages in their favor.

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[6] *Id.* at 180.

[7] Docketed as Civil Case 243-TF.

[8] Covered by OCT P-14556 under the name of Leon Asenjo.

[9] *Rollo*, p. 37.

In his reply, Gaitero claimed that the cadastral survey was erroneous in that it included a 737 sq m portion of Lot 9960-A into Lot 9964.

After trial, on December 9, 2002 the MCTC rendered a decision, dismissing the complaint and ordering Gaitero to pay the Almerias ₱20,000.00 in moral damages and ₱20,000.00 in attorney's fees. The MCTC held that the Almerias were entitled to the possession of the disputed area considering that it is included in the technical description of their registered title. Further, the MCTC held that Gaitero acknowledged the true boundaries of 9960-A when Lot 9960 was subdivided in 1993. Indeed, the subdivision plan clearly shows that the disputed area is excluded from 9960-A.

On appeal,[10] the Regional Trial Court (RTC) reversed the decision of the MCTC.[11] The RTC held that, while the Almerias were the rightful owners of the disputed area, *laches* prevented them from asserting their right over the same since it took them 15 years before they did so. The RTC also ordered the Almerias to pay Gaitero moral damages of ₱50,000.00, attorney's fees of ₱15,000.00 and litigation expenses of ₱30,000.00.

On review,[12] the Court of Appeals (CA) rendered judgment on May 21, 2007, reversing the decision of the RTC and reinstating that of the MCTC. The CA held that the Almerias owned the disputed area since, between a registered title and a verbal claim of ownership, the former must prevail. The CA did not consider the Almerias in laches since no one had lodge a claim of ownership against their title to the disputed property. On motion for reconsideration, the CA deleted the award of moral damages, litigation expenses, and attorney's fees in its resolution of February 11, 2008.

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[10] Docketed as Civil Case 3364.

[11] Decision dated August 1, 2003.

[12] Docketed as CA-G.R. SP 80285.

The Issue Presented

The sole issue presented to the Court is whether or not the CA erred in holding that the Almerias are entitled to the possession of the disputed area as against Gaitero.

The Court's Ruling

Possession is an essential attribute of ownership. Necessarily, whoever owns the property has the right to possess it.[13] Here, between the Almerias' registered title of ownership and Gaitero's verbal claim to the same, the former's title is far superior.

As the MCTC, the RTC, and the CA found, the disputed area forms part of the Almerias' registered title. Upon examination, this fact is also confirmed by the subdivision plan which partitioned Tomagan's original Lot 9960. The evidence shows that the Almerias bought Lot 9964, which includes the disputed area, from the Asenjo heirs in whose names the land was originally registered. Since Gaitero was unable to prove that fraud attended the titling of the disputed area, the Almerias' right over the same became indefeasible and incontrovertible a year from registration.[14]

The Court cannot consider Gaitero's claim of ownership of the disputed area, based on his alleged continuous possession of the same, without running afoul of the rule that bars collateral attacks of registered titles.[15] Gaitero's action before the MCTC is one for recovery of possession of the disputed area. An adjudication of his claim of ownership over the same would be out of place in such kind of action. A registered title cannot be impugned, altered, changed, modified, enlarged, or diminished, except in a direct proceeding permitted by law. Otherwise, reliance on registered titles would be lost.[16] Gaitero's action is prohibited by law and should be dismissed.

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[13] *Spouses Bustos v. Court of Appeals*, 403 Phil. 21, 30 (2001).

[14] Section 32, *Property Registration Decree* (Presidential Decree 1529).

[15] Section 48, *id.*

[16] *Ugale v. Gorospe*, G.R. No.149516, September 11, 2006, 501 SCRA 376, 385.

Gaitero's theory of *laches* cannot vest on him the ownership of the disputed area. To begin with, laches is a consideration in equity[17] and therefore, anyone who invokes it must come to court with clean hands, for he who has done inequity shall not have equity.[18] Here, Gaitero's claim of laches against the Almerias can be hurled against him. When the lot that the Almerias acquired (Lot 9964) was registered in 1979, Gaitero had constructive, if not actual, notice that the cadastral survey included the disputed area as part of the land that Leon Asenjo claimed. Yet, neither Gaitero nor his mother complained or objected to such inclusion.

Worse, when Gaitero saw the subdivision plan covering Tomagan's original Lot 9960 in 1993, it showed that the disputed area fell outside the boundaries of Lot 9960-A which he claimed. Still, Gaitero did nothing to correct the alleged mistake. He is by his inaction clearly estopped from claiming ownership of the disputed area. He cannot avail himself of the law of equity.

WHEREFORE, the Court *DISMISSES* the petition and *AFFIRMS* the decision and resolution of the Court of Appeals in CA-G.R. SP 80285 dated May 21, 2007 and February 11, 2008, respectively.

SO ORDERED.

Carpio, Nachura, Brion,[*] and *Peralta, JJ.*, concur.

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[17] *GF Equity, Inc. v. Valenzona,* 501 Phil. 153, 166 (2005).

[18] *De Castro v. Utility Savings,* G.R. No. 166445, February 9, 2005.

[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per raffle dated June 8, 2011.

SECOND DIVISION

[G.R. No. 182148. June 8, 2011]

SIME DARBY PILIPINAS, INC., *petitioner, vs.* **GOODYEAR PHILIPPINES, INC. and MACGRAPHICS CARRANZ INTERNATIONAL CORPORATION,** *respondents.*

[G.R. No. 183210. June 8, 2011]

GOODYEAR PHILIPPINES, INC., *petitioner, vs.* **SIME DARBY PILIPINAS, INC. and MACGRAPHICS CARRANZ INTERNATIONAL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT ARE NOT REVIEWABLE THEREIN; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.— Well-settled is the rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court should only include questions of law since questions of fact are not reviewable. A question of law arises when there is doubt as to what the law is on a certain state of facts, while a question of fact exists when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by any of the litigants. The resolution of the issue must rest solely on what the law provides under a given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, then the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court resolve the question raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact. Likewise well-settled is the principle that absent grave abuse of discretion, the Court will not disturb the factual findings of the CA. The Court will only exercise its power of review in known exceptions such as

gross misappreciation of evidence or a total void of evidence.Whether Macgraphics gave its consent to the assignment of leasehold rights of Sime Darby is a question of fact. It is not reviewable. On this score alone, the petition of Sime Darby fails.

2. CIVIL LAW; SPECIAL CONTRACTS; LEASE; ASSIGNMENT OF THE LEASE WITHOUT THE LESSOR'S CONSENT IS PROHIBITED.— Article 1649 of the New Civil Code provides: Art. 1649. The lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary. (n) In an assignment of a lease, there is a novation by the substitution of the person of one of the parties – the lessee. The personality of the lessee, who dissociates from the lease, disappears. Thereafter, a new juridical relation arises between the two persons who remain – the lessor and the assignee who is converted into the new lessee. The objective of the law in prohibiting the assignment of the lease without the lessor's consent is to protect the owner or lessor of the leased property.

3. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; KINDS; ESSENTIAL REQUISITES OF EXTINCTIVE NOVATION; NOT PRESENT.— Broadly, a novation may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have dual functions—one to extinguish an existing obligation, the other to substitute a new one in its place. This requires a conflux of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation. While there is no dispute that the first requisite is present, the Court, after careful consideration of the facts and the evidence on record, finds that the other requirements of a valid novation are lacking. A review of the lease contract between Sime Darby and Macgraphics

discloses no stipulation that Sime Darby could assign the lease without the consent of Macgraphics.

4. ID.; ID.; LEASE; CONSENT OF THE LESSOR TO AN ASSIGNMENT OF LEASE MUST BE CLEARLY GIVEN.— Moreover, contrary to the assertions of Sime Darby, the records are bereft of any evidence that clearly shows that Macgraphics consented to the assignment of the lease. As aptly found by the RTC and the CA, Macgraphics was never part of the negotiations between Sime Darby and Goodyear. Neither did it give its conformity to the assignment after the execution of the Deed of Assignment. The consent of the lessor to an assignment of lease may indeed be given expressly or impliedly. It need not be given simultaneously with that of the lessee and of the assignee. Neither is it required to be in any specific or particular form. It must, however, be clearly given. In this case, it cannot be said that Macgraphics gave its implied consent to the assignment of lease.

5. ID.; ID.; CONTRACTS; STAGES; NO CONSENT TO THE ASSIGNMENT OF LEASE IN CASE AT BAR.— Indeed, Macgraphics and Goodyear never came to terms as to the conditions that would govern their relationship. While it is true, that Macgraphics and Goodyear exchanged proposals, there was never a meeting of minds between them. Contrary to the assertions of Sime Darby, the negotiations between Macgraphics and Goodyear did not translate to its (Macgraphics') consent to the assignment. Negotiations is just a part or a preliminary phase to the birth of an obligation. "In general, contracts undergo three distinct stages, to wit: negotiation; perfection or birth; and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof."

6. REMEDIAL LAW; APPEALS; ISSUES; ISSUES NOT RAISED BELOW CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Regarding laches, it is an issue raised by Sime Darby for the first time only in this Court. Basic is the rule that issues not raised below cannot be raised for the first time on appeal. Points of law, theories, issues and arguments not brought

to the attention of the lower court need not be, and ordinarily will not be, considered by the reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel the adoption of this rule.

7. ID.; LACHES; EXPLAINED; APPLICATION OF THE DOCTRINE OF LACHES IS CONTROLLED BY THE EQUITABLE CONSIDERATIONS AND SHOULD NOT BE USED TO DEFEAT JUSTICE OR TO PERPETUATE FRAUD OR INJUSTICE; DOCTRINE NOT APPLICABLE TO CASE AT BAR.—[T]he Court finds that the doctrine of laches cannot be applied in this case. Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court. Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice. From the records, it appears that Macgraphics first learned of the assignment when Sime Darby sent its letter-notice dated May 3, 1996. From the letters sent by Macgraphics to Goodyear, it is apparent that Macgraphics had to study and determine both the legal and practical implications of entertaining Goodyear as a client. After review, Macgraphics found that consenting to the assignment would entail the commitment of manpower and resources that it did not foresee at the inception of the lease. It thereafter communicated its non-conformity to the assignment. To the mind of the Court, there was never a delay.

8. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RESCISSION OF THE DEED OF ASSIGNMENT JUSTIFIED WHERE THE LESSEE FAILED TO SECURE THE CONSENT OF THE LESSOR TO THE ASSIGNMENT OF LEASE.— [I]t is clear that by its failure to secure the consent of Macgraphics to the assignment of lease, Sime Darby failed to perform what was incumbent upon it under the Deed of

Assignment. The rescission of the Deed of Assignment pursuant to Article 1191 of the New Civil Code is, thus, justified.

APPEARANCES OF COUNSEL

Mañacop Law Office for Sime Darby Pilipinas, Inc.
Siguion Reyna Montecillo and Ongsiako for Goodyear Philippines, Inc.
Westwood Law for Macgraphics Carranz Int'l. Corp.

D E C I S I O N

MENDOZA, *J.*:

This disposition covers two petitions for review filed separately by Sime Darby Pilipinas, Inc. *(Sime Darby)* and Goodyear Philippines, Inc. *(Goodyear)* assailing the February 13, 2008 Decision[1] of the Court of Appeals *(CA)* and its March 13, 2008[2] and May 28, 2008[3] Resolutions in CA-G.R. CV No. 86032. The assailed issuances affirmed the November 8, 2004 Decision[4] and the July 20, 2005 Order[5] of the Regional Trial Court, Branch 61, Makati City *(RTC)*, in Civil Case No. 97-561 entitled *Goodyear Philippines, Inc. v. Sime Darby Pilipinas, Inc.*, and/or *Macgraphics Carranz International Corporation*, for Partial Rescission of a Deed of Assignment plus Damages and which essentially: [1] granted Goodyear's complaint for partial rescission against Sime Darby; and [2] ordered Goodyear to pay respondent Macgraphics Carranz International Corporation *(Macgraphics)* attorney's fees with legal interest thereon.

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[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose L. Sabio and Jose C. Reyes, Jr., concurring; CA *rollo*, pp. 194-210.

[2] *Id.* at 227-228 or *Rollo* (G.R. No. 182148), pp. 199-200.

[3] *Rollo* (G.R. No. 183210), pp. 63-64.

[4] Records (Vol. II), pp. 449-454.

[5] *Id.* (Vol. II), p. 526.

The Facts:

Macgraphics owned several billboards across Metro Manila and other surrounding municipalities, one of which was a 35' x 70' neon billboard located at the Magallanes Interchange in Makati City. The Magallanes billboard was leased by Macgraphics to Sime Darby in April 1994 at a monthly rental of ₱120,000.00.[6] The lease had a term of four years and was set to expire on March 30, 1998. Upon signing of the contract, Sime Darby paid Macgraphics a total of ₱1.2 million representing the ten-month deposit which the latter would apply to the last ten months of the lease. Thereafter, Macgraphics configured the Magallanes billboard to feature Sime Darby's name and logo.

On April 22, 1996, Sime Darby executed a Memorandum of Agreement[7] *(MOA)* with Goodyear, whereby it agreed to sell its tire manufacturing plants and other assets to the latter for a total of ₱1.5 billion.

Just a day after, on April 23, 1996, Goodyear improved its offer to buy the assets of Sime Darby from ₱1.5 billion to ₱1.65 billion. The increase of the purchase price was made in consideration, among others, of the assignment by Sime Darby of the receivables in connection with its billboard advertising in Makati City and Pulilan, Bulacan.

On May 9, 1996, Sime Darby and Goodyear executed a deed entitled "Deed of Assignment in connection with Microwave Communication Facility and in connection with Billboard Advertising in Makati City and Pulilan, Bulacan" *(Deed of Assignment)*,[8] through which Sime Darby assigned, among others, its leasehold rights and deposits made to Macgraphics pursuant to its lease contract over the Magallanes billboard.

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[6] *Id.* (Vol. I), p. 11.

[7] *Id.* (Vol. II), p. 526.

[8] *Id.* (Vol. I), pp. 13-15.

Sime Darby then notified Macgraphics of the assignment of the Magallanes billboard in favor of Goodyear through a letter-notice[9] dated May 3, 1996.

After submitting a new design for the Magallanes billboard to feature its name and logo, Goodyear requested that Macgraphics submit its proposed quotation for the production costs of the new design. In a letter[10] dated June 21, 1996 Macgraphics informed Goodyear that the monthly rental of the Magallanes billboard is ₱250,000.00 and explained that the increase in rental was in consideration of the provisions and technical aspects of the submitted design.

Goodyear replied on July 8, 1996 stating that due to budget constraints, it could not accept Macgraphics' offer to integrate the cost of changing the design to the monthly rental. Goodyear stated that it intended to honor the ₱120,000.00 monthly rental rate given by Macgraphics to Sime Darby. It then requested that Macgraphics send its quotation for the simple background repainting and re-lettering of the neon tubing for the Magallanes billboard.[11]

Macgraphics then sent a letter[12] to Sime Darby, dated July 11, 1996, informing the latter that it could not give its consent to the assignment of lease to Goodyear. Macgraphics explained that the transfer of Sime Darby's leasehold rights to Goodyear would necessitate drastic changes to the design and the structure of the neon display of the Magallanes billboard and would entail the commitment of manpower and resources that it did not foresee at the inception of the lease.

Attaching a copy of this letter to a correspondence[13] dated July 15, 1996, Macgraphics advised Goodyear that any

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[9] *Rollo* (G.R. No. 182148), p. 45.

[10] Records (Vol. I), p. 29.

[11] *Id.* (Vol. I), p. 30.

[12] *Id.* (Vol. I), p. 31.

[13] *Id.* (Vol. I), p. 32.

advertising service it intended to get from them would have to wait until after the expiration or valid pre-termination of the lease then existing with Sime Darby.

On September 23, 1996, due to Macgraphics' refusal to honor the Deed of Assignment, Goodyear sent Sime Darby a letter,[14] via facsimile, demanding partial rescission of the Deed of Assignment and the refund of ₱1,239,000.00, the pro-rata value of Sime Darby's leasehold rights over the Magallanes billboard.

As Sime Darby refused to accede to Goodyear's demand for partial rescission, the latter commenced Civil Case No. 97-561 with the RTC. In its complaint,[15] Goodyear alleged that Sime Darby [1] was unable to deliver the object of the Deed of Assignment and [2] was in breach of its warranty under Title VII, Section B, paragraph 2 of the MOA, stating that "no consent of any third party with whom Sime Darby has a contractual relationship is required in connection with the execution and delivery of the MOA, or the consummation of the transactions contemplated therein."[16]

Including Macgraphics as an alternative defendant, Goodyear argued that should the court find the partial rescission of the Deed of Assignment not proper, it must be declared to have succeeded in the rights and interest of Sime Darby in the contract of lease and Macgraphics be ordered to pay it the amount of ₱1,239,000.00.

After trial and the submission of the parties of their respective memoranda, the RTC rendered its decision and disposed the case in the following manner:

WHEREFORE, premises considered, the Deed of Assignment of Receivables (Exh. "C") is hereby partially rescinded and defendant Sime Darby Pilipinas, Inc. is directed to pay plaintiff Goodyear Philippines, Inc. the amount of ₱1,239,000.00 with legal interest thereon

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[14] *Id.* (Vol. I), p. 33.

[15] *Id.* (Vol. I), pp. 1-40.

[16] *Id.* (Vol. I), p. 7.

from June 1996 until fully paid. Plaintiff Goodyear Philippines, Inc. is directed to pay defendant Macgraphics the amount of ₱50,000.00 as attorney's fees with legal interest thereon from the filing of the complaint until fully paid.

SO ORDERED.

The trial court was of the considered view that Sime Darby should have secured the consent of Macgraphics to the assignment of the lease before it could be effective against the latter. The trial court noted that the contract of lease between Sime Darby and Macgraphics made no mention of any clause that would grant Sime Darby the right to unilaterally assign the lease. Thus, following Article 1649 of the New Civil Code,[17] the trial court ruled that absent any stipulation to the contrary, the assignment of the lease without the consent of Macgraphics was not valid. The RTC also stated that as far as Macgraphics was concerned, its relationship with Goodyear was that of a new client.

With Sime Darby's failure to secure the consent of Macgraphics, the trial court considered that it failed to deliver the object of the Deed of Assignment. The RTC, thus, ruled that following Article 1191 of the New Civil Code,[18] Goodyear was entitled to demand rescission of the assignment of the lease over the billboard.

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[17] Art. 1649. The lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary. (n)

[18] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law. (1124)

Granting the counterclaim of Macgraphics, the trial court found that Goodyear had no legal basis to file the complaint against it. According to the trial court, the consent of Macgraphics was required before any assignment of the lease over the billboard could be effective against it, there being no stipulation allowing Sime Darby to do otherwise.

Not satisfied, both Goodyear and Sime Darby sought partial reconsideration of the decision. Their respective pleas, however, were denied by the RTC in its July 20, 2005 Order.[19]

Sime Darby and Goodyear thereafter sought relief from the CA. In its February 13, 2008 Decision, however, the CA echoed the findings and conclusions of the trial court and affirmed its decision *in toto.* The decretal portion of the decision reads:

> WHEREFORE, premises considered, the reliefs prayed for in the instant appeal are hereby DENIED. Accordingly, the assailed Decision of the Court *a quo* dated 08 November 2004 and Order dated 20 July 2005, respectively, STAND.
>
> SO ORDERED.

Both Sime Darby and Goodyear sought partial reconsideration of the CA decision, but their motions were denied.

Unable to seek relief from the CA, Sime Darby and Goodyear filed their respective petitions before the Court. Sime Darby's petition was docketed as G.R. No. 182148, while Goodyear's petition was docketed as G.R. No. 183210. On July 8, 2008, G.R. No. 182148 and G.R. No. 183210 were consolidated.

In its Memorandum,[20] Sime Darby insists that Goodyear has no right to rescind the Deed of Assignment as Macgraphics impliedly consented to the assignment of the lease. It argues that Macgraphics, after being notified of the assignment, entertained Goodyear's request for a quotation on the cost of a new design for the Magallanes billboard. The fact that there

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[19] Records (Volume II), p. 526.

[20] *Rollo* (G.R. No. 183210), pp. 417-438.

was a negotiation, Sime Darby posits, means that Macgraphics did not really care who the lessee was for as long as it got paid for the lease of the Magallanes billboard.

Sime Darby also asserts that Macgraphics, despite refusing to give its consent to the assignment, still entertained Goodyear's request to have its logo featured in the Magallanes billboard. In fact, on July 23, 1996, it sent Goodyear another quotation[21] of the cost to make changes on the billboard design.

Further, Sime Darby argues that Macgraphics' delay of 69 days before its July 11, 1996 letter declining to give its consent to the assignment is unreasonably long. Considering also the lack of explanation on the part of Macgraphics for the reason of the delay, Sime Darby claims that laches has set in.

On the other hand, both Goodyear and Macgraphics pray for the affirmance of the decisions of the courts below that rescission is proper. In addition, Goodyear assails the petition of Sime Darby claiming that it raises only questions of fact since the petition essentially revolves around the truth or falsity of the findings of the courts below that Macgraphics never consented to the assignment of Sime Darby's leasehold rights. Goodyear also insists that it is entitled to attorneys' fees due to the unjustified refusal of Sime Darby to rescind the Deed of Assignment.

Goodyear, however, asserts that it should not be held liable for the attorney's fees in favor of Macgraphics because it merely impleaded the latter when Sime Darby argued that fault and liability lie with it (Macgraphics).

Synthesized, the issues proffered by the two petitions are:

[1] Whether partial rescission of the Deed of Assignment is proper; and

[2] Whether Macgraphics is entitled to an award of attorney's fees.

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[21] Records (Vol. I), p. 459.

The Court finds no merit in the petitions.

Well-settled is the rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court should only include questions of law since questions of fact are not reviewable. A question of law arises when there is doubt as to what the law is on a certain state of facts, while a question of fact exists when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by any of the litigants. The resolution of the issue must rest solely on what the law provides under a given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, then the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court resolve the question raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[22]

Likewise well-settled is the principle that absent grave abuse of discretion, the Court will not disturb the factual findings of the CA. The Court will only exercise its power of review in known exceptions such as gross misappreciation of evidence or a total void of evidence.[23]

Whether Macgraphics gave its consent to the assignment of leasehold rights of Sime Darby is a question of fact. It is not reviewable. On this score alone, the petition of Sime Darby fails.

Even if the Court should sidestep this otherwise fatal miscue, the petition of Sime Darby remains bereft of any merit. Article 1649 of the New Civil Code provides:

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[22] *Leoncio v. De Vera*, G.R. No. 176842, February 18, 2008, 546 SCRA 180, 184, citing *Binay v. Odeña*, G.R. No. 163683, June 8, 2007, 524 SCRA 248, 256, further citing *Velayo-Fong v. Velayo*, G.R. No. 155488, December 6, 2006, 510 SCRA 320, 329-330.

[23] *Encarnacion v. Court of Appeals*, G.R. No. 101292, June 8, 1993, 223 SCRA 279, 284.

Art. 1649. The lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary. (n)

In an assignment of a lease, there is a novation by the substitution of the person of one of the parties – the lessee.[24] The personality of the lessee, who dissociates from the lease, disappears. Thereafter, a new juridical relation arises between the two persons who remain – the lessor and the assignee who is converted into the new lessee. The objective of the law in prohibiting the assignment of the lease without the lessor's consent is to protect the owner or lessor of the leased property.[25]

Broadly, a novation may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have dual functions—one to extinguish an existing obligation, the other to substitute a new one in its place. This requires a conflux of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation.[26]

While there is no dispute that the first requisite is present, the Court, after careful consideration of the facts and the evidence on record, finds that the other requirements of a valid novation are lacking. A review of the lease contract between Sime Darby and Macgraphics discloses no stipulation that Sime Darby could assign the lease without the consent of Macgraphics.

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[24] *Sadhwani v. Court of Appeals*, 346 Phil. 54, 64 (1997).

[25] *Tamio v. Ticson*, 485 Phil. 434, 441 (2004); *Dakudao v. Consolacion*, 207 Phil. 750 (1983).

[26] *Fabrigas v. San Francisco Del Monte*, 512 Phil. 627, 638-639 (2005).

Moreover, contrary to the assertions of Sime Darby, the records are bereft of any evidence that clearly shows that Macgraphics consented to the assignment of the lease. As aptly found by the RTC and the CA, Macgraphics was never part of the negotiations between Sime Darby and Goodyear. Neither did it give its conformity to the assignment after the execution of the Deed of Assignment.

The consent of the lessor to an assignment of lease may indeed be given expressly or impliedly. It need not be given simultaneously with that of the lessee and of the assignee. Neither is it required to be in any specific or particular form.[27] It must, however, be clearly given. In this case, it cannot be said that Macgraphics gave its implied consent to the assignment of lease. As aptly explained by the CA in its decision:

x x x x x x x x x

Neither are We convinced with Appellant SIME DARBY's argument that Appellee MACGRAPHICS impliedly consented to the questioned assignment when it negotiated with Appellant GOODYEAR for the redesigning of Magallanes billboard. In fact, thru its letter dated 11 July 1996 to Appellant SIME DARBY, the Appellee made formal its refusal to give consent to the transfer/assignment to Appellant GOODYEAR of its right in the lease over the billboard located in Magallanes, Makati. The letter reads:

x x x x x x x x x

RE: Your BILLBOARD LEASE

We refer to your letter dated May 23, 1996 notifying us of the assignment and transfer to Goodyear Philippines, Inc. of all your rights in the lease over the billboard located at Wells Photo Building, Magallanes, Makati City.

As anticipated, the transfer of your rights over the lease will necessitate drastic changes to the design and structure of the neon spectacular display advertised in the billboard, which would thus entail commitment of manpower and

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[27] *Babst v. Court of Appeals*, 403 Phil. 244 (2001), citing *Asia Banking Corporation v. Elser*, 54 Phil. 994 (1929).

resources which we did not foresee at the inception of the lease. Much as we would like to accommodate you, these reasons constrained us to decline giving consent to the transfer. We hope that you will understand our position. (Emphasis included)

On 15 July 1996, the Appellee likewise sent a letter to Appellant GOODYEAR informing the latter of its refusal to the assignment of the subject lease. The letter essentially states:

x x x x x x x x x

ATTENTION: MR. CARLOS Q. CARBALLO
Manager
Distribution, Development & Advertising
Gentlemen:

In response to your letter dated July 08, 1996, we are furnishing you with a copy of the letter we sent to Sime Darby Pilipinas, Inc., the content of which is self-explanatory.

We look forward to servicing your advertising needs at the billboards presently leased to Sime Darby but only after the latter's existing lease thereon has expired or been validly pre-terminated. Until then, we are bound to abide by the terms of the existing lease contract.

Should you desire, we have other choice locations which might suit your needs. Please let us know.

x x x x x x x x x

In the assertion of implied consent allegedly made by the Appellee to the assignment, the Court *a quo* ratiocinated in this wise:

x x x x x x x x x

On the issue of whether or not the negotiations between Macgraphics and Goodyear is a separate negotiation or still included in the lease, the Court rules that from the very start of the negotiations between Goodyear and Macgraphics, the relationship between them, as far as Macgraphics is concerned, was that of Goodyear as a new client. Nonetheless, whether the negotiations is separate or included in the lease between Sime

Darby and Macgraphics, the fact remains that Macgraphics did not give its consent to the assignment of the lease.

x x x x x x x x x

Clearly, there is no implied consent based on the factual backdrop of this case. Evidently, what transpired between Appellant GOODYEAR and the Appellee was a negotiation between a willing service provider and a probable new client. On this regard, the president of the Appellee, ALVIN M. CARRANZA (hereinafter CARRANZA), confirmed on direct examination the contents of his judicial affidavit submitted before the Court *a quo* in lieu of direct examination. The said judicial affidavit pertinently states viz:

x x x x x x x x x

Q: Do you know plaintiff?
A: Yes.

Q: How do you know the plaintiff?
A: I know the plaintiff Goodyear because after Sime Darby sent us the letter dated 03 May 1996, Goodyear requested for a price quote on the cost of changing the billboard design on the Magallanes Interchange. They asked how much the cost would be if Sime Darby's billboard were changed and Goodyear's advertisement displayed instead.

Q: What was your reaction to this request?
A: Goodyear is a big company, so we tried to be as accommodating as possible in order to attract it as a client. (Underlining supplied)

x x x x x x x x x

As aptly pointed out by Appellant GOODYEAR in its Brief filed in response to the appeal filed by the Appellant SIME DARBY, the fact that the Appellee dealt with Appellant GOODYEAR as a new client is corroborated by the testimony of APOLLO DE GALA (hereinafter DE GALA), Acting Manager for Advertising of Appellant GOODYEAR, to wit:

Re-direct examination

Q: You mentioned during cross-examination that you started negotiating with Macgraphics Carranz for the make-over of the billboard in Magallanes, is it not?

A: Yes, sir.

Q: And this negotiation was without the participation of Sime Darby?
A: Yes, sir.

Q: Now, why did you not include Sime Darby in the negotiation?
A: I do not really have any reason to include them that time, because considering that it was just a change over, we were willing to pay for the change over. The thing that included Sime Darby was that Carranz refused to honor. Well, Carranz proposed another scheme for the billboard. In fact, they proposed to us that we do the whole thing over, sir. A new set not considering the Sime Darby logo and Sime Darby agreement, Carranz and Sime Darby. To Carranz, it was already new set of client. xxx (Underlining supplied)

Indeed, Macgraphics and Goodyear never came to terms as to the conditions that would govern their relationship. While it is true, that Macgraphics and Goodyear exchanged proposals, there was never a meeting of minds between them. Contrary to the assertions of Sime Darby, the negotiations between Macgraphics and Goodyear did not translate to its (Macgraphics') consent to the assignment. Negotiations is just a part or a preliminary phase to the birth of an obligation.

"In general, contracts undergo three distinct stages, to wit: negotiation; perfection or birth; and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof."[28]

Regarding laches, it is an issue raised by Sime Darby for the first time only in this Court. Basic is the rule that issues

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[28] *Swedish Match, AB v. Court of Appeals*, 483 Phil. 735, 750-751 (2004), citing *Bugatti v. Court of Appeals*, 397 Phil. 376 (2000).

not raised below cannot be raised for the first time on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by the reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel the adoption of this rule.[29]

Notwithstanding, the Court finds that the doctrine of laches cannot be applied in this case.

Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it.[30] There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court. Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice.[31]

From the records, it appears that Macgraphics first learned of the assignment when Sime Darby sent its letter-notice dated May 3, 1996. From the letters sent by Macgraphics to Goodyear, it is apparent that Macgraphics had to study and determine both the legal and practical implications of entertaining Goodyear as a client. After review, Macgraphics found that consenting to the assignment would entail the commitment of manpower and resources that it did not foresee at the inception of the

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[29] *Pag-Asa Steel Works v. Court of Appeals*, G.R. No. 166647, March 31, 2006, 486 SCRA 475, 490.

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

[31] *Id.*

lease. It thereafter communicated its non-conformity to the assignment. To the mind of the Court, there was never a delay.

In sum, it is clear that by its failure to secure the consent of Macgraphics to the assignment of lease, Sime Darby failed to perform what was incumbent upon it under the Deed of Assignment. The rescission of the Deed of Assignment pursuant to Article 1191 of the New Civil Code is, thus, justified.

With regard to the two issues raised by Goodyear on attorney's fees, the Court agrees with the CA which correctly proferred the following ratiocination:

> The award of attorney's fees is the exception rather than the rule, and it must have some factual, legal and equitable bases. Nevertheless, Art. 2208 of the Civil Code authorizes an award of attorney's fees and expenses of litigation, other than judicial costs, when as in this case the plaintiff's act or omission has compelled the defendant to litigate and to incur expenses of litigation to protect her interest (par. 2), and where the Court deems it just and equitable that attorney's fees and expenses of litigation should be recovered (par. 11).
>
> In the case at bar, even before the filing of the instant case before the Court *a quo*, it was clear that Appellee MACGRAPHICS was not part of the Deed of Assignment being assailed by the Appellant GOODYEAR. It was also established during the trial that the consent of Appellee MACGRAPHICS was not secured prior to the execution of the subject deed between the Appellants. Thus, **it is only equitable that Appellant GOODYEAR be made liable for the unnecessary attorney's fees spent by Appellee MACGRAPHICS** to protect its rights and interest due to the filing of a baseless complaint by Appellant GOODYEAR. To stress, attorney's fees may be awarded when a party is compelled to litigate or to incur expenses to protect its interest by reason of an unjustified act by the other.
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> As to the claim of Appellant GOODYEAR that Appellant SIME DARBY be made liable to pay the former attorney's fees, We rule to deny the same.
>
> The grant of attorney's fees depends on the circumstances of each case and lies within the discretion of the court. We are of the view that although the Court *a quo* was correct in ordering the partial rescission of the deed of assignment, it does not necessarily follow that the award of attorney's fees is a natural consequence. They are

not awarded every time a party wins a suit. In the absence of a stipulation, attorney's fees are ordinarily not recoverable; otherwise a premium shall be placed on the right to litigate. **Since the Appellant GOODYEAR's claim from Appellant SIME DARBY, to deliver its leasehold rights with Appellee MACGRAPHICS cannot altogether be considered as demandable claim due to latter's lack of consent, Appellant SIME DARBY cannot be made liable to answer for attorney's fees**. [Emphases supplied]

In view of all the foregoing, the Court finds no legal, factual, or equitable justification to disturb the findings and conclusions of the courts below.

WHEREFORE, the petitions are hereby *DENIED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 182917. June 8, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN PADILLA *y* UNTALAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; CHILD'S CONSENT IS IMMATERIAL BECAUSE OF HER PRESUMED INCAPACITY TO DISCERN GOOD FROM EVIL.— Specifically, Article 266-A(1)(d) spells out the definition of the crime of statutory rape, the elements of which are: (1) that the offender had carnal knowledge of a woman; and (2) that such a woman is under twelve (12) years of age or is demented. In the prosecution of statutory rape cases, force,

intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ACCUSED MAY BE CONVICTED ON THE BASIS OF THE TESTIMONY OF THE RAPE VICTIM WHERE THE SAME MEETS THE TEST OF CREDIBILITY; FACTUAL FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS ON THE CREDIBILITY OF RAPE VICTIM, AFFIRMED.— In the instant case, the element of carnal knowledge was primarily established by the testimony of AAA, which the Court of Appeals and the RTC found to be unequivocal and deserving credence. In this regard, the Court reiterates the oft-cited doctrine that: In a prosecution for rape, the victim's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect all that is necessary to show that rape was committed; thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof. The rule is settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question of credibility. We perused the entire records of the case and we are inclined to agree with the factual findings of the RTC and the Court of Appeals on the issue of the credibility of AAA's testimony.

3. ID.; ID.; ID.; THE ELOQUENT TESTIMONY OF THE VICTIM, COUPLED WITH THE MEDICAL FINDINGS ATTESTING TO HER NON-VIRGIN STATE, SHOULD BE ENOUGH TO CONFIRM THE TRUTH OF HER RAPE CHARGES.— [T]estimony of AAA that the accused-appellant had sexual intercourse with her was also corroborated by the medical findings of Dr. Taganas that AAA was no longer

physically a virgin. In *People v. Oden*, we held that "[t]he spontaneity with which the victim has detailed the incidents of rape, the tears she has shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony. The eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges." Moreover, *People v. Bon* reiterates that "no sane woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are normally given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has been committed. Youth and immaturity are generally badges of truth and sincerity." Thus, the Court rules that the element of carnal knowledge of AAA by the accused-appellant was sufficiently proven in each of the three (3) counts of rape in this case.

4. ID.; ID.; ID.; BETWEEN THE POSITIVE ASSERTIONS OF THE VICTIM AND THE NEGATIVE AVERMENTS OF THE APPELLANT, THE FORMER INDISPUTABLY DESERVE MORE CREDENCE AND IS ENTITLED TO GREATER EVIDENTIARY WEIGHT.— The accused-appellant cannot likewise rely on his defense of alibi to disprove the testimony of AAA. Verily, denial and alibi are inherently weak defenses and constitute self-serving negative evidence, which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness. Between the positive assertions of the victim and the negative averments of the appellant, the former indisputably deserve more credence and are entitled to greater evidentiary weight. For alibi to prosper it is not enough for the appellant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. In the instant case, the accused-appellant merely denied that he raped AAA in November 1999. The accused-appellant did not deny that he was in their house, with all of his children, on the night when the second incident of rape on January 13, 2001 took place. x x x Furthermore, the accused-appellant failed to demonstrate

that it was physically impossible for him to be at their house at the time of the commission of the third incident of rape. x x x. Consequently, the accused-appellant's defense of alibi cannot overcome the positive declaration of AAA.

5. CRIMINAL LAW; STATUTORY RAPE; PROPER PENALTY.— The age of AAA and her relationship to the accused-appellant qualify the three (3) counts of rape in this case, as provided for under Article 266-B of the Revised Penal Code x x x. In sum, the Court finds the accused-appellant guilty beyond reasonable doubt of three (3) counts of statutory rape in its qualified form. Notwithstanding the provisions of Article 266-B of the Revised Penal Code, the Court of Appeals correctly held that the appropriate penalty that should be imposed upon the accused-appellant is *reclusion perpetua* for each count of rape. This is in accordance with the provisions of Republic Act No. 9346, entitled an Act Prohibiting the Imposition of Death Penalty in the Philippines, which took effect on June 30, 2006. Section 2 of Republic Act No. 9346 imposes the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. Section 3 of Republic Act No. 9346 further provides that persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

6. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The Court affirms the appellate court's award of ₱75,000.00 as moral damages for each count of rape in accordance with the current jurisprudence on qualified rape. However, the awards of ₱50,000.00 as civil indemnity and ₱25,000.00 as exemplary damages for each count of rape should be increased to ₱75,000.00 and ₱30,000.00, respectively, in keeping with recent case law.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

The case before Us is an appeal from the Decision[1] dated November 15, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 00387. Said decision affirmed with modification the Joint Decision[2] dated September 3, 2004 of the Regional Trial Court (RTC) of Urdaneta City, Branch 49, in Criminal Case Nos. 11273-75, which convicted accused-appellant Benjamin Padilla *y* Untalan of three (3) counts of rape against the private complainant AAA.[3]

On March 12, 2001, accused-appellant was charged with three (3) counts of rape under three separate informations, the pertinent portions of which state:

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[1] *Rollo*, pp. 2-22; penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring.

[2] CA *rollo*, pp. 40-50; penned by Presiding Judge Rodrigo G. Nabor.

[3] The real name or any other information tending to establish the identity of the private complainant and those of her immediate family or household members shall be withheld in accordance with Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, 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; Sec. 40 of A.M. No. 04-10-11-SC, known as "Rule on Violence Against Women and Their Children" effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

Thus, the private offended party shall be referred to as **AAA**. **BBB** shall refer to her mother. **CCC** shall stand for the name of her older brother, whereas **DDD** and **EEE** shall indicate the names of her younger brother and younger sister, respectively. **FFF** shall pertain to the sister of the private offended party's mother, while **GGG** shall designate the maternal grandmother of the private offended party. **XXX** shall denote the place where the crime was allegedly committed.

CRIMINAL CASE NO. U-11273

That on or about **January 13, 2001** at [XXX] and within the jurisdiction of this Honorable Court, the above-named accused, being the father of [AAA], a minor, **11 years old**, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said [AAA], against her will and without her consent, to her damage and prejudice.

CONTRARY to Article 335, Revised Penal Code, as amended by R.A. 8353 and R.A. 7659.[4] (Emphases ours.)

CRIMINAL CASE NO. U-11274

That at about **dawn of January 14, 2001** at [XXX] and within the jurisdiction of this Honorable Court, the above-named accused being the father of [AAA], a minor, **11 years old**, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said [AAA], against her will and without her consent, to her damage and prejudice.

CONTRARY to Article 335, Revised Penal Code, as amended by R.A. 8353 and R.A. 7659.[5] (Emphases ours.)

CRIMINAL CASE NO. U-11275

That sometime in **November 1999** at [XXX] and within the jurisdiction of this Honorable Court, the above-named accused being the father of [AAA], a minor, **10 years old**, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said [AAA], against her will and without her consent to her damage and prejudice.

CONTRARY to Article 335, Revised Penal Code, as amended by R.A. 8353 and R.A. 7659.[6] (Emphases ours.)

On April 16, 2001, accused-appellant separately entered a plea of not guilty in each of the three cases.[7] Thereafter, the cases were set for a joint pre-trial conference. In the said

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[4] Records (Criminal Case No. U-11273), p. 1.

[5] CA *rollo*, p. 8.

[6] Records (Criminal Case No. U-11275), p. 1.

[7] Records (Criminal Case No. U-11273), p. 28.

conference, the prosecution and the defense stipulated on the following matters, namely:

1. The identity of the accused in [the] three cases;
2. The identity of the private complainant [AAA] in [the] three cases;
3. That the accused is the father of the private complainant; and
4. That the private complainant is a minor having been born on February 28, 1989.[8]

The joint trial of the criminal cases, then, ensued.

The prosecution presented the testimony of AAA in order to prove that accused-appellant committed the three counts of rape as charged in the above informations. AAA testified that the date of her birth was February 28, 1989. In September of the year 1999, her mother, BBB, went to work abroad. Since then, AAA had been living in their house in XXX with the accused-appellant; CCC, her older brother; DDD, her younger brother; and EEE, her younger sister. AAA related that the incidents of rape charged against the accused-appellant occurred in November 1999, on January 13, 2001 and on January 14, 2001. In November 1999, AAA recounted that at around seven o'clock in the morning, she was at the second floor of their house changing her clothes as she was about to go to school. At that time, CCC was already working at the Asingan market as a helper, while DDD and EEE were outside the house. While AAA was changing clothes, the accused-appellant came in. The accused-appellant held her arm with his left hand and his right hand held a bolo. He pushed AAA and the latter fell down on the floor in a lying position. He told her not to shout or he would kill her. He proceeded to remove AAA's short pants and panty. He was able to spread apart the legs of AAA despite her efforts to prevent him. He then went on top of AAA and inserted his penis into her vagina. He then did the push and

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[8] *Id.* at 37.

pull movement. Afterwards, he removed his penis, put on his brief and shorts and went to the market.[9]

As to the alleged second incident of rape on January 13, 2001, AAA related that the same likewise occurred at the upper floor of their house in the evening of the said date. AAA was then changing her clothes before going to bed, while her siblings CCC, DDD and EEE were already sleeping downstairs. The accused-appellant again came in. He held AAA with his left hand and his right hand held the same bolo used on the first incident of rape. AAA stated that the accused-appellant pushed her again on the floor, removing her shorts and panty. He spread her legs and went on top of her while she cried. He thrusted his penis into her vagina then did the push and pull movement. Afterwards, he left AAA. The third incident of rape allegedly took place on January 14, 2001, at dawn as AAA slept at the ground floor of their house. CCC was already in the market, while DDD and EEE were sleeping at a distance of around two meters from AAA. The accused-appellant woke up AAA and whispered to her not to shout or he would kill her. He then removed her shorts and panty and spread her legs. He went on top of her, inserted his penis in her vagina and did the push and pull movement. Thereafter, the accused-appellant left. AAA said that at noontime on January 14, 2001, she and her younger siblings went to the house of her aunt, FFF. There, she reported the incidents of rape to FFF. They then waited for AAA's grandmother, GGG, and the latter accompanied AAA to the police station.[10]

The testimony of Senior Police Officer (SPO) 2 Patricio Badua, Jr. was also submitted in order to prove that he indeed received a report in connection with the above-stated cases for rape. SPO2 Badua testified that on January 14, 2001, GGG reported that AAA was raped by the accused-appellant. SPO2 Badua recorded the report in the police blotter and advised

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[9] TSN, August 22, 2001, pp. 2-9.

[10] *Id.* at 9-17.

GGG that AAA should undergo medical examination.[11] When GGG and AAA returned, SPO2 Badua took the sworn statement of AAA and he thereafter filed three criminal complaints in court against the accused-appellant.[12]

FFF next took the witness stand for the prosecution to corroborate the testimony of AAA. FFF testified, among other details, that AAA is the daughter of her sister, BBB. On January 14, 2001, at around eleven o'clock in the morning, FFF said that she was watering the plants in their yard when she saw AAA, together with DDD and EEE, proceeding towards her and they were crying. When FFF asked AAA why she was crying, the latter eventually revealed that the accused-appellant raped her. They then waited for GGG to arrive so they could have the accused-appellant picked up by the police.[13]

GGG also gave her testimony for the prosecution. GGG testified that her daughter, BBB, is married to accused-appellant. This fact was evidenced by a marriage certificate[14] that GGG presented in court. The Certificate of Live Birth[15] in the name of AAA was likewise presented in order to prove that AAA is the daughter of the accused-appellant and that her date of birth is February 28, 1989. According to GGG, she was at her store in XXX at around 11:00 a.m. on January 14, 2001. She then went home and saw her grandchildren – AAA, DDD and EEE – crying.[16] AAA reported to her that she (AAA) was raped by the accused-appellant. Afterwards, they went to the police station where AAA gave her statement. They then went to the hospital where AAA underwent a medical examination.[17]

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[11] TSN, June 11, 2001, pp. 3-4.

[12] *Id.* at 5.

[13] TSN, June 19, 2001, pp. 2-6.

[14] Records (Criminal Case No. U-11273), p. 93.

[15] *Id.* at 2.

[16] TSN, August 7, 2001, pp. 7-8.

[17] *Id.* at 9-10.

Lastly, the prosecution presented the testimony of Dr. Noemie Taganas, the physician who examined AAA. Dr. Taganas testified that on January 14, 2001, she conducted an external and internal examination of AAA.[18] Dr. Taganas said that there was a swelling of the nipples, the *labia majora*, *labia minora* and the clitoris of AAA. Moreover, Dr. Taganas stated that the hymen of AAA showed incomplete and old healed lacerations at 12 o'clock, 3 o'clock, 6 o'clock and 9 o'clock positions. The hymen was lacerated only halfway. Dr. Taganas concluded that the physical virginity of AAA was already lost.[19]

The defense portrayed a different version of the events.

CCC testified for the defense in order to prove that he had no knowledge of the allegations of rape of his younger sister, AAA. He stated that, in 2001, the accused-appellant worked as a *kargador* (porter) in the market, usually around 5:00 a.m. to 11:00 a.m. CCC related that his family slept side by side

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[18] The findings of Dr. Taganas were set forth in the Medico-Legal Certification, which recites:

MEDICO-LEGAL CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that [AAA], 12 years old, female and a resident of [XXX] came to this hospital for consultation and examination on January 14, 2001 with the following findings:

A. External Findings:

- Swelling of both nipples

- Swelling of the labia majora, labia minora and clitoris

B. Internal Findings:

- Hymen showing incomplete and old healed laceration about 12:00, 3:00, 6:00 and 9:00 o'clock position.

- Hymen orifice admits 1-2 fingers with slight difficulty.

DIAGNOSIS: Physical Virginity, Lost

(Signed)

NOEMIE M. TAGANAS, M.D.

Chief of Hospital (Records [Criminal Case No. U-11273], p. 94.)

[19] TSN, December 4, 2001, pp. 4-6.

on the lower floor of their house at about 8:00 p.m. or 9:00 p.m. Sometimes, he would sleep in another bed, which is separated from the other bed by a bamboo divider. CCC further testified that he did not remember any unusual incident that happened in the evening on the month of January 2001. Particularly, CCC said that he was asleep in their house and did not notice anything on that evening when AAA was allegedly raped by the accused-appellant.[20]

The accused-appellant also took the witness stand to prove his defense of denial and alibi. He testified that in November 1999, he earned a living by selling fruits at the Asingan market. During the market days of Monday, Wednesday and Friday back then, he would usually go out at 5:00 a.m. and stop selling fruits at 6:00 p.m. He denied the allegation of AAA that he raped her sometime in November 1999 and that he afterwards went to the Asingan market. He also testified that in the morning of January 14, 2001, he went to the Asingan market as he was already working there as a *kargador*. He came back to their house at 9:30 a.m. and found therein his children AAA, DDD and EEE. CCC was working at the market at that time. He asked AAA to cook food while he cleaned the house. As he was cleaning, he allegedly saw that his squash plant has withered. He asked who among his children destroyed the plant, but none of them admitted to the act. When he went to get his whipping stick, his children ran away to the bamboo groves. He then went to find CCC in the market and told him to follow his siblings. Afterwards, while he was still cleaning their house, two police officers came, looking for the house of Benjamin Padilla. When he told them that he was Benjamin Padilla, they handcuffed him and brought him to the police station where he was incarcerated. The accused-appellant again denied raping AAA.[21]

On September 27, 2002, the defense also presented the testimony of Dr. Noemie Taganas, who testified to the fact

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[20] TSN, February 4, 2002, pp. 5-10.

[21] TSN, June 10, 2002, pp. 6-11.

that the lacerations found on the hymen of AAA on January 14, 2001 could still be detected as of that trial date. The defense, thus, moved for another physical examination of AAA, to which the prosecution did not object. On October 3, 2002, Dr. Taganas again testified, stating that she conducted another physical examination of AAA on September 27, 2002 and the internal findings arrived at were the same as those obtained from the previous examination.[22]

On September 3, 2004, the RTC rendered its Decision, finding accused-appellant guilty beyond reasonable doubt of three (3) counts of rape, ratiocinating thus:

> Seeking exculpation from the crime, [accused-appellant] claimed that he could not have possibly raped his daughter in November of 1999 and 14 January 2001 because he was working as a baggage carrier in the market of Asingan, Pangasinan. As such, he would leave so early in the morning and would return home in the evening or at times, close to midday. He also said that it was impossible to rape her on the night of 13 January 2001 because all of them sleep side by side; their sleeping arrangement was not even the same all the time.
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> [Accused-appellant's] alibi and denial deserves scant consideration. On the contrary, [AAA's] straightforward and unwavering testimony deserves the badge of credence. She could not have spoken in such simple and forthright manner if the accusations were not true. It is improbable for guileless girls such as [AAA] to impute a crime so serious as rape to any man, let alone her father, if it were not true. The Court finds no motive for [AAA] to testify falsely against her father or implicate him in the commission of the same. The charges for rape could not have likewise been filed because [AAA] regarded [accused-appellant] as a cruel father as the defense would want the Court to believe. [AAA] has clearly identified her father as the perpetrator of the sexual molestation she suffered. She could not have done so if she had only been prompted to free herself from a strict and overweening parent meaning to enforce discipline. Moreover, ill motive is never an essential element of a crime. It becomes inconsequential more so when there are affirmative and categorical declarations towards the accused's accountability for the crime.

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[22] TSN, September 27, 2002, pp. 2-5.

Amidst the firm bedrock of evidence, [accused-appellant]'s general denial pales in comparison. Like alibi, denial is inherently weak and must fail in the light of the positive declaration of the victim that the accused authored the abuses. [Accused-appellant's] bare assertions denying his culpability cannot overcome [AAA's] categorical testimony narrating her father's libidinous proclivities.

Her testimony is readily corroborated by the medical findings of her non-virgin state and the hymenal lacerations she suffered. Juxtaposed against such telling evidence of the prosecution, the bare denial and alibi of [accused-appellant] cannot prevail. Absent strong evidence to buttress such denial, [AAA's] positive testimony deserves far greater weight.

Furthermore, [accused-appellant] was persevering in his denial, so much so that he even questioned the medical findings of Dr. Taganas. He requested that [AAA] would undergo another medical examination, which request was granted by the Court. After examination, Dr. Taganas testified that her findings were all the same.

Little did [accused-appellant] know that by questioning the findings of the doctor, he just dug a hole for his grave and drove the final nail to his coffin. By questioning the medical findings, to the mind of the Court, [accused-appellant] admitted his crime. He admitted that there was indeed penetration but only that the same was not complete; thus, explaining that the laceration in [AAA's] hymen was only half way. It is very elementary that in rape cases, full penetration is not required. The mere touching of the penis of the lips of the vagina would already constitute rape.

From the plethora of evidence presented, the Court finds beyond the whisper of a doubt that [accused-appellant] committed the three counts of rape against his daughter [AAA], as alleged in the informations filed in Court. The complainant's age when the crimes were committed and the blood relationship between her and the accused have not been questioned. Hence, under R.A. 8353, the penalty of death awaits a parent who commits the crime of rape against his or her child less than eighteen (18) years of age. Consistent with law and prevailing jurisprudence, he likewise incurs pecuniary obligations arising from his criminal liability.[23]

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[23] CA *rollo*, pp. 48-50.

The RTC, thus, decreed:

> WHEREFORE, premises considered, the Court finds and hereby pronounces the accused GUILTY beyond reasonable doubt of the crime of rape against his own daughter in each of these three (3) cases. He is hereby sentenced to suffer the supreme penalty of death in each of these cases pursuant to R.A. 7659, otherwise known as the Heinous Crime Law, and is hereby ordered to indemnify the private complainant in the amount of Php50,000.00 for each count of rape as civil indemnity, Php50,000.00 for each count of rape as moral damages and Php25,000.00 for each count of rape as exemplary damages.
>
> Cost against the accused.[24]

Accused-appellant appealed the above judgment to the Court of Appeals. On November 15, 2007, the appellate court issued the assailed Decision, likewise pronouncing the guilt of the accused-appellant. The Court of Appeals found that:

> The [testimony] of Private Complainant was clear, definite, and convincing. Her narration contains the details, which only a real victim could remember and reveal. In fact, even during the grueling cross-examination, the Private Complainant's testimony was unequivocal. It bears the hallmarks of truth as she remained consistent on material points[.] x x x.
>
> x x x x x x x x x
>
> In contrast, the Accused-Appellant's claim that he was at the market of Asingan, Pangasinan on all the three (3) occasions of rape, is flimsy. We agree with the trial court that his defense of denial is intrinsically weak and must necessarily fail. Not to mention that the said defense is negative and a self-serving assertion, it has no weight in law if unsubstantiated by clear, strong, and convincing evidence of non-culpability. Also, the Accused-Appellant failed to buttress his denial by the required quantum of proof. Verily, it did not overcome the Private Complainant's affirmative, categorical, spontaneous, and convincing testimony.
>
> The physical evidence likewise reinforced the Private Complainant's testimony. The Medico-Legal Report of Dr. Noemie Taganas, who

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[24] *Id.* at 50.

physically examined her on January 14, 2001, shows that her genital has healed laceration at 12, 3, 6, and 9:00 o'clock positions, and that her hymen orifice admits 1-2 fingers with slight difficulty. Consequently, the lacerations and pain that the Private Complainant suffered in her genital could be only the result of penile penetration forced upon her by the Accused-Appellant.[25]

The Court of Appeals, however, modified the penalty imposed by the RTC as follows:

The foregoing considered, We affirm the trial court's finding that the Accused-Appellant is guilty of three (3) counts of rape. The age of the Private Complainant at the time of the rape incidents, as well as her relationship with the Accused-Appellant, were sufficiently established by the prosecution and admitted by the Accused-Appellant. Thus, the trial court correctly meted out the penalty of death on all counts. However, *Republic Act No. 9346*, entitled, *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, signed into law on June 24, 2006, prohibits the imposition of the death penalty. **The Accused-Appellant, thus, shall suffer only the penalty of *reclusion perpetua*, on three (3) counts**.

While We sustain the awards of Fifty Thousand Pesos (₱50,000.00) and of Twenty-Five Thousand Pesos (₱25,000.00) as civil indemnity and exemplary damages, respectively, for each count of rape, **the award of moral damages, must, however, be increased from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00) for each count in line with prevailing jurisprudence.**[26] (Emphases ours.)

The dispositive portion of the Court of Appeals decision reads:

WHEREFORE, premises considered, the appealed decision is hereby **AFFIRMED** with **MODIFICATION**. The Accused-Appellant Benjamin Padilla is GUILTY beyond reasonable doubt of three (3) counts of rape and is sentenced to suffer the penalty of *reclusion perpetua* for each count. He is also hereby **ORDERED** to pay the Private Complainant Fifty Thousand Pesos (₱50,000.00) as civil

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[25] *Rollo*, pp. 18-20.

[26] *Id.* at 20-21.

indemnity and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages, for each count of rape. As modified, the Fifty Thousand Pesos (₱50,000.00) awarded below as moral damages is hereby **INCREASED** to Seventy-Five Thousand Pesos (₱75,000.00), for each count of rape. Costs against the Accused-Appellant.[27]

Accused-appellant filed a Notice of Appeal,[28] which was given due course by the appellate court.[29] The records of the case were then elevated to this Court.

In an Order[30] dated July 14, 2008, we required the parties to file their supplemental briefs, if any, within thirty days from notice. The prosecution and the accused-appellant separately manifested[31] that, in lieu of filing their supplemental briefs before this Court, they were each adopting and repleading the briefs they respectively filed before the Court of Appeals.

The accused-appellant submits a lone assignment of error, arguing that the RTC gravely erred in finding him guilty of the crimes charged as the prosecution failed to establish his guilt beyond reasonable doubt.[32]

The accused-appellant avers that the trial court should have given weight to his testimony that he was working at the Asingan market as a *kargador* during the time the alleged rapes were committed. This statement was allegedly attested to by CCC. The accused-appellant argues that, although the defense of alibi is weak, the prosecution is not released from its burden to establish the guilt of the accused beyond reasonable doubt. He avers that the prosecution evidence must always rely on its own strength and not by the weakness of the evidence adduced by the defense. The prosecution failed to prove that (1) there

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[27] *Id.* at 21-22.

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

[29] *Id.* at 26.

[30] *Id.* at 28.

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

[32] CA *rollo*, p. 89.

had been carnal knowledge of AAA by the accused-appellant; and (2) the same was achieved through force and intimidation upon AAA or because the latter was deprived of reason or was otherwise unconscious. Hence, the accused-appellant claims that the presumption of innocence in his favor should be upheld.

After a thorough and conscientious review of the records of this case, the Court affirms the rulings of the Court of Appeals and the RTC that the guilt of the accused-appellant of the crime of rape was indeed established beyond reasonable doubt.

The provision of law that defines the crime of rape by sexual intercourse is Article 266-A of the Revised Penal Code, to wit:

ART. 266-A. *Rape When and How Committed.* – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machinations 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.

Specifically, Article 266-A(1)(d) spells out the definition of the crime of statutory rape, the elements of which are: (1) that the offender had carnal knowledge of a woman; and (2) that such a woman is under twelve (12) years of age or is demented.

In the prosecution of statutory rape cases, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her

tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.[33]

In the instant case, the element of carnal knowledge was primarily established by the testimony of AAA, which the Court of Appeals and the RTC found to be unequivocal and deserving credence. In this regard, the Court reiterates the oft-cited doctrine that:

> In a prosecution for rape, the victim's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect all that is necessary to show that rape was committed; thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.
>
> The rule is settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question of credibility.[34]

We perused the entire records of the case and we are inclined to agree with the factual findings of the RTC and the Court of Appeals on the issue of the credibility of AAA's testimony. AAA unhesitatingly pointed to her father, the accused-appellant, as the perpetrator of the reprehensible acts of rape against her. The testimony of AAA was indeed straightforward, unequivocal, definite and convincing. AAA tearfully narrated the ordeal that she suffered at the hands of the accused-appellant as follows:

> [PROSECUTOR SILVESTRE RIDAO]
> Q: The first incident, Madam Witness, is November 1999. Where were you when the incident happened?

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[33] *People v. Teodoro*, G.R. No. 172372, December 4, 2009, 607 SCRA 307, 314-315.

[34] *People v. Paculba*, G.R. No. 183453, March 9, 2010, 614 SCRA 755, 763-764.

[AAA]
A: I was in our house, sir.

Q: What were you doing in your house?
A: I was changing my clothes, sir.

Q: For what?
A: I was going to school that time, sir.

Q: What time was that?
A: Seven o'clock, sir.

Q: Where was your brother [CCC] at that time?
A: He was at the market, sir.

x x x x x x x x x

Q: How about the two, [DDD] and [EEE], where were they?

x x x x x x x x x

A: They were outside the house, sir.

Q: What happened while you were changing your clothes?
A: My father came, sir.

Q: By the way, what part of the house were you in?
A: I was upstairs, sir.

x x x x x x x x x

Q: What did your father do when he went to the second floor?
A: He held me, sir.

Q: With what hand did he hold you?
A: His left hand, sir.

x x x x x x x x x

Q: You said he held you with his left hand. How about his right hand, what was his right hand doing?
A: His right hand was holding a bolo, sir.

x x x x x x x x x

Q: What happened next after he held you?
A: He pushed me, sir.

Q: What happened to you when he pushed you?
A: I fell down in a lying position, sir.

x x x x x x x x x

Q: What did your father tell you, if any, Madam Witness?
A: He told me not to shout because he will kill me, sir.

x x x x x x x x x

Q: After you were pushed on the floor, what happened next?
A: He removed my short pants and my panty, sir.

Q: What did you do while he was removing your shorts and panty?
A: I was crying, sir.

Q: What did he do next, Madam Witness?
A: He removed his shorts and brief, sir.

x x x x x x x x x

Q: What did your father do when he removed his shorts and brief?
A: He spread my legs sir.

x x x x x x x x x

Q: What happened next after he spread your legs?
A: He went on top of me, sir.

x x x x x x x x x

Q: What happened next after he went on top of you?
A: He inserted his penis inside my vagina, sir.

Q: What did you feel when he inserted his penis to your vagina?
A: It was painful, sir.

x x x x x x x x x

PROS. RIDAO:
May we just put on record, Your Honor, that the witness is crying.

COURT:
Put that on record.

x x x x x x x x x

Q: After he inserted his penis into your vagina, what did he do next?
A: He did the push and pull movement, sir.

Q: What happened next after he did the push and pull movement?
A: He removed his penis and stood up, sir.

x x x x x x x x x

Q: Do you recall where you were, Madam Witness, on January 13, 2001 in the evening?

x x x x x x x x x

A: I was in our house, sir.

Q: In what particular place in your house?
A: Upstairs, sir.

Q: What were you doing upstairs?
A: I was changing my clothes, sir.

x x x x x x x x x

Q: Where was your older brother, [CCC], at that time?
A: He was already asleep, sir.

Q: How about [DDD] and [EEE]?
A: They were already asleep, sir.

Q: Where were they sleeping?
A: Downstairs, sir.

Q: While changing your clothes, Madam Witness, what happened?
A: My father came again, sir.

Q: What did you do when he came near you?
A: He held me again, sir.

Q: How did he hold you?

x x x x x x x x x

A: His left hand, sir.

Q: About [his] right hand, what was his right hand doing?
A: His right hand was holding a bolo, sir.

x x x x x x x x x

Q: What did he do next after he held your arm?
A: He again pushed me, sir.

Q: What happened to you when he pushed you?
A: I fell down, sir.

x x x x x x x x x

Q: What did your father do next after you fell on the floor?
A: He removed my shorts and panty, sir.

x x x x x x x x x

Q: What did your father do next?
A: He spread my [legs], sir.

x x x x x x x x x

Q: What did he do next after spreading your legs?
A: He went on top of me, sir.

x x x x x x x x x

Q: What did your father do next?
A: He inserted his penis in my vagina, sir.

x x x x x x x x x

Q: What did your father do next after inserting his penis into your vagina?
A: He did the push and pull movement, sir.

Q: While doing the push and pull movement, what did you feel?
A: I felt pain, sir.

Q: After he did the push and pull movement, what did you feel?
A: I felt something hot, sir.

Q: Coming from what?
A: Coming from his penis, sir.

Q: Where did you feel that something hot?
A: My vagina, sir.

Q: What did your father do next after you felt something hot in your vagina?
A: He removed his penis from my vagina, sir.

Q: And then what did he do?
A: He put on his brief and shorts, sir.

Q: And then?
A: Then he left, sir.

x x x x x x x x x

Q: On January 14, 2001, at dawn, Madam Witness, do you recall where you were?

x x x x x x x x x

A: I was in our house, sir.

Q: In what particular place in your house?
A: Downstairs, sir.

Q: What were you doing downstairs?
A: I was sleeping, sir.

Q: About your brother [CCC], where was he?
A: He was in the market, sir.

Q: About your brother [DDD], where was he?
A: He was still sleeping, sir.

Q: About your sister [EEE], where was she?
A: She was still sleeping at that time, sir.

Q: Where were they sleeping?
A: On the ground floor, sir.

x x x x x x x x x

Q: What time were you awakened at dawn?
A: I cannot remember but it was early dawn, sir.

Q: Why were you awakened?
A: My father woke me up, sir.

Q: How did he woke you up?
A: He shook me, sir.

x x x x x x x x x

Q: After you were awakened, what did your father do next?
A: He threatened me, sir.

Q: How did he threaten you? What did he tell you?
A: He said to me: "Don't shout or else I will kill you".

Q: How did he tell that to you?
A: He whispered it to me, sir.

Q: After making that threat, what did he do next[?]
A: He removed my shorts and panty, sir.

x x x x x x x x x

Q: After removing your shorts and panty, what did he do next?
A: He also removed his shorts and brief, sir.

x x x x x x x x x

Q: What did your father do next?
A: He spread my legs again, sir.

x x x x x x x x x

Q: What did your father do next?
A: He went on top of me, sir.

Q: And then what did he do next?
A: He inserted his penis inside my vagina, sir.

x x x x x x x x x

Q: What did you do after he inserted his penis inside your vagina?
A: He did the push and pull [movement], sir.

x x x x x x x x x

Q: After your father did the push and pull movement, what did you feel?
A: I felt something hot, sir.

Q: And after you felt something hot, what did your father do?
A: He removed his penis from my vagina, sir.[35]

The above testimony of AAA that the accused-appellant had sexual intercourse with her was also corroborated by the medical findings of Dr. Taganas that AAA was no longer physically a virgin. In *People v. Oden*,[36] we held that "[t]he spontaneity with which the victim has detailed the incidents of rape, the tears she has shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony. The eloquent testimony of the victim, coupled with the medical findings attesting to

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[35] TSN, August 22, 2001, pp. 4-15.

[36] 471 Phil. 638 (2004).

her non-virgin state, should be enough to confirm the truth of her charges."[37]

Moreover, *People v. Bon*[38] reiterates that "no sane woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not in truth, been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child-victims are normally given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has been committed. Youth and immaturity are generally badges of truth and sincerity."[39]

Thus, the Court rules that the element of carnal knowledge of AAA by the accused-appellant was sufficiently proven in each of the three (3) counts of rape in this case.

The accused-appellant cannot likewise rely on his defense of alibi to disprove the testimony of AAA. Verily, denial and alibi are inherently weak defenses and constitute self-serving negative evidence, which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness. Between the positive assertions of the victim and the negative averments of the appellant, the former indisputably deserve more credence and are entitled to greater evidentiary weight.[40] For alibi to prosper it is not enough for the appellant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[41]

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[37] *Id.* at 667.

[38] G.R. No. 166401, October 30, 2006, 506 SCRA 168.

[39] *Id.* at 187.

[40] *People v. Bang-ayan*, G.R. No. 172870, September 22, 2006, 502 SCRA 658, 670.

[41] *People v. Matunhay*, G.R. No. 178274, March 5, 2010, 614 SCRA 307, 317.

In the instant case, the accused-appellant merely denied that he raped AAA in November 1999. The accused-appellant did not deny that he was in their house, with all of his children, on the night when the second incident of rape on January 13, 2001 took place. As to the rape that was committed in the early morning hours of January 14, 2001, the accused-appellant denied the same, stating that he was at the Asingan market when the rape supposedly occurred and that he only came home at around 9:30 a.m. on the said date. However, other than his testimony in court, the accused-appellant failed to submit any other evidence to prove that he was indeed at the Asingan market when the third incident of rape was committed. The testimony of CCC did not particularly provide any specific corroboration on this point, as CCC merely testified that the accused-appellant *usually* goes to work at the Asingan market at 5:00 a.m. to 11:00 a.m. The accused-appellant even subsequently denied in his cross-examination that he went home at about 9:30 a.m. on January 14, 2001 without so much of an explanation.[42] Furthermore, the accused-appellant failed to demonstrate that it was physically impossible for him to be at their house at the time of the commission of the third incident of rape. CCC stated in his cross-examination that the Asingan market was only 10 minutes away from their house if one were to go there by foot.[43] Thus, it would have been relatively easy for the accused-appellant to go back from the Asingan market to their house to carry out the sexual abuse against AAA and then go to the market again. Consequently, the accused-appellant's defense of alibi cannot overcome the positive declaration of AAA.

As to the second element of statutory rape, the fact that AAA was under 12 years of age when the incidents of rape occurred had likewise been clearly established in the instant case. During the pre-trial conference before the RTC, the parties stipulated that AAA was born on February 28, 1989 and such fact was

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[42] TSN, June 11, 2002, p. 4.

[43] TSN, February 4, 2002, p. 10.

also evidenced by the Certificate of Live Birth of AAA, which was presented during the trial. Thus, AAA was only 10 years old and 11 years old, respectively, when the incidents of rape charged against the accused-appellant took place in November 1999 and January 2001. Moreover, the parties previously stipulated during the pre-trial conference and, thereafter, the accused-appellant admitted during trial that he is the biological father of AAA. The said fact is also evident in the Certificate of Live Birth of AAA.

The age of AAA and her relationship to the accused-appellant qualify the three (3) counts of rape in this case, as provided for under Article 266-B of the Revised Penal Code, which reads:

> Art. 266-B. Penalties. – x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In sum, the Court finds the accused-appellant guilty beyond reasonable doubt of three (3) counts of statutory rape in its qualified form.

Notwithstanding the provisions of Article 266-B of the Revised Penal Code, the Court of Appeals correctly held that the appropriate penalty that should be imposed upon the accused-appellant is *reclusion perpetua* for each count of rape. This is in accordance with the provisions of Republic Act No. 9346, entitled an Act Prohibiting the Imposition of Death Penalty in the Philippines, which took effect on June 30, 2006. Section 2 of Republic Act No. 9346 imposes the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code.[44]

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[44] *People v. Dimanawa*, G.R. No. 184600, March 9, 2010, 614 SCRA 770, 783.

Section 3 of Republic Act No. 9346 further provides that persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

The Court affirms the appellate court's award of ₱75,000.00 as moral damages for each count of rape in accordance with the current jurisprudence on qualified rape. However, the awards of ₱50,000.00 as civil indemnity and ₱25,000.00 as exemplary damages for each count of rape should be increased to ₱75,000.00 and ₱30,000.00, respectively, in keeping with recent case law.[45]

WHEREFORE, in light of the foregoing, the appeal is DENIED. The Decision dated November 15, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00387 is *AFFIRMED WITH MODIFICATIONS*. The accused-appellant Benjamin Padilla *y* Untalan is found *GUILTY* beyond reasonable doubt of three (3) counts of *QUALIFIED RAPE* and is hereby sentenced to suffer the penalty of *reclusion perpetua*, without the possibility of parole. The accused-appellant is *ORDERED* to pay AAA for each count of rape ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision. No costs.

SO ORDERED.

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

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[45] *People v. Documento*, G.R. No. 188706, March 17, 2010, 615 SCRA 610, 614-618; *People v. Garcia*, G.R. No. 177740, April 5, 2010, 617 SCRA 318, 335.

FIRST DIVISION

[G.R. No. 185717. June 8, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GARRY DE LA CRUZ *y* DELA CRUZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF PROHIBITED DRUGS; BUY-BUST OPERATION, EXPLAINED; WHERE THERE REALLY WAS NO BUY-BUST OPERATION CONDUCTED, THE ELEMENTS FOR ILLEGAL SALE OF PROHIBITED DRUGS CANNOT BE DULY PROVED DESPITE THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY AND THE STRAIGHTFORWARD TESTIMONY IN COURT BY THE ARRESTING POLICE OFFICER.— A buy-bust operation is "a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime." However, where there really was no buy-bust operation conducted, it cannot be denied that the elements for illegal sale of prohibited drugs cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. After all, the indictment for illegal sale of prohibited drugs will not have a leg to stand on.

2. ID.; ID.; ID.; ELEMENTS.— For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.

3. ID.; ID.; ID.; OBJECTIVE TEST IN DETERMINING THE CREDIBILITY OF WITNESSES REGARDING THE CONDUCT OF THE BUY-BUST OPERATION.— In *People v. Doria*, the Court laid down the "objective test" in determining the credibility of prosecution witnesses regarding the conduct of buy-bust operations. It is the duty of the prosecution to present a complete picture detailing the buy-bust operation—"from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of sale." We said that "[t]he manner by which the initial contact was made, x x x the offer to purchase the drug, the payment of the 'buy-bust money', and the delivery of the illegal drug x x x must be the subject of strict scrutiny by the courts to insure that law-abiding citizens are not unlawfully induced to commit an offense."

4. ID.; ID.; ID.; NON-COMPLIANCE WITH SECTION 21, ART. 11 OF RA 9165 IS NOT FATAL AND WILL NOT RENDER AN ACCUSED'S ARREST ILLEGAL OR THE ITEMS SEIZED FROM HIM INADMISSIBLE; BUT WHERE THERE ARE OTHER PIECES OF EVIDENCE WHICH PUT IN DOUBT THE CONDUCT OF THE BUY-BUST OPERATION, THESE IRREGULARITIES ARE FATAL TO THE PROSECUTION'S CASE.— Even putting this lapse aside, the other irregularities raised by accused-appellant in the backdrop of the uncontroverted testimonies of Buencamino and Lepiten tend to show that there was really no buy-bust operation conducted resulting in the valid arrest of accused-appellant. Generally, non-compliance with Secs. 21 and 86 of RA 9165 does not mean that no buy-bust operation against appellant ever took place. The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated pursuant to Sec. 21, Art. II of RA 9165 will not discharge the accused from the crime. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. But where there are other pieces of evidence putting in doubt the conduct of the buy-bust operation, these irregularities take on more significance which are, well nigh, fatal to the prosecution.

5. ID.; ID.; ID.; TRIAL COURTS MUST EXERCISE VIGILANCE IN TRYING DRUG CASES LEST AN INNOCENT PERSON IS MADE TO SUFFER THE UNUSUALLY SEVERE PENALTIES FOR DRUG OFFENSES.— Putting in doubt the conduct of the buy-bust operation are the uncontroverted testimonies of Buencamino and Lepiten, which gave credence to accused-appellant's denial and frame-up theory. The Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians. This Court has been issuing cautionary warnings to trial courts to exercise **extra vigilance** in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

6. ID.; ID.; ID.; DEFENSE OF DENIAL ASSUMES SIGNIFICANCE ONLY WHEN THE PROSECUTION'S EVIDENCE IS SUCH THAT IT DOES NOT PROVE GUILT BEYOND REASONABLE DOUBT.— The defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Nonetheless, such a defense may be given credence when there is sufficient evidence or proof making it to be very plausible or true. We are of the view that accused-appellant's defenses of denial and frame-up are credible given the circumstances of the case. Indeed, jurisprudence has established that the defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt, as in the instant case. At the very least, there is reasonable doubt that there was a buy-bust operation conducted and that accused-appellant sold the seized *shabu*. After all, a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense.

7. ID.; ID.; ID.; CHAIN OF CUSTODY; DEFINED; RULE ON CHAIN OF CUSTODY, NOT COMPLIED WITH.— Moreover, the prosecution failed to sufficiently prove the requisite chain of custody of the seized specimen. "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The CA found an

unbroken chain of custody of the purportedly confiscated *shabu* specimen. However, the records belie such conclusion.

8. ID.; ID.; ID.; ID.; THE PROHIBITED DRUG CONFISCATED FROM THE SUSPECT MUST BE THE VERY SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT AND THAT THE IDENTITY OF SAID DRUG BE ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUISITE TO MAKE A FINDING OF GUILT; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES IS EFFECTIVELY DESTROYED WHERE THE POLICE OFFICERS FAILED TO OBSERVE PROPER PROCEDURE IN THE CUSTODY OF THE SEIZED DRUGS.— It is essential that the prohibited drug confiscated or recovered from the suspect is the **very same substance** offered in court as exhibit; and that **the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt**. This, the prosecution failed to do. The prosecution must offer the testimony of key witnesses to establish a sufficiently complete chain of custody. As the Court aptly put in *People v. Cantalejo*: x x x the failure of the police to comply with the procedure in the custody of the seized drugs raises doubt as to its origins. x x x failure to observe the proper procedure also negates the operation of the presumption of regularity accorded to police officers. As a general rule, the testimony of police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed. While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt.

9. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN ALL CRIMINAL PROSECUTIONS, WITHOUT REGARD TO THE NATURE OF THE DEFENSE WHICH THE ACCUSED MAY RAISE, THE BURDEN OF PROOF REMAINS AT ALL TIMES UPON THE PROSECUTION TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.— [C]onsidering the

multifarious irregularities and non-compliance with the chain of custody, We cannot but acquit accused-appellant on the ground of reasonable doubt. The law demands that only proof of guilt beyond reasonable doubt can justify a verdict of guilt. In all criminal prosecutions, without regard to the nature of the defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish the guilt of the accused beyond reasonable doubt. As the Court often reiterated, it would be better to set free ten men who might probably be guilty of the crime charged than to convict one innocent man for a crime he did not commit. In fine, We repeat what the Court fittingly held in *People v. Ong*, a case similarly involving a buy-bust operation, thus: The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. While appellant's defense engenders suspicion that he probably perpetrated the crime charged, it is not sufficient for a conviction that the evidence establishes a strong suspicion or probability of guilt. It is the burden of the prosecution to overcome the presumption of innocence by presenting the quantum of evidence required. In the case at bar, the basis of acquittal is reasonable doubt, the evidence for the prosecution not being sufficient to sustain and prove the guilt of appellants with moral certainty. By reasonable doubt is not meant that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such an investigation, to let the mind rest easy upon the certainty of guilt. An acquittal based on reasonable doubt will prosper even though the appellants' innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the evidence of the defense. Suffice it to say, a slightest doubt should be resolved in favor of the accused.

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 Decision[1] dated June 30, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02727, which affirmed *in toto* the February 8, 2007 Decision[2] in Criminal Case No. Q-03-117814 of the Regional Trial Court (RTC), Branch 82 in Quezon City. The RTC found accused Garry de la Cruz *y* dela Cruz (Garry) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

In an Information[3] filed on June 3, 2003, accused was indicted for the crime allegedly committed as follows:

> That on or about the 29th of May, 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero two (0.02) gram of methylamphetamine hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.

Upon arraignment on July 28, 2003, accused pleaded "not guilty" to the above charge.[4] Trial[5] on the merits ensued.

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[1] *Rollo*, pp. 2-20. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose Catral Mendoza (now a member of this Court) and Vicente Q. Roxas.

[2] Records, pp. 127-132. Penned by Presiding Judge Severino B. De Castro, Jr.

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

[4] *Id.* at 19.

[5] During the trial, the prosecution presented as its witnesses PO2 Edcel Ibasco and PO1 Roderick Valencia, while the testimony of Forensic Chemist

Version of the Prosecution

After conducting surveillance for a week, the Station Drug Enforcement Unit in La Loma, Quezon City planned a buy-bust operation against a certain Garry who was in the *Barangay* Watch List. The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA).

On May 29, 2003, at around 9:00 a.m., the station's Officer-in-Charge (OIC), Police Inspector Oliver Villanueva (P/Insp. Villanueva), gave a briefing on the buy-bust operation. Police Officer 2 Edcel Ibasco (PO2 Ibasco) was designated as poseur-buyer, while PO1 Roderick Valencia (PO1 Valencia), PO1 Alfredo Mabutol, and PO2 Ronald Pascual were assigned as back-up operatives. Their informant attended the briefing.

Thereafter, the buy-bust team proceeded to Biak-na-Bato corner Mauban Streets, Quezon City and arrived there at around 9:30 a.m. The informant introduced PO2 Ibasco to the accused, who was standing in front of a shanty, as wanting to buy *shabu*. The accused asked for PhP 100, and when PO2 Ibasco paid the amount, the former handed over to him a white crystalline substance in a plastic sachet. Upon PO2 Ibasco's prearranged signal, the other members of the buy-bust team approached them. The accused, sensing what was happening, ran towards the shanty but was caught by PO1 Valencia at the alley. PO1 Valencia introduced himself as a police officer and frisked the accused, in the process recovering the buy-bust money.

The buy-bust team then brought the accused to the station. The accused was turned over to the desk officer on duty, along with the substance in the sachet bought from him and the recovered buy-bust money. After inquest, the Information was filed on June 3, 2003. Accused was then committed to the Quezon City Jail.[6]

Engr. Leonard Jabonillo was dispensed with upon stipulation by the defense. On the other hand, the defense presented accused Garry, Rodolfo Buencamino, and Marbelita Collado Lepiten.

[6] CA *rollo*, p. 11, Commitment Order dated July 7, 2003.

Consequently, the substance inside the sachet believed to be *shabu* was sent to and examined by a Philippine National Police forensic chemist, Engr. Leonard Jabonillo (Engr. Jabonillo). The laboratory result confirmed that the substance was positive for methylamphetamine hydrochloride or *shabu*.

Only PO2 Ibasco and PO1 Valencia testified for the prosecution during the trial. The testimony of Engr. Jabonillo was dispensed with upon stipulation by the defense.

Version of the Defense

The accused denied selling *shabu* to PO2 Ibasco. In short, the accused used the defense of denial and alleged a frame-up by the arresting officers.

The accused testified that he was arrested on May 29, 2003 at around 9:00 a.m. inside his house at *Barangay* Manresa, Quezon City while he was alone drinking coffee. While two neighbors were talking in front of his house, a Tamaraw FX arrived. Five armed men alighted from it, whereupon his neighbors ran away and were chased by them. The armed men then returned, saying, "*Nakatakas, nakatakbo*." (They had escaped and ran.) One of the armed men saw the accused and entered his house. It was PO2 Ibasco, who frisked him and got PhP 60 from his pocket. PO1 Valencia also entered his house and came out with a shoe box, then said, "*Sige, isakay n'yo na*." (Take him in the car.) He asked the armed men what his violation was but was told to merely explain at the precinct.

In the police precinct, he was investigated and subsequently detained. They showed him a plastic sachet which they allegedly recovered from him. Then a man approached him and demanded PhP 30,000 for his release, but he said he did not have the money. Thereafter, he was presented for inquest.

A witness, Rodolfo Buencamino (Buencamino), narrated that in the morning of May 29, 2003, he called the police precinct to have a certain "Taba," an alleged drug pusher in their area, arrested. PO2 Ibasco and other police officers responded immediately. When the police officers arrived, Buencamino pointed to "Taba," who, however, was able to evade arrest.

Thereafter, he was surprised to see the accused inside the vehicle of the policemen. But he did not know why and where the accused was arrested since he did not witness the actual arrest.

Another witness, Marbelita Collado Lepiten (Lepiten), testified that she was at the terrace of her house on 135 Manba St., Manresa, San Francisco del Monte, Quezon City, when she noticed the accused talking to a certain "Taba," a resident of the area. When a maroon Tamaraw FX stopped in front of the house of accused, "Taba" ran away and was pursued by two men who alighted from the vehicle. The two men returned without "Taba," who evidently escaped, and entered the house of the accused. She did not know what happened inside the house but she eventually saw the men push the accused outside into their vehicle.

The Ruling of the RTC

On February 8, 2007, the RTC rendered its Decision finding the accused guilty beyond reasonable doubt of the offense charged. The dispositive portion reads:

> WHEREFORE, judgment is hereby rendered finding accused GARRY DELA CRUZ guilty beyond reasonable doubt of a violation of Section 5, Article II of R.A. No. 9165, and hereby sentencing him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.
>
> SO ORDERED.

In convicting the accused, the RTC relied on and gave credence to the testimony of prosecution witnesses PO2 Ibasco and PO1 Valencia. Citing *People v. Jubail*,[7] which enumerated the elements required to be established by the prosecution for the illegal sale of prohibited drugs, the trial court found that the prosecution had established the elements of the crime.

The RTC pointed out that Buencamino may, indeed, have called the police to arrest a certain "Taba," an alleged pusher

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[7] G.R. No. 143817, May 19, 2004, 428 SCRA 478.

in the area, but he was not present when the accused was arrested. The trial court likewise did not accord evidentiary weight to the testimony of Lepiten, who testified that she saw the accused talking to "Taba" and that when the police officers entered the house of the accused, she was unaware of what transpired inside. Thus, the RTC concluded that her testimony did not provide clear and convincing justification to cast doubt on the candid and straightforward testimonies of the police officers.

Applying the presumption of the performance of official function, the lack of showing any ill motive on the part of the police officers to testify against the accused, and the principle that the bare denial of an accused is inherently weak, the RTC convicted the accused.

Consequently, with his conviction, the accused started to serve his sentence[8] and was subsequently committed to the New Bilibid Prison in Muntinlupa City.

Aggrieved, accused appealed[9] his conviction before the CA.

The Ruling of the CA

On June 30, 2008, the appellate court rendered the appealed decision, wholly affirming the findings of the RTC and the conviction of appellant. The *fallo* reads:

> WHEREFORE, premises considered, herein appeal is hereby DENIED and the assailed Decision *supra* is hereby AFFIRMED *in toto*.
>
> SO ORDERED.

The CA upheld the findings of the trial court that the essential elements required for the conviction of an accused for violation of Sec. 5, Art. II of RA 9165 were present in the instant case. The appellate court brushed aside the irregularities raised by accused-appellant by putting premium credence on the testimonies of the arresting police officers, who positively

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[8] *Rollo*, p. 25, Order of Commitment issued on February 27, 2007.

[9] CA *rollo*, p. 23, Notice of Appeal dated March 1, 2007.

identified accused-appellant in open court. One with the trial court, the CA found no improper motive on the part of the police officers who, it said, were regularly performing their official duties. Besides, relying on *People v. Barlaan*,[10] the CA held that the irregularities raised that there was no coordination with the PDEA and that no inventory was made and no photograph taken of the seized drug, if true, did not invalidate the legitimate buy-bust operation conducted. Moreover, the CA found that the *corpus delicti*, *i.e.*, the confiscated *shabu* and the PhP 100 bill, were presented as evidence of the commission of the offense.

The CA also ruled that accused-appellant's mere denial, as corroborated by Buencamino and Lepiten, deserved scant consideration *vis-à-vis* the positive identification by the arresting officers who arrested him *in flagrante delicto*. Anent the questioned chain of custody, the CA found it unbroken and duly proven by the prosecution.

The Issues

Hence, We have this appeal.

Only accused-appellant, however, filed his Manifestation (In Lieu of Supplemental Brief),[11] while the Office of the Solicitor General (OSG), representing the People of the Philippines, submitted neither a Manifestation nor a Motion. Consequently, on July 27, 2009, the Court dispensed with the OSG's submission of a supplemental brief.[12] Since no new issues are raised nor supervening events transpired, We scrutinize the Brief for the Accused-Appellant[13] and the Brief for the Plaintiff-Appellee,[14] filed in CA-G.R. CR-H.C. No. 02727, in resolving the instant appeal.

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[10] G.R. No. 177746, August 31, 2007, 531 SCRA 849.

[11] *Rollo*, pp. 27-29, dated April 22, 2009.

[12] *Id.* at 30.

[13] CA *rollo*, pp. 37-51, dated September 18, 2007.

[14] *Id.* at 73-85, dated January 21, 2008.

Thus, accused-appellant raises the same assignment of errors, in that:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTION 5, ARTICLE II, REPUBLIC ACT NO. 9165.

II

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL.[15]

The Court's Ruling

The appeal is meritorious.

Accused-appellant argues that, *first*, the prosecution has not proved his commission of the crime charged for the following irregularities: (1) the arresting officers did not coordinate with the PDEA, as required under Sec. 86 of RA 9165; (2) no physical inventory was conducted and photograph taken of the alleged seized drug in the presence of public officials, as required by Sec. 21 of RA 9165; and (3) the chain of custody was not duly proved by the prosecution. And *second*, his denial is worthy of credence upon corroboration by the credible witnesses presented by the defense.

After a careful and thorough review of the records, We are convinced that accused-appellant should be acquitted, for the prosecution has not proved beyond reasonable doubt his commission of violation of Sec. 5, Art. II of RA 9165.

A buy-bust operation is "a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that

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[15] *Id.* at 39.

may have been part of or used in the commission of the crime."[16] However, where there really was no buy-bust operation conducted, it cannot be denied that the elements for illegal sale of prohibited drugs cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. After all, the indictment for illegal sale of prohibited drugs will not have a leg to stand on.

This is the situation in the instant case.

The courts *a quo* uniformly based their findings and affirmance of accused-appellant's guilt on: (1) the straightforward testimony of the arresting police officers; (2) their positive identification of accused-appellant; (3) no ill motive was shown for their testimony against accused-appellant; (4) the self-serving defense of denial by accused-appellant; (5) the seeming irregularities in the conduct of the buy-bust operation and the arrest of accused-appellant not invalidating the operation; and (6) the testimonies of Buencamino and Lepiten not showing that the buy-bust operation was not conducted.

Although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended, or misapplied in a case under appeal,[17] as here.

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof

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[16] *People v. Mateo*, G.R. No. 179478, July 28, 2008, 560 SCRA 397, 417; citing *People v. Ong*, G.R. No. 137348, June 21, 2004, 432 SCRA 470, 484 and *People v. Juatan*, G.R. No. 104378, August 20, 1996, 260 SCRA 532, 538.

[17] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647, 654; citing *People v. Pedronan*, G.R. No. 148668, June 17, 2003, 404 SCRA 183, 188.

that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.[18]

In *People v. Doria*,[19] the Court laid down the "objective test" in determining the credibility of prosecution witnesses regarding the conduct of buy-bust operations. It is the duty of the prosecution to present a complete picture detailing the buy-bust operation—"from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of sale."[20] We said that "[t]he manner by which the initial contact was made, x x x the offer to purchase the drug, the payment of the 'buy-bust money', and the delivery of the illegal drug x x x must be the subject of strict scrutiny by the courts to insure that law-abiding citizens are not unlawfully induced to commit an offense."[21]

No Surveillance Conducted

The testimony of PO2 Ibasco on direct examination did not mention an alleged surveillance conducted by PO2 Ibasco and PO1 Valencia prior to the alleged buy-bust operation, the corresponding intelligence report, and the written communiqué with the PDEA. The defense in cross-examination put to task both PO2 Ibasco and PO1 Valencia concerning these matters, as attested to in the Joint Affidavit of Apprehension[22] executed by the two police officers on May 30, 2003. PO2 Ibasco testified that his unit, specifically PO1 Valencia and himself, conducted

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[18] *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547; *People v. Del Mundo*, G.R. No. 169141, December 6, 2006, 510 SCRA 554, 562.

[19] G.R. No. 125299, January 22, 1999, 301 SCRA 668.

[20] *Id.* at 698.

[21] *Id.* at 698-699; *People v. Ong*, *supra* note 16, at 485; *People v. De Guzman*, G.R. No. 151205, June 9, 2004, 431 SCRA 516, 523.

[22] Records, pp. 8-9.

surveillance on accused-appellant for a week prior to the buy-bust operation on May 29, 2003 which, according to him, turned out positive, *i.e.*, accused-appellant was, indeed, selling *shabu*.

PO2 Ibasco on cross-examination testified, thus:

ATTY. LOYOLA:
Being an operative, you are of course, trained in intelligence work?

PO2 IBASCO:
Yes, sir.

Q: You said you conducted surveillance but you cannot show any proof that there is an intelligence report, you have no proof?
A: Yes, sir. There is, we were dispatched.

Q: Where is your proof now?
A: It's in our office.

Q: Your dispatch order for the surveillance do you have any?
A: I don't have it now sir but it's in the office.

Q: You said that you conducted surveillance for one week, did I hear you right?
A: Yes, sir.

x x x x x x x x x

Q: So, you are saying you did not actually see him selling drugs at that time during the surveillance?
A: We saw him, sir.

x x x x x x x x x

Q: None. You did not even coordinate this operation with the PDEA?
A: We coordinated it, sir.

Q: What is your proof that you indeed coordinated?
A: It's in the office, sir.

ATTY. LOYOLA:
May I make a reservation for continuance of the cross-examination considering that there are documents that the witness has to present.

COURT:
What documents?

ATTY. LOYOLA:
The proof your Honor that there was indeed a coordination and the intelligence report.

COURT:
Will you be able to produce those documents?
A: Yes, sir. "*Titingnan ko po.*"

PROSECUTOR ANTERO:
Titingnan?

COURT:
You are not sure? You don't have any copy of those documents?

A: You (sic) Honor, what we have in the office is the dispatch.[23]

PO1 Valencia, likewise, on cross-examination testified:

ATTY. LOYOLA:
Mr. Witness, tell me during the orientation, you will agree with me that there was no coordination made to the PDEA regarding this intended buy bust operation?

PO1 VALENCIA:
We have coordinated at the PDEA.

Q: You say that but you have no proof to show us that there was coordination?
A: We have, sir.

Q: What is your proof?
A: We have files in our office for coordination.

Q: Are you sure about that?
A: Yes, sir.

Q: Now, Mr. Witness, based on the information, you already planned to conduct a buy bust operation against the accused?
A: Yes, sir.

Q: But you will agree with me that there was no surveillance against the accused?

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[23] TSN, March 16, 2004, pp. 115-119.

A: We have conducted a surveillance one week before the operation and we conducted surveillance "*Pinakawalan namin ang informant*."

Q: What do you mean "*pinakawalan ang informant*"?
A: So that we have a spy inside to verify whether Garry was really selling *shabu*.

x x x x x x x x x

Q: In fact you don't have any information report?
A: We have, sir. It's in the office. It's with Insp. Villanueva.

Q: And because you claim that you have submitted an information and report, of course, you should have come up with an intelligence report.
A: Yes, sir. It's also in the office of Insp. Villanueva.

x x x x x x x x x

Q: And the alleged recovered item, the plastic sachet which contained white crystalline substance was brought by whom to the PNP Crime Laboratory?
A: I cannot remember who brought it sir because it was a long time ago.[24]

These documents—specifically the dispatch order, the intelligence report of the alleged surveillance, and the written communiqué from the PDEA for the conduct of the surveillance and buy-bust operation—were not, however, presented in court. Evidently, these documents are non-existent, tending to show that there really was no surveillance and, consequently, no intelligence report about the surveillance or the averred written communiqué from PDEA attesting to coordination with said agency. Worse, the prosecution never bothered to explain why it could not present these documents. Thus, there is no basis to say that accused-appellant allegedly sold *shabu* a week before he was arrested.

Even putting this lapse aside, the other irregularities raised by accused-appellant in the backdrop of the uncontroverted

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[24] TSN, August 3, 2004, pp. 10-14.

testimonies of Buencamino and Lepiten tend to show that there was really no buy-bust operation conducted resulting in the valid arrest of accused-appellant.

Generally, non-compliance with Secs. 21 and 86 of RA 9165 does not mean that no buy-bust operation against appellant ever took place.[25] The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated pursuant to Sec. 21, Art. II of RA 9165 will not discharge the accused from the crime. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[26]

No Buy-Bust Operation

But where there are other pieces of evidence putting in doubt the conduct of the buy-bust operation, these irregularities take on more significance which are, well nigh, fatal to the prosecution.

Putting in doubt the conduct of the buy-bust operation are the uncontroverted testimonies of Buencamino and Lepiten, which gave credence to accused-appellant's denial and frame-up theory. The Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians.[27] This Court has been issuing cautionary warnings to trial courts to exercise **extra vigilance** in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.[28]

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[25] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 447.

[26] *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595.

[27] *People v. Daria, Jr.*, G.R. No. 186138, September 11, 2009, 599 SCRA 688, 709.

[28] *Sales v. People*, G.R. No. 182296, April 7, 2009, 584 SCRA 680, 686.

The defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties.[29] Nonetheless, such a defense may be given credence when there is sufficient evidence or proof making it to be very plausible or true. We are of the view that accused-appellant's defenses of denial and frame-up are credible given the circumstances of the case. Indeed, jurisprudence has established that the defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt,[30] as in the instant case. At the very least, there is reasonable doubt that there was a buy-bust operation conducted and that accused-appellant sold the seized *shabu*. After all, a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense.[31]

Notably, Buencamino voluntarily testified to the effect that he called the police asking them to apprehend a certain "Taba," a notorious drug pusher in their area. PO2 Ibasco and company responded to his call and Buencamino helped identify and direct the policemen but "Taba" unfortunately escaped. Thus, Buencamino testified:

ATTY. BARTOLOME:
Mr. Witness, who asked you to testify today?

BUENCAMINO:
I volunteered myself to testify.

x x x x x x x x x

Q: Can you tell us how, when and where the accused was arrested?

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[29] *Id.*

[30] *People v. Mejia*, G.R. No. 185723, August 4, 2009, 595 SCRA 356, 374.

[31] *Dizon v. People*, G.R. No. 144026, June 15, 2006, 490 SCRA 593, 613; citing *People v. Fronda*, G.R. No. 130602, March 15, 2000, 328 SCRA 185, 194.

A: I was the one who called-up the precinct to arrest a certain *Taba* and not Garry. Taba was the target of the operation.

Q: When was that?
A: May 29, 2003.

Q: Why did you call the police station?
A: Ibasco talked to me to arrest Taba.

Q: Why are they going to arrest Taba?
A: Because he is a pusher in the area.

Q: Why do you know Ibasco?
A: Because he was a previous resident of Barangay Manresa.

Q: You said you called police officer [sic] what was the topic. Mr. Witness?
A: That Taba is already there and he already showed up and they immediately responded to arrest Taba.

Q: So, Ibasco immediately responded to your call?
A: Yes, sir.

Q: When they arrived in your place what happened else, if any?
A: I pointed to Taba so they could arrest him.

Q: Where they able to arrest Taba?
A: No, sir. He was able to escape.

Q: When they were not able to arrest *alias* Taba what happened, next Mr. Witness? What happened to Garry Dela Cruz?
A: I was surprised because I saw Garry Dela Cruz already inside the vehicle and I don't know why Garry was inside the vehicle.[32]

Buencamino's assertion of knowing PO2 Ibasco was likewise not rebutted. Moreover, the presentation of the police logbook on calls received in the morning of May 29, 2003 would indeed show if Buencamino or someone else made a call to the precinct about a certain "Taba," but then, again, the prosecution did not bother to rebut the testimony of Buencamino. Verily, this time the presumption "that evidence willfully suppressed would

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[32] TSN, September 12, 2006, pp. 2-4.

be adverse if produced"[33] applies. In fact, the prosecution did not even assail Buencamino's credibility as a witness but merely made the point in the cross-examination that he had no actual knowledge of the arrest of accused-appellant. Thus, Buencamino was cross-examined:

PROSECUTOR ANTERO:
You were not with Garry at the time he was arrested?

BUENCAMINO:
No, sir.

Q: You don't know where he was arrested at that time?
A: I don't know where Garry was, sir.

PROSECUTOR ANTERO:
That will be all, your Honor.[34]

More telling is the testimony of Lepiten which, uncontroverted, shows that there was no buy-bust operation. Her testimony corroborates the testimony of Buencamino that police enforcers indeed responded to Buencamino's phone call but were not able to apprehend "Taba." This destroys the buy-bust operation angle testified to by PO2 Ibasco and PO1 Valencia. Since the buy-bust operation allegedly happened not inside the house of accused-appellant but in an open area in front of a shanty, such cannot be sustained in light of what Lepiten witnessed: The policemen chased but were not able to arrest "Taba"; thereafter, the policemen went inside the house of accused-appellant, emerging later with him who was led to the vehicle of the policemen. Thus, Lepiten testified:

ATTY. BARTOLOME:
Mrs. Witness, where were you on May 29, 2003, if you could still remember?

COURT:
What time?

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[33] RULES OF COURT, Rule 131, Sec. 2(e).

[34] TSN, September 12, 2006, pp. 4-5.

ATTY. BARTOLOME:
At around 9:00 in the morning.

LEPITEN:
I was at the terrace of the house we are renting while sipping coffee.

Q: Where is that house located?
A: No. 135 Mauban Street, Barangay Manresa, Quezon City.

COURT:
Where is this, Novaliches?

A: No, your Honor, near San Francisco Del Monte.

x x x x x x x x x

ATTY. BARTOLOME:
While drinking coffee, what transpired next, Mrs. Witness or was there any unusual thing that happened?
A: Yes, sir. While I was sitting on the terrace in front of the house we are renting is the house of Garry. Garry was talking to a certain *Taba* whom I know.

x x x x x x x x x

Q: While you saw them talking to each other, what happened next?
A: Suddenly a maroon FX stopped.

Q: Where?
A: In front of the house of Garry.

Q: When this maroon FX stopped, what happened next, if any?
A: *Taba* ran, sir.

Q: What happened next, if any?
A: Two (2) men in blue pants and white shirt alighted from the maroon FX and ran after *Taba*.

Q: Were they able to arrest *Taba*, Ms. Witness?
A: No, sir. They were not able to catch him.

Q: When they failed to arrest *Taba*, what did these two (2) men do, if any?
A: They returned in front of the house and Garry and I saw them entered the house of Garry.

x x x x x x x x x

Q: What did they do, if any?
A: I don't know what they did inside because I could not see them, sir. Then I saw them went down and pushed Garry towards the FX.

x x x x x x x x x

Q: After that what else happened, if any?
A: I just saw that they boarded Garry inside the FX.

x x x x x x x x x

COURT:
Any cross?

PROSECUTOR ANTERO:
No cross, your Honor.[35]

Thus, taking into consideration the defense of denial by accused-appellant, in light of the foregoing testimonies of Buencamino and Lepiten, the Court cannot conclude that there was a buy-bust operation conducted by the arresting police officers as they attested to and testified on. The prosecution's story is like a sieve full of holes.

Non-Compliance with the Rule on Chain of Custody

Moreover, the prosecution failed to sufficiently prove the requisite chain of custody of the seized specimen. "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[36] The CA found an unbroken chain of custody of the purportedly confiscated *shabu* specimen. However, the records belie such conclusion.

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[35] TSN, January 30, 2007, pp. 2-6.

[36] *People v. Gutierrez*, G.R. No. 179213, September 3, 2009, 598 SCRA 92, 101-102; *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762, 777.

The testimonies of PO2 Ibasco and PO1 Valencia, as well as their Joint Affidavit of Apprehension, were bereft of any assertion on how the seized *shabu* in a heat-sealed sachet was duly passed from PO2 Ibasco, the chosen poseur-buyer, who allegedly received it from accused-appellant, to forensic chemist Engr. Jabonillo, who conducted the forensic examination. While the testimony of Engr. Jabonillo was dispensed with upon stipulation by the defense, as duly embodied in the RTC Order dated March 16, 2004, it is likewise bereft of any assertion substantially proving the custodial safeguards on the identity and integrity of the *shabu* allegedly received from accused-appellant. The stipulation merely asserts:

> x x x that he is a Forensic Chemist of the Philippine National Police; that his office received a request for laboratory examination marked as Exhibit "A"; that together with said request is a brown envelope marked as Exhibit "B"; which contained a plastic sachet marked as Exhibit "B-1"; that he conducted a requested laboratory examination and, in connection therewith, he submitted a Chemistry Report marked as Exhibit "C". The findings thereon showing the specimen positive for Methylamphetamine Hydrochloride was marked as Exhibit "C-1", and the signature of the said police officer was marked as Exhibit "C-2". He likewise issued a Certification marked as Exhibits "D" and "D-1", and thereafter, turned over the specimen to the evidence custodian and retrieved the same for [sic] purposed proceeding scheduled today.[37]

While both PO2 Ibasco and PO1 Valencia testified on the identity of the plastic sachet duly marked with the initials "EIGC," there was no sufficient proof of compliance with the chain of custody. The records merely show that, after the arrest of accused-appellant, the specimen was allegedly turned over to the desk officer on duty, whose identity was not revealed. Then it was the station's OIC, P/Insp. Villanueva, who requested the forensic examination of the specimen. In gist, from the alleged receipt of the plastic sachet containing 0.02 gram of *shabu* by PO2 Ibasco from the alleged buy-bust operation, the

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[37] Records, p. 47.

chain of custody of the specimen has not been substantially shown. The Court cannot make an inference that PO2 Ibasco passed the specimen to an unnamed desk officer on duty until it made its way to the laboratory examination. There are no details on who kept custody of the specimen, who brought it to the Crime Laboratory, and who received and kept custody of it until Engr. Jabonillo conducted the forensic examination. The stipulated facts merely made an allusion that the specimen custodian of the Crime Laboratory had possession of the specimen and released it for the proceedings before the trial court.

It is essential that the prohibited drug confiscated or recovered from the suspect is the **very same substance** offered in court as exhibit; and that **the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt**.[38] This, the prosecution failed to do. The prosecution must offer the testimony of key witnesses to establish a sufficiently complete chain of custody.[39]

As the Court aptly put in *People v. Cantalejo*:

> x x x the failure of the police to comply with the procedure in the custody of the seized drugs raises doubt as to its origins.
>
> x x x failure to observe the proper procedure also negates the operation of the presumption of regularity accorded to police officers. As a general rule, the testimony of police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.
>
> While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt.[40]

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[38] *Sales v. People*, *supra* note 28, at 688-689.

[39] *Catuiran v. People*, G.R. No. 175647, May 8, 2009, 587 SCRA 567, 580.

[40] G.R. No. 182790, April 24, 2009, 586 SCRA 777, 788.

In sum, considering the multifarious irregularities and non-compliance with the chain of custody, We cannot but acquit accused-appellant on the ground of reasonable doubt. The law demands that only proof of guilt beyond reasonable doubt can justify a verdict of guilt.[41] In all criminal prosecutions, without regard to the nature of the defense which the accused may raise, the burden of proof remains at all times upon the prosecution to establish the guilt of the accused beyond reasonable doubt.[42] As the Court often reiterated, it would be better to set free ten men who might probably be guilty of the crime charged than to convict one innocent man for a crime he did not commit.[43]

In fine, We repeat what the Court fittingly held in *People v. Ong*, a case similarly involving a buy-bust operation, thus:

> The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. While appellant's defense engenders suspicion that he probably perpetrated the crime charged, it is not sufficient for a conviction that the evidence establishes a strong suspicion or probability of guilt. It is the burden of the prosecution to overcome the presumption of innocence by presenting the quantum of evidence required.
>
> In the case at bar, the basis of acquittal is reasonable doubt, the evidence for the prosecution not being sufficient to sustain and prove the guilt of appellants with moral certainty. By reasonable doubt is not meant that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such an investigation, to let the mind rest easy upon the certainty of guilt. An acquittal based on reasonable doubt will prosper even though the appellants' innocence may be doubted, for a criminal

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[41] *People v. Mateo*, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 653.

[42] *People v. Caiñgat*, G.R. No. 137963, February 6, 2002, 376 SCRA 387, 396; citing *People v. Mariano*, G.R. No. 134309, November 17, 2000, 347 SCRA 109 and *People v. Tacipit*, G.R. No. 109140, March 8, 1995, 242 SCRA 241.

[43] *Valeroso v. Court of Appeals*, G.R. No. 164815, September 3, 2009, 598 SCRA 41, 60; citing *People v. Sarap*, G.R. No. 132165, March 26, 2003, 399 SCRA 503, 512.

conviction rests on the strength of the evidence of the prosecution and not on the weakness of the evidence of the defense. Suffice it to say, a slightest doubt should be resolved in favor of the accused.[44]

WHEREFORE, the instant appeal is *GRANTED*. Accused-appellant Garry De La Cruz *y* Dela Cruz is hereby *ACQUITTED* of the crime charged on basis of reasonable doubt. Accordingly, the CA Decision dated June 30, 2008 in CA-G.R. CR-H.C. No. 02727 is *SET ASIDE*. The Director of the Bureau of Corrections is ordered to cause the immediate release of accused-appellant, unless he is being lawfully held for another cause.

No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186395. June 8, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ITO PINIC,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GUIDING PRINCIPLE IN THE DETERMINATION OF THE INNOCENCE OR GUILT OF THE ACCUSED; SOLE TESTIMONY OF THE VICTIM

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[44] G.R. No. 175940 [Formerly G.R. Nos. 155361-62], February 6, 2008, 544 SCRA 123, 141.

MAY BE SUFFICIENT TO CONVICT SO LONG AS THE SAME IS CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.— 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. In the determination of the innocence or guilt of the accused, we are guided by the following 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 own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Owing to the manner of the commission of rape, the sole testimony of the victim may be sufficient to convict the accused so long as the court finds the testimony "credible, natural, convincing and consistent with human nature and the normal course of things." More so, when the testimony is supported by the medico-legal findings of the examining physician.

2. ID.; ID.; ID.; INCONSISTENCIES IN THE RAPE VICTIM'S TESTIMONY DO NOT IMPAIR HER CREDIBILITY, ESPECIALLY IF THE INCONSISTENCIES REFER TO TRIVIAL MATTERS THAT DO NOT ALTER THE ESSENTIAL FACT OF THE COMMISSION OF RAPE.— Agreeably, there were several inconsistencies in the testimony of AAA with respect to matters other than the aforequoted testimony. However, the appellate court correctly applied *Boromeo,* where this Court declared: Inconsistencies in a rape victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. x x x In *Rellota,* this Court reiterated: It is established jurisprudence that testimony must be considered and calibrated in its entirety inclusive and not by truncated or isolated passages thereof. Due consideration must be accorded to all the questions propounded to the witness and her answers thereto. The whole impression or effect of what

had been said or done must be considered and not individual words or phrases alone. Moreover, rape xxx causes deep psychological wounds, often forcing the victim's conscience or subconscious to forget the traumatic experience xxx. A rape victim cannot thus be expected to keep an accurate account and remember every ugly detail of the appalling and horrifying outrage perpetrated on her especially since she might in fact have been trying not to remember them. xxx Error-free testimony cannot be expected most especially when a young victim of rape is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion deep in the recesses of her mind xxx. Moreover, a rape victim testifying in the presence of strangers, face to face with her tormentor and being cross-examined by his hostile and intimidating lawyer would be benumbed with tension and nervousness and this can affect the accuracy of her testimony. xxx [A]mple margin of error and understanding should be accorded to a young victim of a vicious crime like rape.

3. ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT AS TO THE CREDIBILITY OF THE RAPE VICTIM SHOULD NOT BE DISTURBED ABSENT A SHOWING THAT MATERIAL FACTS, WHICH MIGHT AFFECT THE RESULT OF THE CASE, HAD BEEN OVERLOOKED.— We defer to the finding of the trial court as to the credibility of the testimony of AAA, x x x. This should not be unnecessarily disturbed absent a showing that material facts, which might affect the results of the case, had been overlooked. We found none in the instant case.

4. CRIMINAL LAW; RAPE; WHEN THE TESTIMONY OF THE RAPE VICTIM IS SUPPORTED BY THE PHYSICIAN'S FINDING OF PENETRATION, THERE IS SUFFICIENT FOUNDATION TO CONCLUDE THAT THE REQUISITES OF CARNAL KNOWLEDGE EXISTED.— Settled is the rule, however, that when the testimony of the victim is supported by the physician's finding of penetration, there is sufficient foundation to conclude that the requisites of carnal knowledge existed. Moreover, AAA positively identified appellant as her assailant.

5. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; MUST BE STRONGLY SUPPORTED BY CORROBORATING EVIDENCE IN ORDER TO MERIT CREDIBILITY.— The

bare denial of the appellant cannot prevail over the positive identification and credible testimony of AAA as we have consistently ruled that a categorical testimony generally prevails over a bare denial. Alibi and denial must be strongly supported by corroborative evidence in order to merit credibility. But the trial court correctly disregarded the testimonies of the defense's corroborating witnesses. JJJ allegedly did not hear AAA shout because, apparently, the rape was committed when she and MJR were not around. Appellant's brother Luis later admitted that he could not say whether or not a person had entered or could enter the house. Further, Luis' testimony is tainted with bias because he is the older brother of the appellant. He is necessarily interested in the latter's acquittal.

6. CRIMINAL LAW; SIMPLE RAPE; IMPOSABLE PENALTY; USE OF DEADLY WEAPON CANNOT BE APPRECIATED AS QUALIFYING CIRCUMSTANCE, IF NOT SPECIFICALLY ALLEGED IN THE INFORMATION, EVEN IF THE PROSECUTION PROVES THE SAME.— In the determination of the imposable penalty, we note that the appellant used a deadly weapon to threaten AAA. This would have the effect of increasing the penalty from *reclusion perpetua* to *reclusion perpetua* to death pursuant to Article 266-B of the Revised Penal Code, which provides that *reclusion perpetua* to death should be the penalty for rape committed with the use of a deadly weapon. While Republic Act 9346 prohibits the imposition of death penalty, such qualifying circumstance would still produce two (2) effects: (1) the imposable penalty of *reclusion perpetua* without eligibility for parole should be imposed; and (2) the award of moral damages and civil indemnity should be increased each from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00) under prevailing jurisprudence. It is a requisite, however, that the use of a deadly weapon be alleged in the information because such circumstance is also in the nature of a qualifying circumstance that increases the range of the penalty to include death. Otherwise, it cannot be appreciated as a qualifying circumstance even if the prosecution proves the same. Unfortunately, the use of a deadly weapon was not specifically alleged in the Information. Appellant cannot, therefore, be convicted of the crime of qualified rape and meted the penalty of death. Consequently, appellant shall be eligible for parole and the damages to which the victim is

entitled to shall correspond to that for simple rape. Accordingly, the trial court correctly imposed the penalty of *reclusion perpetua*.

7. ID.; ID.; CIVIL LIABILITY OF THE ACCUSED-APPELLANT.— The award of damages to the victim in the amount of Fifty Thousand Pesos (₱50,000.00) each as civil indemnity and moral damages is likewise in order. Pursuant to prevailing jurisprudence, however, the amount of exemplary damages has already been increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00).

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Before this Court for final review is the conviction[1] of appellant Ito Pinic for the rape of AAA,[2] a seven (7) year old lass.

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[1] Records, pp. 192-217. Decision dated 22 December 2006 of the Regional Trial Court penned by Judge Melanio C. Rojas, Jr.; CA *rollo* pp. 126-136. Decision dated 6 May 2008 penned by Associate Justice Magdangal M. de Leon, with Associate Justices Josefina Guevara-Salonga and Normandie B. Pizarro concurring.

[2] The real name and 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. This is consistent with the application in *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419) of the following: (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*) on maintaining the confidentiality of information on child abuse cases.

The Facts

In three (3) separate Informations[3] all dated 12 December 2001 filed with the Regional Trial Court and docketed as Criminal Case Nos. 730-T to 732-T, appellant was accused of the crime of RAPE allegedly committed as follows:

> That on or about the month of April[,] 2001, in the municipality of xxx, province of xxx, and within the jurisdiction of this Honorable Court, [Ito Pinic], did then and there wilfully, unlawfully, and feloniously [had] carnal knowledge of one [AAA], a seven (7) year old girl, by means of force and against the latter's will and consent.[4]

It was only on 27 January 2003 that appellant was apprehended and committed[5] to the Bureau of Jail Management and Penology by virtue of an Alias Warrant of Arrest[6] issued by the trial court.

On arraignment, appellant entered a plea of not guilty.[7] During pre-trial,[8] the parties stipulated, among others, that AAA was only seven (7) years old during the incident of April 2001; and that Ito Pinic and Lito Pinic are one and the same person.

On trial, AAA testified that sometime in April 2001, she, together with playmates JJJ and a certain MJR, played *bahay-bahayan* outside the house of Victorio Pinic *a.k.a.* Balulang.[9]

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[3] Records, p.1; copies of the Informations in Criminal Case Nos. 731-T and 732-T are not attached to the records that were forwarded to this Court; however, succeeding pleadings and court issuances, including the decision of the trial court, consistently referred to Criminal Case Nos. 730-T to 732-T.

[4] *Id.*

[5] *Id.* at 16. Letter dated 27 January 2003 of the trial court to the Bureau of Jail Management and Penology.

[6] *Id.* at 15. Alias Warrant of Arrest dated 26 December 2002.

[7] *Id.* at 19-20. Order dated 12 March 2003.

[8] *Id* at 26-28. Pre-Trial Order dated 23 April 2003.

[9] TSN, 15 October 2003, pp. 4-6.

On that same day, her neighbor appellant, who was armed with a bolo/knife,[10] summoned her to the house of Balulang.[11] Inside the house, he threatened to cut her ears with his bolo.[12] He undressed her and removed her panty.[13] Thereafter, he took off his own pants[14] and inserted his penis into her vagina.[15] She felt pain.[16] He withdrew his penis after about ten (10) seconds but inserted it again after ten (10) seconds. After five (5) seconds, he withdrew it again but inserted it once more after five (5) seconds. He also inserted his finger and licked her vagina.[17] After consummating the act, appellant sent her home and warned her not to tell anyone of the incident.[18]

Sometime in the same month of April 2001, AAA complained to her father FFF that her anus was painful.[19] When her mother MMM examined her, she confided that she was raped by appellant.[20] It was then that MMM recalled of one morning when she could not find her daughter. She and her relatives looked for her from 9:00 o'clock in the morning until she arrived home at 12:00 o'clock noon. AAA refused to have her lunch and was "quiet and fearful" for a long time. She would not say why.[21]

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[10] TSN, 8 September 2004, p. 4; knife and bolo were interchangeably used during AAA's entire testimony.

[11] TSN, 30 August 2004, p. 9.

[12] TSN, 29 September 2003, pp. 4-5.

[13] TSN, 30 August 2004, p. 13.

[14] *Id.*

[15] TSN, 29 September 2003, p. 5.

[16] TSN, 30 August 2004, p. 13.

[17] *Id.* at 11-12.

[18] TSN, 29 September 2003, p. 5.

[19] TSN, 16 June 2003, p. 4.

[20] *Id.* at 5.

[21] TSN, 11 August 2003, pp. 10-12.

AAA submitted herself to a physical examination and was issued a Medico-Legal Certificate[22] showing that she has old hymenal lacerations at 10:00 o'clock and 2:00 o'clock positions. Dr. Jomelyn Bolompo, her attending physician, later testified in court that the lacerations could have been caused by "any object bigger than the hymenal opening" like a penis or a finger.[23]

On the other hand, appellant denied the accusations against him. He claimed that nobody could enter the house of Balulang where the alleged rape was committed. His brother Luis, the caretaker of the house, padlocks the windows and the doors whenever he leaves.[24] Luis gave the same version on the witness stand and added that he is the only one who has the keys to the house.[25]

JJJ, one of the playmates of AAA who stayed at the house of the Pinics on a one-month vacation, testified that her mother and the appellant are siblings;[26] that while playing with AAA and MJR on the date of the alleged commission of the crime, she did not see the appellant nor AAA enter the house of Balulang;[27] that she did not notice AAA cry or shout;[28] and that during her whole stay at the Pinics where the appellant supposedly stayed, she never saw him in the house.[29]

On 22 December 2006, the regional trial court convicted the appellant of the crime of rape in Criminal Case No. 730-T but acquitted him in Criminal Case Nos. 731-T and 732-T.[30] The dispositive portion of the decision reads:

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[22] Records, p. 171. Medico-Legal Certificate dated 8 May 2001.

[23] TSN, 1 December 2003, pp. 5-6.

[24] TSN, 29 May 2006, pp. 4-5.

[25] TSN, 14 November 2005, p. 4.

[26] TSN, 25 May 2005, p. 6.

[27] *Id.* at 5.

[28] *Id.*

[29] *Id.* at 13.

[30] Records, p. 216. Decision dated 22 December 2006 of the trial court.

WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATION, this Court finds the accused ITO PINIC guilty beyond reasonable doubt of the crime of rape in Criminal Case No. 730-T defined and penalized under Article 266-A and 266-B of the Revised Penal Code and shall suffer the penalty of *reclusion perpetua* and hereby further ordered to pay the victim [AAA] the amount of Fifty Thousand (Php50,000.00) Pesos as civil indemnity and Fifty Thousand (Php50,000.00) Pesos as moral damages.

xxx. [A]side from the moral damages and civil indemnity the latter which is automatically granted in rape cases, the accused should likewise be made to pay exemplary damages in the amount of Twenty Five (Php25,000.00) Pesos.

The accused is hereby acquitted in [Criminal Case Nos.] 731-T and 732-T, his guilt not proved beyond reasonable doubt.[31]

Appellant elevated the case to the Court of Appeals on 31 January 2007.[32] On 6 May 2008, the Court of Appeals promulgated its decision[33] in CA-G.R. CR-H.C. No. 02673 dismissing the appeal. Thus:

In fine, this Court finds no reason to disturb the findings of the trial court which took extreme caution to scrutinize [AAA's] testimony.

WHEREFORE, the instant appeal is **DISMISSED** for lack of merit.[34]

Appealed to this Court, we required the parties to simultaneously file their respective supplemental briefs.[35] Both manifested that they will no longer file supplemental pleadings.[36]

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[31] *Id.*

[32] *Id.* at 218. Notice of Appeal dated 31 January 2007 filed by appellant with the trial court.

[33] CA *Rollo*, p. 125. Notice of Judgment dated 6 May 2008 of the Division Clerk of Court, Court of Appeals.

[34] *Id.* at 135. Decision dated 6 May 2008 of the Court of Appeals.

[35] *Rollo*, p. 18. Resolution dated 30 March 2009, Second Division, Supreme Court.

[36] *Id.* at 22-23. Manifestation (In Lieu of Supplemental Brief) dated 21 May 2009 of the Appellant; *Id.* at 26. Manifestation and Motion dated 11 June 2009 of the Office of the Solicitor General.

Our Ruling

We uphold the conviction of appellant in Criminal Case No. 730-T.

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.[37]

In the determination of the innocence or guilt of the accused, we are guided by the following 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 own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[38]

Owing to the manner of the commission of rape, the sole testimony of the victim may be sufficient to convict the accused so long as the court finds the testimony "credible, natural, convincing and consistent with human nature and the normal course of things."[39] More so, when the testimony

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[37] *People v. Jacinto,* G.R. No. 182239, 16 March 2011 citing Art. 266-A paragraph 1(d), Revised Penal Code, as amended by Sec. 2 of The Anti-Rape Law of 1997.

[38] *People v. Dalisay,* G.R. No. 188106, 25 November 2009, 605 SCRA 807, 814 citing *People v. Glivano,* G.R. No. 177565, January 28, 2008, 542 SCRA 656, 662 further citing *People v. Malones*, 425 SCRA 318, 329 (2004).

[39] *People v. Cadap,* G. R. No. 190633, 5 July 2010,623 SCRA 655, 660-661, citing *People v. Corpuz,* G.R. No. 168101, 13 February 2006, 482 SCRA 435, 444.

is supported by the medico-legal findings of the examining physician.[40]

I

Invoking the three (3) well-entrenched principles that guide the court in the determination of the guilt of an accused, appellant maintains that the sole testimony of AAA should not be made the basis for his conviction.

We are not convinced.

The points raised by appellant had been squarely addressed by the trial court and the Court of Appeals.

The trial court explained:

> xxx In her testimony, the inconsistency whether the rape happened in the morning or afternoon becomes clear, when she averred that she entered the house of Balulang when she was playing alone and after she went home she again returned to the house of Balulang and played with [MJR] and [JJJ] outside. This [c]ourt entertains the conclusion that the sexual assault happened in the morning before she returned to the house of Balulang and played with her playmates. Besides, the time of the alleged rape is not an element of the crime of rape.[41]
>
> In his brief, counsel for the accused, attempts to discredit [AAA] by pointing out alleged inconsistencies in her testimony. These so called inconsistencies *e.g.*, the time of day when the alleged rape happened, whether morning or afternoon, whether the rape [was] on a bed – and that these inconsistencies belie the accusation of rape.[42]
>
> A careful review of the transcript of the testimony of the private complainant shows that these supposed inconsistencies bear [on] relatively minor points, and even taken as a whole, fail to debunk the

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[40] *People v. Jacinto*, *supra* note 36 citing *People v. Leonardo*, G.R. No. 181036, 6 July 2010; *People v. Alcazar*, G.R. No. 186494, 15 September 2010.

[41] Records, p. 212. Decision dated 22 December 2006 of the trial court.

[42] *Id*.

gravamen of the accusation; that the accused had carnal knowledge of the complainant against the latter's will.[43]

An impeccable recollection cannot reasonably be expected from the victim of a horrendous crime, such that minor contradiction in a witness' testimony [is] perceived to enhance, rather than detract from the credibility of said witness.[44]

The Court of Appeals added that the Office of the Solicitor General[45] correctly argued that the young age of AAA at the time she was defiled did not lessen her credibility inasmuch as she was able to relate her ordeal clearly and consistently.[46]

On cross examination, AAA vividly testified:[47]

Q You testified [AAA] that Ito Pinic inserted his penis into your vagina, do you still remember that?
A I can remember, ma'am.

Q How many times did Ito Pinic insert his penis?
A Three (3) times, ma'am.

x x x x x x x x x

ATTY. FORTUNA:

Q How long did Ito Pinic insert his penis?
A Short, ma'am.

Q How short it was?

ATTY. DAVIS:
Your Honor, the witness cannot understand the word short.

WITNESS:

A For a bit longer time, ma'am.

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[43] *Id.*

[44] *Id.* citing *People v. Colisao*, G.R. No. 134526, 11 December 2001.

[45] CA *Rollo*, p. 116. *Brief for the Appellee* dated 6 December 2007 citing *People v. San Juan*, 270 SCRA 693 (1997).

[46] *Id.*

[47] TSN, 30 August 2004, pp. 9-13.

Q [AAA], do you know how to count?
A I know, ma'am.

Q Do you know how to count up to ten?
A I know, ma'am.

Q How about up to twenty?
A I know, ma'am.

Q Will you count one to five? Was it also the time Ito Pinic inserted his penis or up to ten?

COURT:
The complainant is allowed to count on her fingers.

INTERPRETER:
Witness is counting her fingers.

ATTY. DAVIS:
May we stipulate for 5 seconds, Your Honor, based on her count from 1 to 5.

WITNESS:
It is even longer, ma'am. *(Emphasis supplied.)*

ATTY. FORTUNA:

Q Was it up to 10?
A Yes, ma'am..

Q [AAA] when you count 1 to 10 that is also the time that Ito Pinic inserted his penis for the first time, am I correct?
A Yes, ma'am.

Q How about the second time that Ito Pinic inserted his panis (sic), can you count again how long it was?
A For a short period, ma'am.

Q [AAA], can you count again to tell us how short it was?

COURT:
After the complainant counted her fingers from 1 to 5.

ATTY. FORTUNA:
Q How about the third time?

INTERPRETER:
The witness counted 1,2,3,4,5.

Q How about the first insertion to the second insertion, can you tell us how long?

ATTY. DAVIS:
That is leading, Your Honor. May we know what is the point of counsel, Your Honor.

COURT:
You are asking the duration between the first and the second insertion?

ATTY. FORTUNA:
Yes, the time in between, Your Honor.

COURT:
Witness may answer.

INTERPRETER:
The witness counte[d] her fingers from 1 to 10 as the duration or representing 10 seconds for the duration between the first and second insertion.

Q How about the duration between the second and third insertion?

INTERPRETER:
Witness is counting her fingers from 1 to 5 as the duration between the second and the third insertion.

Q Aside from inserting his penis, did Ito Pinic do something else to you?
A Ito Pinic inserted his finger and licked my vagina, ma'am.

Q When Ito Pinic raped you, what were you wearing at that time?

ATTY. DAVIS:
It is misleading because the question calls at that time that she was raped, may we know if was it before the rape or during the rape?

ATTY. FORTUNA:
At the time that she was raped, Your Honor.

A A dress, ma'am.

Q Were you wearing panty at that time?
A Yes, ma'am.

Q How about Ito Pinic what was he wearing at that time?
A Pants, ma'am.

Q Pants only?
A Pants only, ma'am.

Q Did he remove your dress when you were raped?
A Yes, ma'am.

Q How about your panty, did he remove it?
A Yes, ma'am.

Q How about Ito Pinic, did he remove his pants?
A Yes, ma'am.

Q When you were raped, what did you feel?
A Painful, ma'am.

Q Did you laugh after you were raped?
A No, ma'am.

Q Did you shout?
A Yes, ma'am.

Q After Ito Pinic raped you, did you find any blood on your panty?
A Yes, ma'am.

Q After you were raped did you go home after?
A Yes, ma'am.

Q You said that it was painful, which part of your body was painful?
A My vagina, ma'am.

Agreeably, there were several inconsistencies in the testimony of AAA with respect to matters other than the aforequoted testimony. However, the appellate court correctly applied *Boromeo*,[48] where this Court declared:

Inconsistencies in a rape victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters

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[48] G.R. No. 150501, 3 June 2004, 430 SCRA 533.

that do not alter the essential fact of the commission of rape. x x x[49]

In *Rellota,*[50] this Court reiterated:

It is established jurisprudence that testimony must be considered and calibrated in its entirety inclusive and not by truncated or isolated passages thereof. Due consideration must be accorded to all the questions propounded to the witness and her answers thereto. The whole impression or effect of what had been said or done must be considered and not individual words or phrases alone. Moreover, rape xxx causes deep psychological wounds, often forcing the victim's conscience or subconscious to forget the traumatic experience xxx. A rape victim cannot thus be expected to keep an accurate account and remember every ugly detail of the appalling and horrifying outrage perpetrated on her especially since she might in fact have been trying not to remember them. xxx Error-free testimony cannot be expected most especially when a young victim of rape is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion deep in the recesses of her mind xxx. Moreover, a rape victim testifying in the presence of strangers, face to face with her tormentor and being cross-examined by his hostile and intimidating lawyer would be benumbed with tension and nervousness and this can affect the accuracy of her testimony. xxx [A]mple margin of error and understanding should be accorded to a young victim of a vicious crime like rape.[51]

We defer to the finding of the trial court as to the credibility of the testimony of AAA, to wit:

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[49] CA *Rollo*, p. 133. Decision dated 6 May 2008 of the Court of Appeals citing *People v. Boromeo, id.* at 547.

[50] G.R. No. 168103, 3 August 2010, 626 SCRA 422, 437-438.

[51] *Id.* at 437-438 citing *People v. Luna,* 443 Phil. 782, 800-801further citing *People v. Abalde,* 329 SCRA 418 (2000); Francisco, *The Revised Rules of Court of the Philippines*, 1991 ed., Volume VII, Part II, p. 542; *People v. Rosario*, 246 SCRA 658 (1995); *People v. Cula,* 329 SCRA 101 (2000); *People v. Tamala,* 284 SCRA 436 (1998); *People v. Perez*, 270 SCRA 181 (1997); *People v. Arafiles,* 325 SCRA 181 (2000).

> The testimonies of the private complainant [are] scrutinized by this [c]ourt with extreme caution. These testimonies from direct, cross, re-direct and re-cross examination were given on different dates. They were given after the lapse of days or months in intervals. But it can be clearly seen that they are consistent save for the minor inconsistencies xxx.[52]

This should not be unnecessarily disturbed absent a showing that material facts, which might affect the results of the case, had been overlooked.[53] We found none in the instant case.

Appellant likewise argues that the prosecution failed to prove his guilt beyond reasonable doubt inasmuch as the attending physician testified that the hymenal lacerations found in the vagina of AAA could have also been caused by strenuous activities.[54] He added that the medico-legal findings did not show that he was the one who perpetrated the crime.[55]

Settled is the rule, however, that when the testimony of the victim is supported by the physician's finding of penetration, there is sufficient foundation to conclude that the requisites of carnal knowledge existed.[56] Moreover, AAA positively identified appellant as her assailant.[57]

The bare denial of the appellant cannot prevail over the positive identification and credible testimony of AAA as we have consistently ruled that a categorical testimony generally prevails over a bare denial.[58]

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[52] Records, p. 211. Decision dated 22 December 2006 of the trial court.

[53] *People v. Saludo*, G.R. No. 178406, 6 April 2011.

[54] CA *Rollo*, p. 70. *Brief for the Accused-Appellant* dated 2 August 2007.

[55] *Id.*

[56] *People v. Saludo, supra* note 52.

[57] TSN, 29 September 2003, p. 3.

[58] *People v. Miranda*, G.R. No. 176634, 5 April 2010, 617 SCRA 298, 309 citing *People v. Alvero*, 386 Phil. 181, 200 (2000)

Alibi and denial must be strongly supported by corroborative evidence in order to merit credibility.[59] But the trial court correctly disregarded the testimonies of the defense's corroborating witnesses. JJJ allegedly did not hear AAA shout because, apparently, the rape was committed when she and MJR were not around.[60] Appellant's brother Luis later admitted that he could not say whether or not a person had entered or could enter the house.[61] Further, Luis' testimony is tainted with bias because he is the older brother of the appellant. He is necessarily interested in the latter's acquittal.[62]

All considered, we are convinced that the guilt of appellant has been sufficiently established with moral certainty with respect to Criminal Case No. 730-T. On the other hand, the acquittal of the appellant in Criminal Case Nos. 731-T and 732-T was also in order. The aforequoted testimony of AAA[63] shows that although the penis was thrice inserted in her private organ, the same constituted one (1) count of rape.

II

In the determination of the imposable penalty, we note that the appellant used a deadly weapon to threaten AAA.[64] This would have the effect of increasing the penalty from *reclusion perpetua* to *reclusion perpetua* to death pursuant to Article 266-B of the Revised Penal Code, which provides that *reclusion perpetua* to death should be the penalty for rape committed with the use of a deadly weapon.[65] While

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[59] *People v. Olimba*, G.R. No. 185008, 22 September 2010, 631 SCRA 223, 242 citing *People v. Jacob*, G.R. No. 177151, 22 August 2008, 563 SCRA 191, 203.

[60] Records, p. 213. Decision dated 22 December 2006 of the trial court.

[61] *Id.* at 215; TSN, 20 February 2006, pp. 3-4.

[62] *Id.*

[63] TSN, 30 August 2004, pp. 10-13.

[64] TSN, 29 September 2003, pp. 4-5.

[65] *People v. Alegre*, G.R. No. 184812, 6 July 2010, 624 SCRA 239, 246.

Republic Act 9346[66] prohibits the imposition of death penalty, such qualifying circumstance would still produce two (2) effects: (1) the imposable penalty of *reclusion perpetua* without eligibility for parole should be imposed;[67] and (2) the award of moral damages and civil indemnity should be increased each from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00) under prevailing jurisprudence.[68]

It is a requisite, however, that the use of a deadly weapon be alleged in the information because such circumstance is also in the nature of a qualifying circumstance that increases the range of the penalty to include death.[69] Otherwise, it cannot be appreciated as a qualifying circumstance even if the prosecution proves the same.[70]

Unfortunately, the use of a deadly weapon was not specifically alleged in the Information. Appellant cannot, therefore, be convicted of the crime of qualified rape and meted the penalty of death.[71] Consequently, appellant shall be eligible for parole and the damages to which the victim is entitled to shall correspond to that for simple rape.

Accordingly, the trial court correctly imposed the penalty of *reclusion perpetua*. The award of damages to the victim in the amount of Fifty Thousand Pesos (₱50,000.00) each as civil indemnity and moral damages is likewise in order. Pursuant to prevailing jurisprudence, however, the amount of exemplary

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[66] *An Act Prohibiting the Imposition of the Death Penalty in the Philippines*, 24 June 2006.

[67] *People v. Alegre*, *supra* note 65.

[68] *Id.* at 247 citing *People v. Araojo*, G.R. No. 185203, 17 September 2009, 600 SCRA 295, 309.

[69] *People v. dela Peña*, G.R. Nos. 138358-59, 421 Phil. 262, 269 (2001).

[70] *Id.* citing *People v. Fraga*, 330 SCRA 699 [2000].

[71] *Id.*

damages has already been increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00).[72]

WHEREFORE, the Decision dated 6 May 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 02673 *DISMISSING* the appeal of appellant Lito Pinic *a.k.a.* Ito Pinic is hereby *AFFIRMED*.

The Decision dated 22 December 2006 of the trial court in Criminal Case Nos. 730-T to 732-T is hereby *MODIFIED* in the following manner:

1. Appellant is found *GUILTY* beyond reasonable doubt of the crime of rape committed against AAA in Criminal Case No. 730-T. He is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay AAA the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and

2. With respect to Criminal Case Nos. 731-T and 732-T, the appellant is hereby *ACQUITTED* for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.

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

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[72] *People v. Rante*, G.R. No. 184809, 29 March 2010, 617 SCRA 115, 127 citing *People v. Dalisay, supra* note 37.

THIRD DIVISION

[G.R. No. 188319. June 8, 2011]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MADS SALUDIN MANTAWIL, MAGID MAMANTA and ABDULLAH TOMONDOG,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972 (R.A. No. 6425); ILLEGAL SALE OF PROHIBITED DRUGS; CHAIN OF CUSTODY REQUIREMENTS; MET IN CASE AT BAR.— In *Malillin v. People*, we laid down the chain of custody requirements that must be met in proving that the seized drugs are the same ones presented in court: (1) testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence; and (2) witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item. After a meticulous scrutiny of the records, we are satisfied that there is no broken chain in the custody of the confiscated *shabu*, contrary to appellants' claim.

2. ID.; ID.; ID.; THE FAILURE OF THE BUY-BUST TEAM TO IMMEDIATELY MARK THE SEIZED DRUGS WILL NOT AUTOMATICALLY IMPAIR THE INTEGRITY OF THE CHAIN OF CUSTODY AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS HAVE BEEN PRESERVED.— Appellants anchor their argument on the PAOCTF team's failure to mark the confiscated *shabu* while they were still at the crime scene. This is, however, untenable. The buy-bust team's failure to immediately mark the seized drugs will not automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved. Moreover, we have explained in *People v. Salak*, While it appears that the buy-bust team failed to comply strictly with the procedure outlined above, the same does not overturn the presumption of regularity in the performance of their duty. **A violation of the**

regulation is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case since the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established and the prosecution thereof is not undermined by the arresting officers' inability to conform to the regulations of the Dangerous Drugs Board. Further, the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.

3. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; WHEN A PARTY DESIRES THE COURT TO REJECT THE EVIDENCE OFFERED, HE MUST SO STATE IN THE FORM OF OBJECTION; WITHOUT SUCH OBJECTION, HE CANNOT RAISE THE QUESTION FOR THE FIRST TIME ON APPEAL.— It is worthy to note that appellants never alleged that the drugs presented during the trial have been tampered with. Neither did appellants challenge the admissibility of the seized items when these were formally offered as evidence. In the course of the trial, the seized *shabu* were duly marked, made the subject of examination and cross-examination, and eventually offered as evidence, yet at no instance did the appellants manifest or even hint that there were lapses in the safekeeping of the seized items as to affect their admissibility, integrity and evidentiary value. It was only during their appeal that appellants raised the issue of non-compliance with the said regulation. Settled is the rule that objections to the admissibility of evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

4. ID.; ID.; CONSPIRACY; TO BE GUILTY AS A CONSPIRATOR, THE ACCUSED NEEDS TO HAVE DONE AN OVERT ACT IN PURSUIT OF THE CRIME INDUBITABLY SHOWING A COMMUNITY OF PURPOSE AND DESIGN; MERE PRESENCE IN THE VICINITY WHEN THE ILLEGAL TRANSACTION TOOK PLACE SHOULD NOT BE TAKEN AS PARTICIPATION IN A CONSPIRACY TO COMMIT THE CRIME.— However, as to Tomondog, the Court entertains nagging doubts as to his guilt considering that his participation to the transaction

was not established. According to the three PAOCTF officers, Tomondog alighted from the FX taxi and went to Bisnar's car after Mantawil motioned to him. The prosecution, however, offered no further evidence as to his participation in the illegal transaction. It was not shown that he acted as guard nor that he had possession of the *shabu* at anytime. Neither was it shown that Tomondog knew that the other appellants had *shabu* in their possession at that time. In fact, it was even made clear from the testimonies of the witnesses, and even in the stipulation of the parties, that Tomondog was a simple FX taxi driver. Hence, the fact that he alighted and approached Mantawil after the latter motioned to him could very well have been due to a mistaken belief that Mantawil motioned to him so he could get his ₱250 payment. Whatever the reason, his mere presence in the vicinity when the illegal transaction took place should not be taken as participation in a conspiracy to commit the crime. To be guilty as a conspirator, the accused needs to have done an overt act in pursuit of the crime indubitably showing a community of purpose and design. Here, the prosecution presented no proof tending to show that Tomondog knew of the criminal intentions of the other appellants, much less that he adopted the same.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is an appeal from the January 30, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02627. The CA had affirmed the September 12, 2006 Decision[2] of the

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[1] *Rollo*, pp. 2-10. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Portia Aliño-Hormachuelos and Noel G. Tijam.

[2] CA *rollo*, pp. 44-50. Penned by Judge Vedasto B. Marco.

Regional Trial Court (RTC) of Manila, Branch 41, convicting appellants for violation of Section 15,[3] Article III of Republic Act (R.A.) No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended.[4]

The information against appellants reads:

> That on or about June 2, 1999, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, accused MADS SALUDIN MANTAWIL *a.k.a.* MADS ALI, MAGID MAMANTA and ABDULLAH TOMONDOG, conspiring, confederating and mutually helping one another, did then and there, wilfully, unlawfully and feloniously sell, deliver and give away to a poseur-buyer One Thousand Three Hundred Sixteen point five (1,316.5) grams of Methamphetamine Hydrochloride, commonly known as *SHABU*, a regulated drug, without authority of law or the corresponding license therefor.
>
> CONTRARY TO LAW.[5]

At the trial, the prosecution presented as witnesses P/C Insp. Arthur V. Bisnar (Bisnar), SPO3 Rolando Sayson (Sayson), SPO1 Rodolfo Gonzales (Gonzales), and P/Insp. Ma. Luisa David. Their testimonies presented the following factual scenario:

On June 2, 1999 at around 10:00 in the morning, the Presidential Anti-Organized Crime Task Force (PAOCTF) buy-bust operations team composed of P/Supt. John Lopez (Lopez), Bisnar, Sayson, Gonzales and other PAOCTF operatives, conducted a briefing to discuss a buy-bust operation with a confidential informant. The confidential informant revealed

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[3] SEC. 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.*—The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

x x x x x x x x x

[4] Amended by R.A. No. 7659 or The Death Penalty Law.

[5] Records, Vol. I, p. 1.

that he was able to confirm a drug deal with a drug dealer named Mads Ali for 1½ kilos of *shabu* worth ₱900,000.00. The deal would be consummated at the Quirino Grandstand, Rizal Park, Manila near *Museong Pambata* between two to three o'clock that afternoon.[6]

Together with the confidential informant, the buy-bust team boarded four unmarked vehicles bearing confidential security plates of the PAOCTF and proceeded to the designated place, arriving thereat around 1:45 p.m. Bisnar was to act as the poseur-buyer, Sayson the arresting officer, and Gonzales the back-up poseur-buyer.[7]

Around 2:00 p.m., a maroon Toyota FX Mega Taxi marked "Margy" with plate no. TVC 479 arrived at the Quirino Grandstand and parked two meters away from Bisnar's car. Appellant Mads Saludin Mantawil (Mantawil) alighted from the FX taxi, approached Bisnar's car, and greeted the confidential informant, who greeted Mantawil back and introduced Bisnar as the buyer of the *shabu*. Bisnar showed Mantawil the boodle money placed inside a Giordano™ paper bag and the latter went back to the FX taxi and left the place.[8]

After thirty (30) minutes, Mantawil returned on board the same FX taxi. The FX taxi parked about five meters away from Bisnar's car. Mantawil alighted and approached Bisnar's car. He demanded to see the money. When Bisnar insisted on seeing the *shabu* first, Mantawil waved to his two companions who were inside the FX taxi. Magid Mamanta (Mamanta) and Abdullah Tomondog (Tomondog) alighted from the FX taxi and approached Bisnar.[9]

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[6] TSN, April 14, 2000, pp. 5-13; TSN, September 15, 2000, pp. 4-9; TSN, November 15, 2000, p. 4.

[7] *Id.* at 7, 13-14; *id.* at 7-10; *id.* at 5.

[8] *Id.* at 14-16; *id.* at 11-14; *id.* at 6-8.

[9] *Id.* at 16-18; *id.* at 14-18; *id.* at 9-11.

Mamanta then handed a light blue Bench™ plastic bag to Bisnar through the car window. Inside the bag was a self-sealing transparent plastic bag containing white crystalline substance, which Bisnar suspected to be *shabu*. After seeing the contents of the plastic bag, Bisnar handed the boodle money to Mantawil and immediately made the pre-arranged signal for the arrest by switching on the hazard lights of his car. The PAOCTF team then rushed to Bisnar's car and arrested the appellants.[10] After apprising appellants of their constitutional rights, the buy-bust team brought appellants separately to Camp Crame. Mamanta was transported by Gonzales while Sayson transported Tomondog. Bisnar, for his part, transported the confiscated *shabu* and Mantawil.[11]

At Camp Crame, Sayson and Gonzales witnessed Bisnar mark the seized *shabu.*[12] Bisnar also filled up a corresponding Receipt for Property Seized dated June 2, 1999,[13] which appellants refused to sign. Bisnar and his team likewise executed a Joint Affidavit of Arrest[14] and prepared the Booking Sheet and Arrest Report of the appellants.[15] Thereafter, P/Supt. Lopez issued a request for laboratory examination of the confiscated *shabu*.[16] Gonzales delivered the request to the Philippine National Police (PNP) Crime Laboratory at 6:55 p.m.[17] with the confiscated *shabu* indicated to be contained in a self-sealing plastic bag marked "AVB 06/02/99" and placed inside a light blue Bench™ plastic bag. A handwritten description was also placed on the

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[10] *Id.* at 18-21; *id.* at 18-20; *id.* at 12-16.

[11] TSN, September 15, 2000, pp. 20-21.

[12] *Id.* at 22-24; TSN, November 15, 2000, p. 36.

[13] Records, p. 213, Exhibit "I".

[14] *Id.* at 10-12.

[15] *Id.* at 13-15.

[16] *Id.* at 206, Exhibit "A".

[17] *Id.*, Exhibit "A-2".

laboratory report indicating that the *shabu* with the container weighed 1,325 grams.[18]

At the PNP Crime Laboratory, P/Insp. Ma. Luisa David, Forensic Chemist I, conducted a quantitative and qualitative examination of the specimen. The Initial Laboratory Report, as well as the Final Report, showed that the white crystalline substance, weighing 1,316.5 grams, tested positive for methamphetamine hydrochloride or *shabu*.[19]

On the other hand, the appellants, testifying on their own behalf, denied the charges and claimed that they were framed-up by the policemen. They also presented two other witnesses, Teddy Ziganay (Ziganay) and Solaiman Casan (Casan), to corroborate their defense. The testimony of the other defense witness, Atty. Rowaisa M. Pandapatan, was dispensed with as the parties stipulated that Tomondog was indeed an FX taxi driver.

Taken together, the defense witnesses' testimonies present the following version of the incident:

On June 2, 1999, while selling cigarettes at Globo de Oro, Quiapo, Manila, Mantawil was approached by two unidentified women who asked him to look for an FX taxi and accompany them to Luneta. As they offered to pay him ₱150.00 for the service, Mantawil agreed. The women, however, did not see the person they were supposed to meet in Luneta so they all returned to Quiapo. Mantawil then went back to selling cigarettes.[20]

Around 1:30 in the afternoon, one of the women whom Mantawil accompanied earlier came back and asked him to rent an FX taxi and go with her to Quirino Grandstand. Mantawil approached Tomondog, an FX taxi driver who was at the terminal for public utility vehicles in Quiapo, and asked the latter to

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[18] *Id.*

[19] TSN February 18, 2000, pp. 7-15; records, Vol. I, pp. 207-208.

[20] TSN January 16, 2001, pp. 5-7.

take him and his companion to Quirino Grandstand. Tomondog agreed for a fee of ₱250.00.[21]

As they were about to leave the terminal, Mamanta, a sidewalk vendor, came and asked Tomondog to take him to San Andres Bukid. Tomondog acceded but he proceeded first to Quirino Grandstand.[22]

At the Quirino Grandstand, Mantawil and the woman alighted from the FX taxi while Mamanta remained inside. Tomondog also alighted but only to pour water into the taxi's radiator. Mantawil testified that he then saw the woman talk to two unidentified persons in a Honda Civic car. After that, appellants were surprised when several unidentified men in civilian clothes suddenly poked their guns at appellants and handcuffed them. They were brought to Camp Crame separately and tortured. They were detained there for a week before they were brought to the Department of Justice for inquest proceedings.[23]

Ziganay, a cigarette vendor, corroborated Tomondog and Mamanta's story. Ziganay testified that while he was resting near the Quirino Grandstand that afternoon on June 2, 1999, he saw an FX taxi containing three persons park near the Grandstand. The driver, Tomondog, alighted from the vehicle and poured water into the radiator. Then, armed men in civilian clothes approached and poked their guns at Tomondog and Mamanta. Tomondog and Mamanta were arrested by said men. At that time, Mamanta was the only remaining passenger on board the FX taxi.[24]

The RTC found the appellants guilty beyond reasonable doubt of violating Section 15, Article III of R.A. No. 6425, as amended. The dispositive portion of the RTC decision reads:

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[21] *Id.* at 7-8; TSN, April 24, 2001, pp. 8-9.

[22] *Id.* at 8; *id.* at 9-10; TSN, December 7, 2001, pp. 5-6.

[23] *Id.* at 8-12; *id.* at 10-14.

[24] TSN, September 24, 2003, pp. 4-8.

WHEREFORE, premises considered, judgment is hereby rendered finding the three accused, MADS SALUDIN MANTAWIL @ "*Mads Ali*", MAGID MAMANTA and ABDULLAH TOMONDOG guilty beyond reasonable doubt of the crime of Violation of Section 15, Article III, Republic Act No. 6425 and sentence them to suffer the penalty of *Reclusion Perpetua*.

SO ORDERED.[25]

The RTC held that the version of the prosecution was a standard entrapment story. Thus, it gave credence to the narration of the incident by the prosecution witnesses, noting that they were officers of the law who enjoyed the presumption of regularity in the performance of their duties, absent any evidence to the contrary.

As regards appellants' defense, the trial court held that frame-up, like alibi, is generally considered with disfavor, for it is easy to concoct but difficult to disprove. The trial court noted that in admitting that they went to Quirino Grandstand twice, Mantawil corroborated the testimony of the prosecution's witnesses that appellants first arrived at the place to look at the money then left and returned with the *shabu*. The trial court noted that no credible reason was given by the appellants why they were at the Quirino Grandstand, Luneta at the time and date of the drug deal. No motive was also given by the appellants why the police officers would fabricate a grave offense against them if it was not true.[26]

Aggrieved, appellants filed a notice of appeal to the CA.[27] In their brief, appellants faulted the RTC for giving weight and credence to the evidence of the prosecution and totally disregarding their defense. Appellants contended that the prosecution failed to prove the indispensable element of the *corpus delicti* since the arresting officers failed to mark the *shabu* immediately after the seizure, thus creating reasonable

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[25] CA *rollo*, p. 50.

[26] *Id.* at 49-50.

[27] *Id.* at 51.

doubt as to whether the *shabu* presented in court were seized from them.[28]

The CA, however, affirmed the decision of the RTC. The dispositive portion of the CA decision reads:

> WHEREFORE, premises considered, the assailed decision of the RTC of Manila City, Branch 41 dated September 12, 2006 is hereby **AFFIRMED *IN TOTO***.
>
> SO ORDERED.[29]

In affirming appellants' conviction, the appellate court held that the prosecution was able to establish all the elements of the crime of illegal sale of *shabu*. Bisnar positively identified the seller as Mantawil who sold the drugs to him for ₱900,000.00. Appellants' contention that the prosecution failed to establish an essential link in the chain of custody of the seized item was untenable. The CA noted that appellants were with the members of the PAOCTF when they were brought to Camp Crame and Bisnar had custody of the Bench™ plastic bag containing the *shabu*. Said *shabu* was immediately marked before it was given to the forensic chemist for chemical analysis. Absent any showing to the contrary, the members of the PAOCTF are presumed to have performed their duties regularly and faithfully. This is especially so since nothing in the records shows that the contents of the plastic bag were changed or the prosecution's witnesses perjured themselves.[30]

Thus, the case is now before us for final review.

Appellants raise the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED BEYOND REASONABLE DOUBT.

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[28] *Id.* at 65-68.

[29] *Rollo*, p. 9.

[30] *Id.* at 7-8.

II.

THE LOWER COURT GRAVELY ERRED IN GIVING WEIGHT AND FULL CREDENCE TO THE EVIDENCE OF THE PROSECUTION AND TOTALLY DISREGARDING THE DEFENSE OF THE ACCUSSED-APPELLANT.[31]

Appellants posit that the prosecution utterly failed to prove the indispensable element of the *corpus delicti* of the crime. They point that the arresting officers did not immediately mark the seized item after its seizure and that the markings were admittedly made only in Camp Crame. Such failure, according to appellants, is sufficient to create reasonable doubt as the first link in the custodial chain was not established. Moreover, the arresting officers failed to comply with the procedure in the custody of the seized item suspected to be *shabu*. They failed to photograph and make a physical inventory of the seized item immediately in the presence of the appellants pursuant to Dangerous Drugs Board Regulation No. 3, Series of 1979 amending Board Regulation No. 7, Series of 1974.[32]

The Office of the Solicitor General, on the other hand, argues that the chain of custody of the *shabu* was not broken. Appellants were with the arresting officers when they were brought to Camp Crame and Bisnar was holding the bag containing the *shabu*. Upon arrival in Camp Crame, Bisnar immediately marked the seized items before it was sent to the forensic chemist for chemical analysis. There was also no showing that the contents of the bag taken from appellants were substituted with *shabu*.[33]

We affirm the verdict with respect to appellants Mantawil and Mamanta, but find reasonable doubt as to the guilt of Tomondog.

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

[32] *Id.* at 66-69.

[33] *Id.* at 99-100.

In *People v. Cervantes,*[34] we explained:

> In every prosecution for illegal sale of dangerous drug, what is crucial is the identity of the buyer and seller, the object and its consideration, the delivery of the thing sold, and the payment for it. Implicit in these cases is first and foremost the identity and existence, coupled with the presentation to the court of the traded prohibited substance, this object evidence being an integral part of the *corpus delicti* of the crime of possession or selling of regulated/prohibited drug. There can be no such crime when nagging doubts persist on whether the specimen submitted for examination and presented in court was what was recovered from, or sold by, the accused. Essential, therefore, in appropriate cases is that the identity of the prohibited drug be established with moral certainty. x x x[35]

The chain of custody requirement, set forth in Dangerous Drugs Board Regulation No. 3, Series of 1979,[36] performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[37] The said regulation reads:

> Subject: Amendment of Board Regulation No. 7, series of 1974, prescribing the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles specially designed for the use thereof.
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> x x x x x x x x x
>
> SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial

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[34] G.R. No. 181494, March 17, 2009, 581 SCRA 762.

[35] *Id.* at 776.

[36] As amended by Dangerous Drugs Board Regulation No. 2, Series of 1990.

[37] *Malillin v. People,* G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

custody and control of said drugs and[/or] paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation.[38]

In *Malillin v. People*,[39] we laid down the chain of custody requirements that must be met in proving that the seized drugs are the same ones presented in court: (1) testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence; and (2) witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item.

After a meticulous scrutiny of the records, we are satisfied that there is no broken chain in the custody of the confiscated *shabu*, contrary to appellants' claim.

After the arrest, the confiscated *shabu* remained with Bisnar inside his car as the team and the appellants travelled separately back to Camp Crame.[40] Aside from Bisnar, only two other persons

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[38] As cited in *People v. Salak,* G.R. No. 181249, March 14, 2011, p. 9, citing *People v. Kimura,* G.R. No. 130805, April 27, 2004, 428 SCRA 51, 69; and *People v. Magat,* G.R. No. 179939, September 29, 2008, 567 SCRA 86, 95-96.

[39] *Supra* note 37 at 632-633 as cited in *People v. Barba,* G.R. No. 182420, July 23, 2009, 593 SCRA 711, 718-719.

[40] TSN, September 15, 2000, pp. 20-21, the pertinent portion of which reads:

were with him throughout the said travel, namely Mantawil and another PAOCTF operative.[41] Immediately upon their arrival at Camp Crame, Sayson and Gonzales saw Bisnar place his initials and the date of the arrest on the light blue Bench™ plastic bag and on the self-sealing transparent plastic bag.[42]

A physical inventory of the confiscated items was also made by Bisnar at Camp Crame, as evidenced by the Receipt of Property Seized dated June 2, 1999.[43] Notably, appellants did not question the accuracy and validity of the said document.

After conducting a physical inventory, Bisnar, accompanied by Gonzales, delivered the seized *shabu* to the PNP Crime Laboratory.[44]

At the PNP Crime Laboratory, P/Insp. Ma. Luisa David received the seized *shabu* together with the laboratory request form. She testified that:

Q In going back to your office at Camp Crame, where did you place these three accused?

Witness: Mads Ali with Chief Insp. Bisnar, Magid Mamanta was with SPO1 Gonzales who transferred to car No. 3 with another security man while Tomondog was with me with another security man, Ma'am.

Pros. Macapagal:

How about that blue plastic bag which was then being carried and handed by Magid Mamanta to either the C.I. or Major Bisnar, where was it?

A It was inside the car of Chief Insp. Bisnar, Ma'am.

Q And in going to Camp Crame, who has the custody of that blue plastic bag?

A Chief Insp. Bisnar, Ma'am.

[41] TSN, August 3, 2000, p. 23.

[42] TSN, September 15, 2000, p. 24; TSN, November 15, 2000, pp. 36-37.

[43] Records, p. 213.

[44] TSN, November 15, 2000, p. 19; records, p. 206 and reverse unnumbered page.

Atty. Villacorta:

Q When you examined, who received this specimen?

A I personally received the specimen, [S]ir.

Q Why? Is it a procedure that you should be the one to receive that (sic)?

A I am the duty chemist (sic), [S]ir and it [was] 7 o'clock in the evening, [S]ir.

Q You have no clerk at that time?

A I am the only one present at (sic) the laboratory, [S]ir.

Q So, when this stuff was examined, you were the [only] one present?

A Yes, [S]ir. But prior to my examination, the requesting parties were present, [S]ir.

Q Did you put that in your report?

A No, [S]ir. But they counter[-]sign[ed] on the page which I took. They [were] present when I weighed the specimen, [S]ir.

x x x x x x x x x

Atty. Mancao:

By the way, in your examination of this specimen, did you not ask for an assistance of another chemist?

A No, [S]ir.

Q So that you can have a better result?

A No, [S]ir. Because we were already trained to perform such examination on our own, [S]ir.

Q You want to tell this Honorable Court that you [were] the only one who conducted this examination and no other?

A Yes, [S]ir.

Q That because of this examination, you believe that such (sic) contain metha[m]phetamine hydrochloride?

A Yes, [S]ir.[45]

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[45] TSN, February 18, 2000, pp. 20-21, 24.

Appellants anchor their argument on the PAOCTF team's failure to mark the confiscated *shabu* while they were still at the crime scene. This is, however, untenable. The buy-bust team's failure to immediately mark the seized drugs will not automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved.[46]

Moreover, we have explained in *People v. Salak*,

> While it appears that the buy-bust team failed to comply strictly with the procedure outlined above, the same does not overturn the presumption of regularity in the performance of their duty. **A violation of the regulation is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case since the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established** and the prosecution thereof is not undermined by the arresting officers' inability to conform to the regulations of the Dangerous Drugs Board.
>
> Further, the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.[47]

It is worthy to note that appellants never alleged that the drugs presented during the trial have been tampered with. Neither did appellants challenge the admissibility of the seized items when these were formally offered as evidence. In the course of the trial, the seized *shabu* were duly marked, made the subject of examination and cross-examination, and eventually offered as evidence, yet at no instance did the appellants manifest or even hint that there were lapses in the safekeeping of the seized items as to affect their admissibility, integrity and evidentiary value. It was only during their appeal that appellants raised

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[46] *People v. Morales*, G.R. No. 188608, February 9, 2011, p. 11, citing *People v. Resurreccion*, G.R. No. 186380, October 12, 2009, 603 SCRA 510, 518-519.

[47] *Supra* note 38 at 10. Emphasis supplied.

the issue of non-compliance with the said regulation. Settled is the rule that objections to the admissibility of evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.[48]

However, as to Tomondog, the Court entertains nagging doubts as to his guilt considering that his participation to the transaction was not established. According to the three PAOCTF officers, Tomondog alighted from the FX taxi and went to Bisnar's car after Mantawil motioned to him. The prosecution, however, offered no further evidence as to his participation in the illegal transaction. It was not shown that he acted as guard nor that he had possession of the *shabu* at anytime. Neither was it shown that Tomondog knew that the other appellants had *shabu* in their possession at that time. In fact, it was even made clear from the testimonies of the witnesses, and even in the stipulation of the parties, that Tomondog was a simple FX taxi driver. Hence, the fact that he alighted and approached Mantawil after the latter motioned to him could very well have been due to a mistaken belief that Mantawil motioned to him so he could get his ₱250 payment. Whatever the reason, his mere presence in the vicinity when the illegal transaction took place should not be taken as participation in a conspiracy to commit the crime. To be guilty as a conspirator, the accused needs to have done an overt act in pursuit of the crime indubitably showing a community of purpose and design.[49] Here, the prosecution presented no proof tending to show that Tomondog knew of the criminal intentions of the other appellants, much less that he adopted the same.

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[48] *People v. Araneta*, G.R. No. 191064, October 20, 2010, p. 13 and *People v. Domado*, G.R. No. 172971, June 16, 2010, 621 SCRA 73, 84, citing *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645.

[49] See *Aquino v. Paiste*, G.R. No. 147782, June 25, 2008, 555 SCRA 255, 272; *Cajigas v. People*, G.R. No. 156541, February 23, 2009, 580 SCRA 54, 67.

WHEREFORE, the Decision dated January 30, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 02627 is *MODIFIED*. The Court *AFFIRMS IN TOTO* the judgment of conviction against appellants Mads Saludin Mantawil and Magid Mamanta, but *ACQUITS* appellant Abdullah Tomondog of the crime charged on the ground of reasonable doubt. Appellant Abdullah Tomondog is ordered immediately *RELEASED* from custody, unless he is being held for some other lawful cause. The Director of the Bureau of Corrections is *ORDERED* to implement this Decision forthwith and to *INFORM* this Court, within five (5) days from receipt hereof, of the date Abdullah Tomondog was actually released from confinement.

With costs against appellants Mads Saludin Mantawil and Magid Mamanta.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 189206. June 8, 2011]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **THE HONORABLE 15th DIVISION OF THE COURT OF APPEALS and INDUSTRIAL BANK OF KOREA, TONG YANG MERCHANT BANK, HANAREUM BANKING CORP., LAND BANK OF THE PHILIPPINES, WESTMONT BANK and DOMSAT HOLDINGS, INC.,** *respondents.*

SYLLABUS

1. **CIVIL LAW; THE BANK SECRECY LAW (R.A. 6426): DISTINGUISHED FROM THE LAW ON SECRECY OF BANK DEPOSITS (R.A. 1405).—** Republic Act No. 1405 provides for four (4) exceptions when records of deposits may be disclosed. These are under any of the following instances: a) upon written permission of the depositor, (b) in cases of impeachment, (c) upon order of a competent court in the case of bribery or dereliction of duty of public officials or, (d) when the money deposited or invested is the subject matter of the litigation, and e) in cases of violation of the Anti-Money Laundering Act (AMLA), the Anti-Money Laundering Council (AMLC) may inquire into a bank account upon order of any competent court. On the other hand, the lone exception to the non-disclosure of foreign currency deposits, under Republic Act No. 6426, is disclosure upon the written permission of the depositor. These two laws both was enacted for the purpose of giving support to the confidentiality of bank deposits. There is no conflict between them. Republic Act No. 1405 was enacted for the purpose of giving encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country. It covers all bank deposits in the Philippines and no distinction was made between domestic and foreign deposits. Thus, Republic Act No. 1405 is considered a law of general application. On the other hand, Republic Act No. 6426 was intended to encourage deposits from foreign lenders and investors. It is a special law designed especially for foreign currency deposits in the Philippines.

2. **ID.; ID.; R.A. 6426 APPLIES IN CASE AT BAR; THE BANK CANNOT BE COMPELLED TO DISCLOSE FOREIGN CURRENCY DEPOSIT OF A DEPOSITOR IN THE ABSENCE OF THE LATTER'S WRITTEN CONSENT.—** Applying Section 8 of Republic Act No. 6426, absent the written permission from Domsat, Westmont Bank cannot be legally compelled to disclose the bank deposits of Domsat, otherwise, it might expose itself to criminal liability under the same act. The basis for the application of *subpoena* is to prove that the loan intended for Domsat by the Banks and guaranteed by GSIS,

was diverted to a purpose other than that stated in the surety bond. The Banks, however, argue that GSIS is in fact liable to them for the proper applications of the loan proceeds and not *vice-versa*. We are however not prepared to rule on the merits of this case lest we pre-empt the findings of the lower courts on the matter.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioner.

Cayanga Zuñiga & Angel Law Offices for Domsat Holdings, Inc.

Sycip Salazar Hernandez Gatmaitan for respondents banks.

D E C I S I O N

PEREZ, *J.*:

The subject of this petition for *certiorari* is the Decision[1] of the Court of Appeals in CA-G.R. SP No. 82647 allowing the *quashal* by the Regional Trial Court (RTC) of Makati of a *subpoena* for the production of bank ledger. This case is incident to Civil Case No. 99-1853, which is the main case for collection of sum of money with damages filed by Industrial Bank of Korea, Tong Yang Merchant Bank, First Merchant Banking Corporation, Land Bank of the Philippines, and Westmont Bank (now United Overseas Bank), collectively known as "the Banks" against Domsat Holdings, Inc. (Domsat) and the Government Service Insurance System (GSIS). Said case stemmed from a Loan Agreement,[2] whereby the Banks agreed to lend United States (U.S.) $11 Million to Domsat for the purpose of financing the lease and/or purchase of a Gorizon Satellite from the International Organization of Space Communications (Intersputnik).[3]

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[1] Penned by Associate Justice Agustin S. Dizon with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring. *Rollo*, pp. 32-44.

[2] *Id.* at 48-91.

[3] *Id.* at 55.

The controversy originated from a surety agreement by which Domsat obtained a surety bond from GSIS to secure the payment of the loan from the Banks. We quote the terms of the Surety Bond in its entirety.[4]

Republic of the Philippines
GOVERNMENT SERVICE INSURANCE SYSTEM
GENERAL INSURANCE FUND
GSIS Headquarters, Financial Center
Roxas Boulevard, Pasay City

G(16) GIF Bond 027461

S U R E T Y B O N D

KNOW ALL MEN BY THESE PRESENTS:

That we, DOMSAT HOLDINGS, INC., represented by its President as PRINCIPAL, and the GOVERNMENT SERVICE INSURANCE SYSTEM, as Administrator of the GENERAL INSURANCE FUND, a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office in the City of Pasay, Metro Manila, Philippines as SURETY, are held and firmly bound unto the OBLIGEES: LAND BANK OF THE PHILIPPINES, 7th Floor, Land Bank Bldg. IV. 313 Sen. Gil J. Puyat Avenue, Makati City; WESTMONT BANK, 411 Quintin Paredes St., Binondo, Manila: TONG YANG MERCHANT BANK, 185, 2-Ka, Ulchi-ro, Chungk-ku, Seoul, Korea; INDUSTRIAL BANK OF KOREA, 50, 2-Ga, Ulchi-ro, Chung-gu, Seoul, Korea; and FIRST MERCHANT BANKING CORPORATION, 199-40, 2-Ga, Euliji-ro, Jung-gu, Seoul, Korea, in the sum, of US $ ELEVEN MILLION DOLLARS ($11,000,000.00) for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

THE CONDITIONS OF THE OBLIGATION ARE AS FOLLOWS:

WHEREAS, the above bounden PRINCIPAL, on the 12th day of December, 1996 entered into a contract agreement with the aforementioned OBLIGEES to fully and faithfully

> Guarantee the repayment of the principal and interest on the loan granted the PRINCIPAL to be used for the financing of the two (2) year lease of a Russian Satellite from INTERSPUTNIK, in accordance with the terms and conditions of the credit package entered into by the parties.
>
> This bond shall remain valid and effective until the loan including interest has been fully paid and liquidated,

a copy of which contract/agreement is hereto attached and made part hereof;

WHEREAS, the aforementioned OBLIGEES require said PRINCIPAL to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said contract/agreement.

NOW, THEREFORE, if the PRINCIPAL shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements stipulated in said contract/agreements, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

WITNESS OUR HANDS AND SEALS this 13th day of December 1996 at Pasay City, Philippines.

DOMSAT HOLDINGS, INC Principal	GOVERNMENT SERVICE INSURANCE SYSTEM General Insurance Fund
By:	By:
CAPT. RODRIGO A. SILVERIO President	AMALIO A. MALLARI Senior Vice-President General Insurance Group

When Domsat failed to pay the loan, GSIS refused to comply with its obligation reasoning that Domsat did not use the loan proceeds for the payment of rental for the satellite. GSIS alleged that Domsat, with Westmont Bank as the conduit, transferred

the U.S. $11 Million loan proceeds from the Industrial Bank of Korea to Citibank New York account of Westmont Bank and from there to the Binondo Branch of Westmont Bank.[5] The Banks filed a complaint before the RTC of Makati against Domsat and GSIS.

In the course of the hearing, GSIS requested for the issuance of a *subpoena duces tecum* to the custodian of records of Westmont Bank to produce the following documents:

1. Ledger covering the account of DOMSAT Holdings, Inc. with Westmont Bank (now United Overseas Bank), any and all documents, records, files, books, deeds, papers, notes and other data and materials relating to the account or transactions of DOMSAT Holdings, Inc. with or through the Westmont Bank (now United Overseas Bank) for the period January 1997 to December 2002, in his/her direct or indirect possession, custody or control (whether actual or constructive), whether in his/her capacity as Custodian of Records or otherwise;

2. All applications for cashier's/ manager's checks and bank transfers funded by the account of DOMSAT Holdings, Inc. with or through the Westmont Bank (now United Overseas Bank) for the period January 1997 to December 2002, and all other data and materials covering said applications, in his/her direct or indirect possession, custody or control (whether actual or constructive), whether in his/her capacity as Custodian of Records or otherwise;

3. Ledger covering the account of Philippine Agila Satellite, Inc. with Westmont Bank (now United Overseas Bank), any and all documents, records, files, books, deeds, papers, notes and other data and materials relating to the account or transactions of Philippine Agila Satellite, Inc. with or through the Westmont bank (now United Overseas Bank) for the period January 1997 to December 2002, in his/her direct or indirect possession, custody or control (whether actual or constructive), whether in his/her capacity as Custodian of Records or otherwise;

4. All applications for cashier's/manager's checks funded by the account of Philippine Agila Satellite, Inc. with or through the Westmont Bank (now United Overseas Bank) for the period January 1997 to December 2002, and all other data and materials covering said

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[5] *Id.* at 9.

applications, in his/her direct or indirect possession, custody or control (whether actual or constructive), whether in his/her capacity as Custodian of Records or otherwise.[6]

The RTC issued a *subpoena decus tecum* on 21 November 2002.[7] A motion to quash was filed by the banks on three grounds: 1) the *subpoena* is unreasonable, oppressive and does not establish the relevance of the documents sought; 2) request for the documents will violate the Law on Secrecy of Bank Deposits; and 3) GSIS failed to advance the reasonable cost of production of the documents.[8] Domsat also joined the banks' motion to quash through its Manifestation/Comment.[9] On 9 April 2003, the RTC issued an Order denying the motion to quash for lack of merit. We quote the pertinent portion of the Order, thus:

> After a careful consideration of the arguments of the parties, the Court did not find merit in the motion.
>
> The serious objection appears to be that the subpoena is violative of the Law on Secrecy of Bank Deposit, as amended. The law declares bank deposits to be "absolutely confidential" except: x x x (6) In cases where the money deposited or invested is the subject matter of the litigation.
>
> The case at bench is for the collection of a sum of money from defendants that obtained a loan from the plaintiff. The loan was secured by defendant GSIS which was the surety. It is the contention of defendant GSIS that the proceeds of the loan was deviated to purposes other than to what the loan was extended. The quashal of the subpoena would deny defendant GSIS its right to prove its defenses.
>
> WHEREFORE, for lack of merit the motion is DENIED.[10]

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[6] CA *rollo,* pp. 178-179.

[7] *Id.* at 201-203.

[8] *Id.* at 181.

[9] *Id.* at 201-205.

[10] *Id.* at 225.

On 26 June 2003, another Order was issued by the RTC denying the motion for reconsideration filed by the banks.[11] On 1 September 2003 however, the **trial court granted the second motion for reconsideration** filed by the banks. The previous *subpoenas* issued were consequently quashed.[12] The trial court invoked the ruling in *Intengan v. Court of Appeals*,[13] where it was ruled that foreign currency deposits are absolutely confidential and may be examined only when there is a written permission from the depositor. The motion for reconsideration filed by GSIS was denied on 30 December 2003.

Hence, these assailed orders are the subject of the petition for *certiorari* before the Court of Appeals. GSIS raised the following arguments in support of its petition:

I.

Respondent Judge acted with grave abuse of discretion when it favorably considered respondent banks' (second) Motion for Reconsideration dated July 9, 2003 despite the fact that it did not contain a notice of hearing and was therefore a mere scrap of paper.

II.

Respondent judge capriciously and arbitrarily ignored Section 2 of the Foreign Currency Deposit Act (RA 6426) in ruling in his Orders dated September 1 and December 30, 2003 that the US$11,000,000.00 deposit in the account of respondent Domsat in Westmont Bank is covered by the secrecy of bank deposit.

III.

Since both respondent banks and respondent Domsat have disclosed during the trial the US$11,000,000.00 deposit, it is no longer secret and confidential, and petitioner GSIS' right to inquire into what happened to such deposit can not be suppressed.[14]

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[11] *Id.* at 265.

[12] *Id.* at 317.

[13] 427 Phil. 293 (2002).

[14] CA *rollo*, pp. 16, 20 and 25.

The Court of Appeals addressed these issues in *seriatim*.

The Court of Appeals resorted to a liberal interpretation of the rules to avoid miscarriage of justice when it allowed the filing and acceptance of the second motion for reconsideration. The appellate court also underscored the fact that GSIS did not raise the defect of lack of notice in its opposition to the second motion for reconsideration. The appellate court held that failure to timely object to the admission of a defective motion is considered a waiver of its right to do so.

The Court of Appeals declared that Domsat's deposit in Westmont Bank is covered by Republic Act No. 6426 or the Bank Secrecy Law. We quote the pertinent portion of the Decision:

> It is our considered opinion that Domsat's deposit of $11,000,000.00 in Westmont Bank is covered by the Bank Secrecy Law, as such it cannot be examined, inquired or looked into without the written consent of its owner. The ruling in *Van Twest vs. Court of Appeals* was rendered during the effectivity of CB Circular No. 960, Series of 1983, under Sec. 102 thereof, transfer to foreign currency deposit account or receipt from another foreign currency deposit account, whether for payment of legitimate obligation or otherwise, are not eligible for deposit under the System.
>
> CB Circular No. 960 has since been superseded by CB Circular 1318 and later by CB Circular 1389. Section 102 of Circular 960 has not been re-enacted in the later Circulars. What is applicable now is the decision in *Intengan vs. Court of Appeals* where the Supreme Court has ruled that the under R.A. 6426 there is only a single exception to the secrecy of foreign currency deposits, that is, disclosure is allowed only upon the written permission of the depositor. Petitioner, therefore, had inappropriately invoked the provisions of Central Bank (CB) Circular Nos. 343 which has already been superseded by more recently issued CB Circulars. CB Circular 343 requires the surrender to the banking system of foreign exchange, including proceeds of foreign borrowings. This requirement, however, can no longer be found in later circulars.
>
> In its Reply to respondent banks' comment, petitioner appears to have conceded that what is applicable in this case is CB Circular

1389. Obviously, under CB 1389, proceeds of foreign borrowings are no longer required to be surrendered to the banking system.

Undaunted, petitioner now argues that paragraph 2, Section 27 of CB Circular 1389 is applicable because Domsat's $11,000,000.00 loan from respondent banks was intended to be paid to a foreign supplier Intersputnik and, therefore, should have been paid directly to Intersputnik and not deposited into Westmont Bank. The fact that it was deposited to the local bank Westmont Bank, petitioner claims violates the circular and makes the deposit lose its confidentiality status under R.A. 6426. However, a reading of the entire Section 27 of CB Circular 1389 reveals that the portion quoted by the petitioner refers only to the procedure/conditions of drawdown for service of debts using foreign exchange. The above-said provision relied upon by the petitioner does not in any manner prescribe the conditions before any foreign currency deposit can be entitled to the confidentiality provisions of R.A. 6426.[15]

Anent the third issue, the Court of Appeals ruled that the testimony of the incumbent president of Westmont Bank is not the written consent contemplated by Republic Act No. 6426.

The Court of Appeals however upheld the issuance of *subpoena* praying for the production of applications for cashier's or manager's checks by Domsat through Westmont Bank, as well as a copy of an Agreement and/or Contract and/or Memorandum between Domsat and/or Philippine Agila Satellite and Intersputnik for the acquisition and/or lease of a Gorizon Satellite. The appellate court believed that the production of these documents does not involve the examination of Domsat's account since it will never be known how much money was deposited into it or withdrawn therefrom and how much remains therein.

On 29 February 2008, the Court of Appeals rendered the assailed Decision, the decretal portion of which reads:

WHEREFORE, the petition is partially GRANTED. Accordingly, the assailed Order dated December 30, 2003 is hereby modified in

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[15] *Rollo,* pp. 39-40.

that the quashal of the subpoena for the production of Domsat's bank ledger in Westmont Bank is upheld while respondent court is hereby ordered to issue *subpoena duces tecum ad testificandum* directing the records custodian of Westmont Bank to bring to court the following documents:

a) applications for cashier's or manager's checks by respondent Domsat through Westmont Bank from January 1997 to December 2002;

b) bank transfers by respondent Domsat through Westmont Bank from January 1997 to December 2002; and

c) copy of an agreement and/or contract and/or memorandum between respondent Domsat and/or Philippine Agila Satellite and Intersputnik for the acquisition and/or lease of a Gorizon satellite.

No pronouncement as to costs.[16]

GSIS filed a motion for reconsideration which the Court of Appeals denied on 19 June 2009. Thus, the instant petition ascribing grave abuse of discretion on the part of the Court of Appeals in ruling that Domsat's deposit with Westmont Bank cannot be examined and in finding that the banks' second motion for reconsideration in Civil Case No. 99-1853 is procedurally acceptable.[17]

This Court notes that GSIS filed a petition for *certiorari* under Rule 65 of the Rules of Court to assail the Decision and Resolution of the Court of Appeals. Petitioner availed of the improper remedy as the appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65.[18] *Certiorari* under Rule 65 lies only when there is no appeal, nor plain, speedy

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[16] *Id.* at 43-44.

[17] Petition. *Id.* at 13.

[18] *Bicol Agro-Industrial Producers Cooperative, Inc. v. Obias*, G.R. No. 172077, 9 October 2009, 603 SCRA 173, 184-185 citing *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362, 371 (1999).

and adequate remedy in the ordinary course of law. That action is not a substitute for a lost appeal in general; it is not allowed when a party to a case fails to appeal a judgment to the proper forum.[19] Where an appeal is available, *certiorari* will not prosper even if the ground therefor is grave abuse of discretion. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.[20]

Yet, even if this procedural infirmity is discarded for the broader interest of justice, the petition sorely lacks merit.

GSIS insists that Domsat's deposit with Westmont Bank can be examined and inquired into. It anchored its argument on Republic Act No. 1405 or the "Law on Secrecy of Bank Deposits," which allows the disclosure of bank deposits in cases where the money deposited is the subject matter of the litigation. GSIS asserts that the subject matter of the litigation is the U.S. $11 Million obtained by Domsat from the Banks to supposedly finance the lease of a Russian satellite from Intersputnik. Whether or not it should be held liable as a surety for the principal amount of U.S. $11 Million, GSIS contends, is contingent upon whether Domsat indeed utilized the amount to lease a Russian satellite as agreed in the Surety Bond Agreement. Hence, GSIS argues that the whereabouts of the U.S. $11 Million is the subject matter of the case and the disclosure of bank deposits relating to the U.S. $11 Million should be allowed.

GSIS also contends that the concerted refusal of Domsat and the banks to divulge the whereabouts of the U.S. $11 Million will greatly prejudice and burden the GSIS pension fund considering that a substantial portion of this fund is earmarked every year to cover the surety bond issued.

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[19] *National Power Corporation v. Laohoo*, G.R. No. 151973, 23 July 2009, 593 SCRA 564, 588 citing *Leca Realty Corporation v. Republic*, G.R. No. 155605, 27 September 2006, 503 SCRA 563, 571.

[20] *Sable v. People*, G.R. No. 177961, 7 April 2009, 584 SCRA 619, 629-630 citing *Mercado v. Court of Appeals*, 484 Phil. 438, 444 (2004); *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, 16 October 2006, 504 SCRA 336, 352.

Lastly, GSIS defends the acceptance by the trial court of the second motion for reconsideration filed by the banks on the grounds that it is *pro forma* and did not conform to the notice requirements of Section 4, Rule 15 of the Rules of Civil Procedure.[21]

Domsat denies the allegations of GSIS and reiterates that it did not give a categorical or affirmative written consent or permission to GSIS to examine its bank statements with Westmont Bank.

The Banks maintain that Republic Act No. 1405 is not the applicable law in the instant case because the Domsat deposit is a foreign currency deposit, thus covered by Republic Act No. 6426. Under said law, only the consent of the depositor shall serve as the exception for the disclosure of his/her deposit.

The Banks counter the arguments of GSIS as a mere rehash of its previous arguments before the Court of Appeals. They justify the issuance of the *subpoena* as an interlocutory matter which may be reconsidered anytime and that the *pro forma* rule has no application to interlocutory orders.

It appears that only GSIS appealed the ruling of the Court of Appeals pertaining to the *quashal* of the *subpoena* for the production of Domsat's bank ledger with Westmont Bank. Since neither Domsat nor the Banks interposed an appeal from the other portions of the decision, particularly for the production of applications for cashier's or manager's checks by Domsat through Westmont Bank, as well as a copy of an agreement and/or contract and/or memorandum between Domsat and/or Philippine Agila Satellite and Intersputnik for the acquisition

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[21] **Section 4.** ***Hearing of motion***. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

and/or lease of a Gorizon satellite, the latter became final and executory.

GSIS invokes Republic Act No. 1405 to justify the issuance of the *subpoena* while the banks cite Republic Act No. 6426 to oppose it. The core issue is which of the two laws should apply in the instant case.

Republic Act No. 1405 was enacted in 1955. Section 2 thereof was first amended by Presidential Decree No. 1792 in 1981 and further amended by Republic Act No. 7653 in 1993. It now reads:

Section 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

Section 8 of Republic Act No. 6426, which was enacted in 1974, and amended by Presidential Decree No. 1035 and later by Presidential Decree No. 1246, provides:

Section 8. Secrecy of Foreign Currency Deposits. – All foreign currency deposits authorized under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no instance shall foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or legislative or any other entity whether public or private; *Provided, however,* That said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever. (As amended by PD No. 1035, and further amended by PD No. 1246, prom. Nov. 21, 1977.)

On the one hand, Republic Act No. 1405 provides for four (4) exceptions when records of deposits may be disclosed. These are under any of the following instances: a) upon written permission of the depositor, (b) in cases of impeachment, (c) upon order of a competent court in the case of bribery or dereliction of duty of public officials or, (d) when the money deposited or invested is the subject matter of the litigation, and e) in cases of violation of the Anti-Money Laundering Act (AMLA), the Anti-Money Laundering Council (AMLC) may inquire into a bank account upon order of any competent court.[22] On the other hand, the lone exception to the non-disclosure of foreign currency deposits, under Republic Act No. 6426, is disclosure upon the written permission of the depositor.

These two laws both support the confidentiality of bank deposits. There is no conflict between them. Republic Act No. 1405 was enacted for the purpose of giving encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country.[23] It covers all bank deposits in the Philippines and no distinction was made between domestic and foreign deposits. Thus, Republic Act No. 1405 is considered a law of general application. On the other hand, Republic Act No. 6426 was intended to encourage deposits from foreign lenders and investors.[24] It is a special law designed especially for foreign currency deposits in the Philippines. A general law does not nullify a specific or special law. *Generalia specialibus non derogant*.[25] Therefore, it is beyond cavil that Republic Act No. 6426 applies in this case.

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[22] *Republic v. Eugenio, Jr.*, G.R. No. 174629, 14 February 2008, 545 SCRA 384, 415-416.

[23] Sec. 1, Republic Act No. 1405.

[24] See *China Banking Corporation v. Court of Appeals*, G.R. No. 140687, 18 December 2006, 511 SCRA 110, 117.

[25] *Tomawis v. Balindong*, G.R. No. 182434, 5 March 2010, 614 SCRA 354, 367-368 citing Agpalo, *Statutory Construction*, p. 415 (2003).

Intengan v. Court of Appeals affirmed the above-cited principle and categorically declared that **for foreign currency deposits, such as U.S. dollar deposits, the applicable law is Republic Act No. 6426.**

In said case, Citibank filed an action against its officers for persuading their clients to transfer their dollar deposits to competitor banks. Bank records, including dollar deposits of petitioners, purporting to establish the deception practiced by the officers, were annexed to the complaint. Petitioners now complained that Citibank violated Republic Act No. 1405. This Court ruled that since the accounts in question are U.S. dollar deposits, the applicable law therefore is not Republic Act No. 1405 but Republic Act No. 6426.

The above pronouncement was reiterated in *China Banking Corporation v. Court of Appeals*,[26] where respondent accused his daughter of stealing his dollar deposits with Citibank. The latter allegedly received the checks from Citibank and deposited them to her account in China Bank. The subject checks were presented in evidence. A *subpoena* was issued to employees of China Bank to testify on these checks. China Bank argued that the Citibank dollar checks with both respondent and/or her daughter as payees, deposited with China Bank, may not be looked into under the law on secrecy of foreign currency deposits. This Court highlighted the exception to the non-disclosure of foreign currency deposits, *i.e.*, in the case of a written permission of the depositor, and ruled that respondent, as owner of the funds unlawfully taken and which are undisputably now deposited with China Bank, he has the right to inquire into the said deposits.

Applying Section 8 of Republic Act No. 6426, absent the written permission from Domsat, Westmont Bank cannot be legally compelled to disclose the bank deposits of Domsat,

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[26] *Supra* note 24.

otherwise, it might expose itself to criminal liability under the same act.[27]

The basis for the application of *subpoena* is to prove that the loan intended for Domsat by the Banks and guaranteed by GSIS, was diverted to a purpose other than that stated in the surety bond. The Banks, however, argue that GSIS is in fact liable to them for the proper applications of the loan proceeds and not *vice-versa*. We are however not prepared to rule on the merits of this case lest we pre-empt the findings of the lower courts on the matter.

The third issue raised by GSIS was properly addressed by the appellate court. The appellate court maintained that the judge may, in the exercise of his sound discretion, grant the second motion for reconsideration despite its being *pro forma*. The appellate court correctly relied on precedents where this Court set aside technicality in favor of substantive justice. Furthermore, the appellate court accurately pointed out that petitioner did not assail the defect of lack of notice in its opposition to the second motion of reconsideration, thus it can be considered a waiver of the defect.

WHEREFORE, the petition for *certiorari* is *DISMISSED*. The Decision dated 29 February 2008 and 19 June 2009 Resolution of the Court of Appeals are hereby *AFFIRMED*.

SO ORDERED.

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

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[27] **Section 10.** ***Penal provisions.*** – Any willful violation of this Act or any regulation duly promulgated by the Monetary Board pursuant hereto shall subject the offender upon conviction to an imprisonment of not less than one year nor more than five years or a fine of not less than five thousand pesos nor more than twenty-five thousand pesos, or both such fine and imprisonment at the discretion of the court.

SECOND DIVISION

[G.R. No. 192465. June 8, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANGELITO ESQUIBEL *y* JESUS,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE MUST BE SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE; CASE AT BAR.—** In his Appellant's Brief, Esquibel admitted that he stabbed Baloloy although in self-defense. By invoking self-defense, the burden of evidence shifts to appellant to show that the killing was justified and that he incurred no criminal liability. However, Esquibel merely pointed to alleged inconsistencies in Gaboy's testimony and to the alleged failure of Gaboy to positively identify him since there was no light in front of the victim's house where she was sitting. These allegations by Esquibel were not substantiated by clear and convincing evidence. Both the RTC and CA found that Esquibel's testimony is self-serving and deserves no weight in law over the positive and credible testimonies of the prosecution's witnesses, particularly Gaboy's. In *People v. Nicholas,* we held that self-defense, to be successfully invoked, must be established with certainty and proved with sufficient satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. Esquibel's testimony was not only uncorroborated but also extremely doubtful.

2. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.—** [W]e agree with the lower courts in appreciating treachery as a qualifying circumstance. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus, insuring its commission without risk to the aggressor and without any provocation on the part of the victim. The sudden attack by Esquibel with a bladed weapon, with Baloloy's back against him, was undoubtedly treacherous. Baloloy was washing his hands outside his house when Esquibel appeared out of nowhere

and stabbed him. Baloloy was unprepared and had no means to put up a defense. Such aggression insured the commission of the crime without risk on Esquibel.

3. ID.; MURDER; PENALTY AND CIVIL LIABILITY.— In sum, we find no cogent reason to depart from the decision of the CA. Esquibel is guilty beyond reasonable doubt of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law. As for damages, the CA awarded these amounts: (1) ₱50,000 as civil indemnity; (2) ₱50,000 as moral damages; (3) ₱20,000 as temperate damages; and (4) ₱25,000 as exemplary damages. To conform with recent jurisprudence, the amounts awarded by the CA are hereby increased to: (1) ₱75,000 as civil indemnity; (2) ₱25,000 as temperate damages; and (3) ₱30,000 as exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is an appeal assailing the Decision[1] dated 15 December 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03287. The CA affirmed with modification the Decision[2] dated 24 October 2007 of the Regional Trial Court (RTC) of Manila, Branch 47 in Criminal Case No. 03-215890, convicting appellant Angelito Esquibel *y* Jesus (Esquibel) of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

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[1] *Rollo*, pp. 2-15. Penned by Justice Normandie B. Pizarro with Justices Rosalinda Asuncion-Vicente and Antonio L. Villamor, concurring.

[2] CA *rollo*, pp. 16-20. Penned by Presiding Judge Augusto T. Gutierrez.

The Facts

An information[3] for murder, defined and penalized under Article 248[4] of the Revised Penal Code, was filed with the RTC of Manila, Branch 53 and then re-raffled to Branch 47. The information states:

> That on or about February 7, 2003, in the City of Manila, Philippines, the said accused, armed with a bladed weapon, with intent to kill, with treachery, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one CLARK BALOLOY *y* TACSAGON, by stabbing and hitting him on the stomach, thereby inflicting upon the latter a stab wound on the abdomen which was the direct and immediate cause of his death thereafter.
>
> Contrary to law.

Upon arraignment, appellant Esquibel pleaded not guilty and asserted self-defense.

The prosecution presented the following witnesses: Maricel Gaboy (Gaboy), the eyewitness to the crime and Baloloy's cousin and house helper; Felimon and Evelyn Baloloy, parents of Clark Baloloy *y* Tacsagon (Baloloy); Dr. Elizardo Daileg (Dr. Daileg), the Medico-Legal Officer who conducted the post-mortem examination on the cadaver; and SPO2 Danilo Vidal who conducted the investigation against Esquibel.

The prosecution summed up its version of the facts: On 7 February 2003 at around 9 o'clock in the evening, Baloloy and his parents were at home watching television. After eating dinner, Baloloy went outside the house to wash his hands. Gaboy was

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[3] *Id.* at 9-10.

[4] Article 248. *Murder.* – Any person who, not falling within the provision of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. **With treachery**, taking advantage of superior strength, with the aid of armed men, **or employing means to weaken the defense**, or of means or persons to insure or afford impunity; x x x (Emphasis supplied)

also outside the house waiting for a friend. Esquibel then appeared and sat beside Gaboy. Esquibel was a neighbor and Gaboy had known him since she was a little girl.

When Esquibel saw Baloloy washing his hands and standing on a bent position with Baloloy's back against him, Esquibel suddenly stood up and approached Baloloy. Esquibel then stabbed Baloloy on the right side of the stomach with a knife. Afterwards, Esquibel ran away.

Baloloy managed to go back inside the house with Gaboy following behind him. Before collapsing, Baloloy uttered "*Tatay, may tama ako. Si Butchoy sinaksak ako.*" Baloloy's parents rushed him to the Ospital ng Maynila where he was pronounced dead on arrival.

Medico-Legal Officer Dr. Daileg conducted the autopsy. In his Medico-Legal Report No. M-401-03 dated 20 February 2003, Dr. Daileg found the cause of death as hemorrhagic shock secondary to a stab wound caused by a sharp-edged instrument on the right side of the abdomen.

During the trial, Baloloy's parents personally identified Esquibel as the one whom their son referred to as "Butchoy." Baloloy's parents also incurred the amount of ₱20,000 representing the cost of the casket.

The defense, on the other hand, presented Esquibel as the lone witness and invoked self-defense. Esquibel testified that on the night of 7 February 2003, from 6:00 to 8:30 in the evening, he was on a drinking spree with friends, including Baloloy. They were celebrating the birthday of Esquibel's childhood friend, Philip Patino, at the latter's house. During the party, Baloloy suddenly told Esquibel in an angry tone, "*Butchoy Negro titirahin kita.*" Esquibel retorted "*Pati ba naman ako titirahin mo,*" referring to a previous incident where Baloloy allegedly stabbed Esquibel's brother. Shortly after the exchange, Baloloy went home.

At around 9 o'clock in the evening, Esquibel left the party. He passed by in front of Baloloy's house and heard Gaboy say "*Kuya, nandiyan na.*" Then Baloloy suddenly appeared carrying

a knife and lunged at Esquibel. Esquibel eluded Baloloy's attack and grabbed the knife. Esquibel then used the knife to stab Baloloy and immediately fled from the scene.

In its Decision dated 24 October 2007, the RTC found Esquibel guilty beyond reasonable doubt of the crime of murder qualified by treachery. The RTC accorded full faith and credence to the testimony of Gaboy and disregarded Esquibel's claim of self-defense. The RTC stated that the qualifying circumstance of treachery was duly established by direct and positive evidence. Gaboy, the eyewitness, convincingly narrated the details and circumstances of how Baloloy was killed, showing that Esquibel knowingly chose the mode of attack to insure the accomplishment of the crime without risk to himself. The RTC further stated that Esquibel's version of self-defense was self-serving and cannot be given credence over the positive and credible testimony of Gaboy. The dispositive portion of the decision states:

> WHEREFORE, premises considered, this Court finds the accused Angelito Esquibel *y* Jesus guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, as amended and there being no mitigating or aggravating circumstance present, imposes upon him the penalty of *RECLUSION PERPETUA* with all the accessory penalties provided by law; to indemnify the heirs of the victim the sum of ₱50,000.00; to pay the heirs of the victim the amount of ₱20,000.00 as actual damages; and to pay the costs.
>
> SO ORDERED.[5]

Esquibel filed an appeal with the CA. Esquibel imputed the following errors on the RTC:

I. THE COURT *A QUO* GRAVELY ERRED IN GIVING UNDUE CREDENCE TO THE TESTIMONY OF THE ALLEGED EYEWITNESS.

II. THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S

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[5] CA *rollo*, p. 20.

FAILURE TO POSITIVELY IDENTIFY HIM AS THE VICTIM'S ASSAILANT.

III. ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANT IS GUILTY, THE COURT *A QUO* GRAVELY ERRED IN APPRECIATING TREACHERY.[6]

The Ruling of the Court of Appeals

In a Decision dated 15 December 2009, the CA affirmed with modification the decision of the RTC. The CA found no cogent reason to depart from the rule that matters concerning the credibility of the witnesses in criminal cases are left to the sound discretion of the trial court. Since the trial court is in the best position to assess and observe the witness' demeanor, conduct and attitude under a grueling examination, the trial court's assessment of the credibility of a witness is entitled to great weight. The CA stated that Gaboy's testimony was consistent, unwavering and straightforward. Esquibel's defense that there were alleged inconsistencies in Gaboy's testimony are trivial and insignificant and do not contravene Gaboy's testimony that she directly witnessed Esquibel stabbing Baloloy.

The CA deleted the award of actual damages of ₱20,000 since no receipt was presented to support the claim. Nevertheless, the CA granted the amount of ₱20,000 as temperate damages, given in homicide or murder cases when no evidence of burial or funeral expenses is presented in court, since it cannot be denied that the heirs suffered pecuniary loss although the exact amount was not proved. The dispositive portion of the decision states:

> WHEREFORE, the assailed decision of the RTC finding the Accused-Appellant Angelito Esquibel *y* Jesus guilty beyond reasonable doubt of Murder, sentencing him to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law, and ordering him to pay the heirs of Clark Baloloy the amount of Fifty Thousand Pesos (Php50,000.00) as civil indemnity, is AFFIRMED with MODIFICATION that the said Accused-Appellant is further

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[6] CA *rollo*, p. 37.

ORDERED to pay the said heirs the amounts of Fifty Thousand Pesos (Php50,000.00) as moral damages, Twenty Thousand Pesos (Php20,000.00) as temperate damages, and Twenty Five Thousand Pesos (Php25,000.00) as exemplary damages. The award of actual damages in the amount of Twenty Thousand Pesos (Php20,000.00) is DELETED for lack of factual basis. Costs against Accused-Appellant.

SO ORDERED.[7]

Appellant Esquibel now comes before the Court, submitting for resolution the same issues argued before the CA. In a Manifestation[8] dated 6 September 2010, Esquibel stated that in lieu of supplemental brief, he is adopting the Appellant's Brief[9] submitted before the CA. Likewise, the Office of the Solicitor General manifested that it no longer desires to file a supplemental brief and instead adopts the Appellee's Brief[10] dated 24 March 2009 which it filed before the CA.[11]

Appellant assails the decisions of the RTC and CA for giving credence to the prosecution's evidence. The issue boils down to the credibility of Gaboy, the lone eyewitness to the crime.

The Ruling of the Court

The appeal lacks merit.

We agree with the RTC and the CA in ruling that the prosecution fully established appellant's guilt for the crime of murder beyond reasonable doubt. Gaboy positively identified Esquibel as the person who stabbed Baloloy. Despite the exhausting examination by the defense, Gaboy was candid, straightforward, firm and unwavering in her narration of the events.

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[7] *Rollo*, pp. 14-15.

[8] *Id.* at 24-25.

[9] CA *rollo*, pp. 35-46.

[10] *Id.* at 68-81.

[11] *Rollo*, pp. 31-32.

Also, the defense did not even raise any ill-motive on Gaboy's part to testify falsely against Esquibel. In his Appellant's Brief, Esquibel admitted that he stabbed Baloloy although in self-defense. By invoking self-defense, the burden of evidence shifts to appellant to show that the killing was justified and that he incurred no criminal liability.[12] However, Esquibel merely pointed to alleged inconsistencies in Gaboy's testimony and to the alleged failure of Gaboy to positively identify him since there was no light in front of the victim's house where she was sitting. These allegations by Esquibel were not substantiated by clear and convincing evidence. Both the RTC and CA found that Esquibel's testimony is self-serving and deserves no weight in law over the positive and credible testimonies of the prosecution's witnesses, particularly Gaboy's.

In *People v. Nicholas*,[13] we held that self-defense, to be successfully invoked, must be established with certainty and proved with sufficient satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. Esquibel's testimony was not only uncorroborated but also extremely doubtful.

Further, we agree with the lower courts in appreciating treachery as a qualifying circumstance. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus, insuring its commission without risk to the aggressor and without any provocation on the part of the victim.[14] The sudden attack by Esquibel with a bladed weapon, with Baloloy's back against him, was undoubtedly treacherous. Baloloy was washing his hands outside his house when Esquibel appeared out of nowhere and stabbed him. Baloloy was unprepared and had no means

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[12] *Beninsig v. People*, G.R. No. 167683, 8 June 2007, 524 SCRA 320, citing *Catalina Security Agency v. Gonzalez-Decano*, 473 Phil. 690 (2004).

[13] 422 Phil. 53 (2001).

[14] *People v. Molina*, G.R. No. 184173, 13 March 2009, 581 SCRA 519.

to put up a defense. Such aggression insured the commission of the crime without risk on Esquibel.

In sum, we find no cogent reason to depart from the decision of the CA. Esquibel is guilty beyond reasonable doubt of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law. As for damages, the CA awarded these amounts: (1) ₱50,000 as civil indemnity; (2) ₱50,000 as moral damages; (3) ₱20,000 as temperate damages; and (4) ₱25,000 as exemplary damages. To conform with recent jurisprudence,[15] the amounts awarded by the CA are hereby increased to: (1) ₱75,000 as civil indemnity;[16] (2) ₱25,000 as temperate damages; and (3) ₱30,000 as exemplary damages.[17]

WHEREFORE, we *DISMISS* the appeal. We *AFFIRM* the Decision dated 15 December 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03287 *WITH THE MODIFICATION* that the amounts of civil indemnity, temperate damages, and exemplary damages are increased to ₱75,000, ₱25,000, and ₱30,000, respectively.

SO ORDERED.

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

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[15] *People v. Nazareno*, G.R. No. 180915, 9 August 2010, 627 SCRA 383.

[16] See also *People v. Obligado*, G.R. No. 171735, 16 April 2009, 585 SCRA 380.

[17] See also *People v. Ortiz, Jr.*, G.R. No. 188704, 7 July 2010, 624 SCRA 533.

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