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SUPREME COURT

OF THE

PHILIPPINES

FROM

SEPTEMBER 28, 2011 TO OCTOBER 11, 2011

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 8920. September 28, 2011]

JUDGE RENE B. BACULI, *complainant, vs.* **ATTY. MELCHOR A. BATTUNG,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY TO RESPECT THE COURTS AND ITS JUDICIAL OFFICERS; VIOLATED WHEN RESPONDENT LAWYER INSULTED COMPLAINANT JUDGE INSIDE THE COURTROOM. — Litigants and counsels, particularly the latter because of their position and avowed duty to the courts, cannot be allowed to publicly ridicule, demean and disrespect a judge, and the court that he represents. The Code of Professional Responsibility provides: Canon 11 — A lawyer shall observe and maintain the respect due the courts and to judicial officers and should insist on similar conduct by others. Rule 11.03 — A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts. We ruled in *Roxas v. De Zuzuarregui, Jr.* that it is the duty of a lawyer, as an officer of the court, to uphold the dignity and authority of the courts. Respect for the courts guarantees the stability of the judicial institution; without this guarantee, the institution would be resting on very shaky foundations. A lawyer who insults a judge inside a courtroom completely disregards the latter's role, stature and position in our justice system. When

the respondent publicly berated and brazenly threatened Judge Baculi that he would file a case for gross ignorance of the law against the latter, the respondent effectively acted in a manner tending to erode the public confidence in Judge Baculi's competence and in his ability to decide cases. Incompetence is a matter that, even if true, must be handled with sensitivity in the manner provided under the Rules of Court; an objecting or complaining lawyer cannot act in a manner that puts the courts in a bad light and bring the justice system into disrepute.

2. ID.; ID.; ID.; ID.; PROPER PENALTY IS SUSPENSION FOR ONE YEAR. — Atty. Battung's violations x x x were committed *in the courtroom in the course of judicial proceedings where the respondent was acting as an officer of the court, and before the litigating public.* His actions were plainly disrespectful to Judge Baculi and to the court, to the point of being scandalous and offensive to the integrity of the judicial system itself. *WHEREFORE***,** in view of the foregoing, Atty. Melchor A. Battung is found *GUILTY* of violating Rule 11.03, Canon 11 of the Code of Professional Responsibility, for which he is *SUSPENDED* from the practice of law for one (1) year effective upon the finality of this Decision. He is *STERNLY WARNED* that a repetition of a similar offense shall be dealt with more severely.

D E C I S I O N

BRION,[*] *J.*:

Before us is the resolution[1] of the Board of Governors of the Integrated Bar of the Philippines (*IBP*) finding Atty. Melchor Battung liable for violating Rule 11.03, Canon 11 of the Code of Professional Responsibility and recommending that he be reprimanded. The complainant is Judge Rene B. Baculi, Presiding Judge of the Municipal Trial Court in Cities, Branch 2, Tuguegarao City. The respondent, Atty. Battung, is a member of the Bar with postal address on Aguinaldo St., Tuguegarao City.

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[*] Designated as Acting Chairperson in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1083 dated September 13, 2011.

[1] *Rollo*, p. 161.

Background

Judge Baculi filed a complaint for disbarment[2] with the Commission on Discipline of the IBP against the respondent, alleging that the latter violated Canons 11[3] and 12[4] of the Code of Professional Responsibility.

Violation of Canon 11 of the Code of Professional Responsibility

Judge Baculi claimed that on July 24, 2008, during the hearing on the motion for reconsideration of Civil Case No. 2502, the respondent was shouting while arguing his motion. Judge Baculi advised him to tone down his voice but instead, the respondent shouted at the top of his voice. When warned that he would be cited for direct contempt, the respondent shouted, "Then cite me!"[5] Judge Baculi cited him for direct contempt and imposed a fine of ₱100.00. The respondent then left.

While other cases were being heard, the respondent re-entered the courtroom and shouted, "Judge, I will file gross ignorance against you! I am not afraid of you!"[6] Judge Baculi ordered the sheriff to escort the respondent out of the courtroom and cited him for direct contempt of court for the second time.

After his hearings, Judge Baculi went out and saw the respondent at the hall of the courthouse, apparently waiting for him. The respondent again shouted in a threatening tone, "Judge, I will file gross ignorance against you! I am not afraid of you!" He kept on shouting, "I am not afraid of you!" and challenged the judge to a fight. Staff and lawyers escorted him out of the building.[7]

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[2] *Id.* at 1-5.

[3] Canon 11 – A lawyer shall observe and maintain the respect due the courts and to judicial officers and should insist on similar conduct by others.

[4] Canon 12 – A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

[5] *Rollo*, p. 2.

[6] *Ibid.*

[7] *Id.* at 8-12.

Judge Baculi also learned that after the respondent left the courtroom, he continued shouting and punched a table at the Office of the Clerk of Court.[8]

Violation of Canon 12 of the Code of Professional Responsibility

According to Judge Baculi, the respondent filed dilatory pleadings in Civil Case No. 2640, an ejectment case.

Judge Baculi rendered on October 4, 2007 a decision in Civil Case No. 2640, which he modified on December 14, 2007. After the modified decision became final and executory, the branch clerk of court issued a certificate of finality. The respondent filed a motion to quash the previously issued writ of execution, raising as a ground the motion to dismiss filed by the defendant for lack of jurisdiction. Judge Baculi asserted that the respondent knew as a lawyer that ejectment cases are within the jurisdiction of First Level Courts and the latter was merely delaying the speedy and efficient administration of justice.

The respondent filed his Answer,[9] essentially saying that it was Judge Baculi who disrespected him.[10] We quote from his Answer:

> 23. I only told Judge Rene Baculi I will file Gross ignorance of the Law against him once inside the court room when he was lambasting me[.]
>
> 24. It was JUDGE BACULI WHO DISRESPECTED ME. He did not like that I just submit the Motion for Reconsideration without oral argument because he wanted to have an occasion to just HUMILIATE ME and to make appear to the public that I am A NEGLIGENT LAWYER, when he said "YOU JUSTIFY YOUR NEGLIGENCE BEFORE THIS COURT" making it an impression to the litigants and the public that as if I am a NEGLIGENT, INCOMPETENT, MUMBLING, and IRRESPONSIBLE LAWYER.

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[8] *Id.* at 13.

[9] *Id.* at 20-28.

[10] *Id.* at 24.

25. These words of Judge Rene Baculi made me react[.]

x x x x x x x x x

28. Since I manifested that I was not going to orally argue the Motion, Judge Rene Baculi could have just made an order that the Motion for Reconsideration is submitted for resolution, but what he did was that he forced me to argue so that he will have the room to humiliate me as he used to do not only to me but almost of the lawyers here (sic).

Atty. Battung asked that the case against him be dismissed.

The IBP conducted its investigation of the matter through Commissioner Jose de la Rama, Jr. In his Commissioner's Report,[11] Commissioner De la Rama stated that during the mandatory conference on January 16, 2009, both parties merely reiterated what they alleged in their submitted pleadings. Both parties agreed that the original copy of the July 24, 2008 tape of the incident at the courtroom would be submitted for the Commissioner's review. Judge Baculi submitted the tape and the transcript of stenographic notes on January 23, 2009.

Commissioner De la Rama narrated his findings, as follows:[12]

At the first part of the hearing as reflected in the TSN, it was observed that the respondent was calm. He politely argued his case but the voice of the complainant appears to be in high pitch. During the mandatory conference, it was also observed that indeed, the complainant maintains a high pitch whenever he speaks. In fact, in the TSN, where there was already an argument, the complainant stated the following:

Court: Do not shout.
Atty. Battung: Because the court is shouting.
Court: This court has been constantly under this kind of voice Atty. Battung, we are very sorry if you do not want to appear before my court, then you better attend to your cases and do not appear before my court if you do not want to be corrected! (TSN, July 24, 2008, page 3)

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[11] *Id.* at 162-175.

[12] *Id.* at 169-171.

(NOTE: The underlined words — "we are very sorry" [— were] actually uttered by Atty. Battung while the judge was saying the quoted portion of the TSN)

That it was during the time when the complainant asked the following questions when the undersigned noticed that Atty. Battung shouted at the presiding judge.

Court: Did you proceed under the Revised Rules on Summary Procedure?

*

Atty. Battung: It is not our fault Your Honor to proceed because we were asked to present our evidence *ex parte*. Your Honor, so, if should we were ordered (sic) by the court to follow the rules on summary procedure. (TSN page 3, July 24, 2008)

It was observed that the judge uttered the following:

Court: Do not shout.
Atty. Battung: Because the court is shouting.
(Page 3, TSN July 24, 2008)
Note: * it was at this point when the respondent shouted at the complainant.

Thereafter, it was observed that both were already shouting at each other.

Respondent claims that he was provoked by the presiding judge that is why he shouted back at him. But after hearing the tape, the undersigned in convinced that it was Atty. Battung who shouted first at the complainant.

Presumably, there were other lawyers and litigants present waiting for their cases to be called. They must have observed the incident. In fact, in the joint-affidavit submitted by Elenita Pacquing, *et al.*, they stood as one in saying that it was really Atty. Battung who shouted at the judge that is why the latter cautioned him "not to shout."

The last part of the incident as contained in page 4 of the TSN reads as follows:

Court: You are now ordered to pay a fine of ₱100.00.

Atty. Battung: We will file the necessary action against this court for gross ignorance of the law.

Court: Yes, proceed.
(NOTE: Atty. Battung went out the courtroom)

Court: Next case.

Interpreter: Civil Case No. 2746.
(Note: Atty. Battung entered again the courtroom)

Atty. Battung: But what we do not like … (not finished)

Court: The next time…

Atty. Battung: We would like to clear …

Court: Sheriff, throw out the counsel, put that everything in record. If you want to see me, see me after the court.

Next case.

Civil Case No. 2746 for Partition and Damages, *Roberto Cabalza vs. Teresita Narag, et al.*

(nothing follows)

Commissioner De la Rama found that the respondent failed to observe Canon 11 of the Code of Professional Responsibility that requires a lawyer to observe and maintain respect due the courts and judicial officers. The respondent also violated Rule 11.03 of Canon 11 that provides that a lawyer shall abstain from scandalous, offensive or menacing language or behavior before the courts. The respondent's argument that Judge Baculi provoked him to shout should not be given due consideration since the respondent should not have shouted at the presiding judge; by doing so, he created the impression that disrespect of a judge could be tolerated. What the respondent should have done was to file an action before the Office of the Court Administrator if he believed that Judge Baculi did not act according to the norms of judicial conduct.

With respect to the charge of violation of Canon 12 of the Code of Professional Responsibility, Commissioner De la Rama found that the evidence submitted is insufficient to support a ruling that the respondent had misused the judicial processes to frustrate the ends of justice.

Commissioner De la Rama recommended that the respondent be suspended from the practice of law for six (6) months.

On October 9, 2010, the IBP Board of Governors passed a Resolution adopting and approving the Report and Recommendation of the Investigating Commissioner, with the modification that the respondent be reprimanded.

The Court's Ruling

We agree with the IBP's finding that the respondent violated Rule 11.03, Canon 11 of the Code of Professional Responsibility. Atty. Battung disrespected Judge Baculi by shouting at him inside the courtroom during court proceedings in the presence of litigants and their counsels, and court personnel. The respondent even came back to harass Judge Baculi. This behavior, in front of many witnesses, cannot be allowed. We note that the respondent continued to threaten Judge Baculi and acted in a manner that clearly showed disrespect for his position *even after the latter had cited him for contempt*. In fact, after initially leaving the court, the respondent returned to the courtroom and disrupted the ongoing proceedings. These actions were not only against the person, the position and the stature of Judge Baculi, but against the court as well whose proceedings were openly and flagrantly disrupted, and brought to disrepute by the respondent.

Litigants and counsels, particularly the latter because of their position and avowed duty to the courts, cannot be allowed to publicly ridicule, demean and disrespect a judge, and the court that he represents. The Code of Professional Responsibility provides:

> Canon 11 — A lawyer shall observe and maintain the respect due the courts and to judicial officers and should insist on similar conduct by others.
>
> Rule 11.03 — A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

We ruled in *Roxas v. De Zuzuarregui, Jr.*[13] that it is the duty of a lawyer, as an officer of the court, to uphold the dignity

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[13] G.R. Nos. 152072 & 152104, July 12, 2007, 527 SCRA 446.

and authority of the courts. Respect for the courts guarantees the stability of the judicial institution; without this guarantee, the institution would be resting on very shaky foundations.

A lawyer who insults a judge inside a courtroom completely disregards the latter's role, stature and position in our justice system. When the respondent publicly berated and brazenly threatened Judge Baculi that he would file a case for gross ignorance of the law against the latter, the respondent effectively acted in a manner tending to erode the public confidence in Judge Baculi's competence and in his ability to decide cases. Incompetence is a matter that, even if true, must be handled with sensitivity in the manner provided under the Rules of Court; an objecting or complaining lawyer cannot act in a manner that puts the courts in a bad light and bring the justice system into disrepute.

The IBP Board of Governors recommended that Atty. Battung be reprimanded, while the Investigating Commissioner recommended a penalty of six (6) months suspension.

We believe that these recommended penalties are too light for the offense.

In *Re: Suspension of Atty. Rogelio Z. Bagabuyo, Former Senior State Prosecutor,*[14] we suspended Atty. Bagabuyo for one year for violating Rule 11.05, Canon 11, and Rule 13.02, Canon 13 of the Code of Professional Responsibility, and for violating the Lawyer's Oath for airing his grievances against a judge in newspapers and radio programs. In this case, Atty. Battung's violations are no less serious as they were committed *in the courtroom in the course of judicial proceedings where the respondent was acting as an officer of the court, and before the litigating public*. His actions were plainly disrespectful to Judge Baculi and to the court, to the point of being scandalous and offensive to the integrity of the judicial system itself.

WHEREFORE, in view of the foregoing, Atty. Melchor A. Battung is found *GUILTY* of violating Rule 11.03, Canon 11 of

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[14] A.C. No. 7006, October 9, 2007, 535 SCRA 200.

the Code of Professional Responsibility, for which he is *SUSPENDED* from the practice of law for one (1) year effective upon the finality of this Decision. He is *STERNLY WARNED* that a repetition of a similar offense shall be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to the respondent's personal record as an attorney; the Integrated Bar of the Philippines; the Department of Justice; and all courts in the country, for their information and guidance.

SO ORDERED.

Del Castillo,[**] *Perez, Mendoza,*[***] and *Sereno, JJ.*, concur.

SECOND DIVISION

[A.M. No. P-10-2836. September 28, 2011]
(from RTJ-07-2070)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JESUS VINCENT M. CARBON III, formerly Clerk III, Regional Trial Court, Zamboanga City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; DROPPING FROM THE ROLLS IS NOT A SHIELD AGAINST AN ADMINISTRATIVE CASE

[**] Designated as Additional Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1084 dated September 13, 2011.

[***] Designated as Additional Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 1107 dated September 27, 2011.

DEEMED INSTITUTED FOR OFFENSE COMMITTED WHILE IN OFFICE; CASE AT BAR. — [T]he respondent's absence without leave and dropping from the rolls did not place him outside our reach as he apparently intended; he cannot use his disappearance as a shield against liability for his actions while he was in office. We can likewise continue with the case against him as this case was brought while he was still an active employee of the Court. After he has been heard through his affidavit and after giving him the opportunity to explain himself and to put up his defenses, he cannot now hide under the claim of denial of due process. Joie was clear in his complaint regarding the illegality complained about — bribery allegedly perpetrated by Judge Dela Peña through the respondent. Thus, it was a complaint, no less, against the respondent to which he responded with an admission that he indeed "followed up" the case and secured sums from Joie under the representation that these were to be given to Judge Dela Peña. In the ensuing formal investigation, the respondent failed to appear despite notice. Instead, he conveniently dropped out of sight. It was under these facts that we maintain our continuing jurisdiction to hold the respondent administratively liable as a court employee for an illegality committed while in the service. x x x As we held in the case of *Office of the Ombudsman v. Uldarico P. Andutan, Jr.*, separation from the service renders a former employee out of the reach of the government's administrative processes with respect to the former employment, but this claim does not hold true if the separation from the service was in contemplation of and to escape administrative liability from an offense that took place and was investigated while the employee was still in the service.

2. ID.; ID.; ID.; GROSS MISCONDUCT; PRESENT WITH THE COURT EMPLOYEE'S ADMISSION OF HIS PARTICIPATION IN THE CASE-FIXING ACTIVITY. — On the merits, we agree with the OCA's finding that the respondent is guilty of gross misconduct as charged. He admitted in his affidavit that he followed up Natasha Dioquino's case with Judge Dela Peña and that he handed over to the latter, on two occasions, sums of money from Joie. While the case against Judge Dela Peña did not prosper for lack of evidence that he indeed demanded and received money in return for a favorable ruling on Natasha Dioquino's case, what remains uncontested is that money changed hands between Joie and

the respondent on the understanding that these sums would be a consideration for receiving a favorable judgment on a case that the respondent "worked on." In plainer terms, what remained proven was a case-fixing activity where the respondent was a direct participant as the middleman and fixer between the decision maker and the litigant. Under these circumstances, that Judge Dela Peña might not have been a party to the nefarious arrangement is immaterial as what remained was the respondent's demand for a bribe that implicated a judge, in fact a colleague of his own father in the Judiciary.

3. ID.; ID.; ID.; ID.; PENALTY; ADMINISTRATIVE FINE OF ₱40,000 WITH FORFEITURE OF SEPARATION BENEFITS AND DISQUALIFICATION FROM FUTURE GOVERNMENT SERVICE MADE PROPER IN LIEU OF DISMISSAL, AS COURT EMPLOYEE WAS ALREADY DROPPED FROM THE ROLLS. — Under Section 52(A)(3) of the Revised Uniform Rules on Administrative Cases in the Civil Service, grave misconduct carries the penalty of dismissal for the first offense. Since the respondent had earlier been declared dropped from the rolls, the penalty of dismissal is now ineffectual. In lieu of dismissal, we hereby impose an administrative fine of ₱40,000.00, with accompanying forfeiture of all the retirement or separation benefits he may be entitled to, except accrued leave credits. The ₱40,000.00 fine shall be deducted from any such accrued leave credits, with the respondent personally held liable for any deficiency which shall be directly payable to this Court. He is further declared disqualified from any future government service.

D E C I S I O N

BRION,[*] *J.*:

We resolve in this Decision the administrative charge against Jesus Vincent M. Carbon III (*respondent or Carbon III*) made pursuant to the directive of the Court in its June 4, 2008 Resolution in A.M. No. RTJ-07-2070 (formerly A.M. OCA IPI No. 07-2613-RTJ).

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[*] Designated as Acting Chairperson of the Second Division in lieu of Associate Justice Antonio T. Carpio per Special Order No. 1083 dated September 13, 2011.

Background

The case A.M. OCA IPI No. 07-2613-RTJ traces its roots to the affidavit-complaint of Joie Ramos against Judge Gregorio dela Peña III, Presiding Judge, Regional Trial Court (*RTC*), Branch 12, Zamboanga City, received by the Office of the Court Administrator (*OCA*) on February 28, 2007. Joie claimed that during the pendency of the case filed by Joie's wife, for partition against the heirs of Venancio Go (Special Civil Action No. 551), before the sala of Judge Dela Peña, the latter asked money from him, and that he gave the latter around ₱300,000.00. However, when Joie refused to give more money to Judge Dela Peña, the latter dismissed Special Civil Action No. 551 and denied the motion for reconsideration. In support of his allegations, Joie attached to his complaint the affidavit of respondent Carbon III.

The Court ordered Judge Dela Peña to comment. He duly complied and in this comment, he denied all of Joie's allegations.[1] On July 30, 2007, the Court issued a Resolution[2] redocketing the case as a regular administrative matter (A.M. No. RTJ-07-2070), and referred the case for investigation, report and recommendation.

In the investigation conducted by the assigned Justice of the Court of Appeals,[3] Judge Dela Peña appeared and testified, but neither Joie nor his witnesses appeared. In light of this development, the investigating Justice opined that the charges against Judge Dela Peña were not supported by the required quantum of evidence in administrative disciplinary proceedings.[4] The investigating Justice also noted Joie's statement in his affidavit that he never had any direct communication with Judge Dela Peña, all communications and transactions having been coursed through respondent Carbon III who acted as go-between.

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[1] Comment, filed on March 27, 2007.

[2] *Rollo,* pp. 391-392.

[3] Associate Justice Romulo V. Borja; investigation hearings conducted on October 25, November 13 and 20, 2007.

[4] *Rollo,* p. 541.

The investigating Justice recommended the dismissal of the administrative complaint against Judge Dela Peña, and the investigation of respondent Carbon III based on the latter's admissions in his affidavit.

The Court approved the recommendation and dismissed the administrative complaint against Judge Dela Peña in its June 4, 2008 Resolution,[5] and directed as well the Executive Judge of the RTC, Zamboanga City "*to investigate the involvement of Jesus Vincent M. Carbon III, an employee of the RTC-OCC, Zamboanga City, in view of [the] admissions in his affidavit, and to submit a report and recommendation thereon within ninety (90) days from receipt of the records*." We issued this Resolution pursuant to our authority to *motu proprio* investigate court personnel even in the absence of a direct complaint or of a complainant, and to discipline erring members and employees after the observance of due process.[6]

Our Resolution of June 4, 2008, for the investigation of respondent Carbon III was driven by the respondent's affidavit[7] in the case against Judge Dela Peña which states:

> I, Jesus Vincent M. Carbon III, of legal age, married, and a resident of Putik, Zamboanga City, Philippines, after being duly sworn in accordance with law, depose and state:
>
> That **I am an employee of the Regional Trial Court in Zamboanga City**, particularly the Office of the Clerk of Court; I have been in the employ of the said government agency for more than thirteen (13) years now;
>
> That, sometime early last year (2005), I became aware of the appointment of Gregorio dela Peña III, a local private law practitioner, as Presiding Judge of Regional Trial Court Branch 12;

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[5] *Id.* at 606-607.

[6] Constitution, Article VIII, Section 6; *Maceda v. Vasquez*, G.R. No. 102781, April 22, 1993, 221 SCRA 464; and *Bernardo v. Judge Fabros*, 366 Phil. 485, 493 (1999).

[7] Dated October 13, 2006 and attached to Joie's complaint against Judge Dela Peña; *rollo*, p. 13.

That, my personal association with Judge dela Peña III began shortly after his assumption of office; said association went further by virtue of my employment as a court employee and the fact that I am the son of my father who is his fellow Judge;

That sometime middle of last year, **I personally approached Judge dela Peña III to make a follow-up on the case of a friend which has been then pending before his Branch**; that, the said case is the case filed by Natasha Dioquino, the wife of my friend Joie Ramos, against the heirs of Venancio Go for inheritance;

That after several follow-ups regarding the aforementioned case, Judge dela Peña III commented to me that the case is inherently weak. That such weakness can only be remedied, as he placed it, "*kung meron tayo*." Upon clarification, **I came to understand that his phrase "*kung meron tayo*" came to mean as "money"**;

That as a result of such, Judge dela Peña III urged me several times to ask money from Joie Ramos, the husband of the (sic) Natasha Dioquino; that, on two separate occasions, **I handed over to Judge dela Peña III the amounts of Php60000 and Php35000**;

That I am executing this Affidavit to attest to the truth of the foregoing and **in support of charges against Judge Gregorio dela Peña III of the Regional Trial Court[,] Branch 12 of Zamboanga City** and for whatever other action that may be filed against him. [emphases ours]

The investigation of the respondent was assigned to Zamboanga City RTC Executive Judge Reynerio G. Estacio who scheduled the investigation for January 27 and April 17, 2009, and sent notices to respondent Carbon III at his known address, together with a copy of Joie's affidavit and his own affidavit. Respondent Carbon III, however, did not appear nor did he submit any evidence in his defense. The return of the first notice to him at his address of record shows that the notice was received for him by a certain Michelle Reyes, while the second notice was returned unserved for the reason "House Closed."

In fact, respondent Carbon III stopped reporting for work starting March 2007, without the benefit of any approved leave of absence. This was at about the time Judge Dela Peña was being asked by the Court to comment on the charges of Joie.

Subsequently, Carbon III filed his resignation from office effective July 2007, but this resignation was never approved due to his failure to submit the required clearance. Parallel to this development, Joie wrote SC Administrator Christopher Lock on June 28, 2007 asking that the investigation against Judge Dela Peña be stopped because an unknown person sent him ₱300,000.00 cash to answer for the amount Judge Dela Peña borrowed. On October 8, 2007, Judge Dela Peña filed a Manifestation and Motion asking that Carbon III be compelled to state — under oath — the time, place and dates he allegedly gave the sums of ₱65,000.00 and ₱35,000.00 to Judge Dela Peña. Carbon III never resurfaced.

In A.M. No. 08-3-115-RTC (Dropping from the Rolls of Mr. Jesus Vincent Carbon III, Clerk III, RTC, Office of the Clerk of Court, Zamboanga City), the Court issued a Resolution on April 2, 2008[8] that reads:

> The Court NOTES the Report dated 05 February 2008 of the Office of the Court Administrator [OCA] on the failure of Mr. Jesus Vincent Carbon III to submit his bundy cards from the month of March 2007 up to the present, submitting that he has not filed any application for leave; that Mr. Carbon III tendered his resignation effective 25 July 2007; and that, to date, he has not submitted the necessary clearances for his resignation.
>
> Upon the recommendation of the OCA, the Court resolves to:
>
> (1) DROP FROM THE ROLLS the name of Mr. Jesus Vincent Carbon III effective 24 March 2007 for having been absent without official leave (AWOL);
>
> (2) DECLARE his position vacant; and
>
> (3) INFORM Mr. Carbon III of his separation from the service or dropping from the rolls at the address appearing in his 201 File, that is at B5 L7, A & N Subdivision, Sta. Barbara, Zamboanga City.

In his Report and Recommendation[9] of August 13, 2009, Judge Estacio found that the respondent's act of demanding and receiving

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[8] *Id.* at 605B.

[9] *Id.* at 616-620.

money from a party litigant constituted grave misconduct in office — a grave offense punishable by dismissal from the service pursuant to Section 23, Rule IX of the Omnibus Rules Implementing Book V of Executive Order No. 292, and other pertinent Civil Service Laws. Judge Estacio recommended the respondent's dismissal from the service with prejudice to re-employment in any branch, instrumentality or agency of the government, including government-owned and controlled corporations, and forfeiture of all his benefits, except accrued leave credits.

The OCA, in its Report of March 23, 2010,[10] agreed with Judge Estacio's finding and recommendation. It cited Section 26, Rule 130 of the Rules of Court,[11] and our ruling in *Unchuan v. Lozada*[12] that "a man's acts, conduct, and declaration, wherever made, if voluntary, are admissible against him" because "it is fair to presume that they correspond with the truth, and it is his fault if they do not." As well, the OCA argued that the solicitation of money from a litigant in exchange for a favorable decision violates Sections 1 and 2, Canon I of the Code of Conduct for Court Personnel.[13] Thus, the OCA recommended that the case be redocketed as a regular administrative matter and that the respondent be found guilty of gross misconduct. Since the respondent had been dropped from the rolls, the OCA recommended that he be fined the amount of ₱40,000.00, with forfeiture of all the retirement benefits he is entitled to except accrued leave credits, if any, and that he be barred from re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

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[10] *Id.* at 645-649.

[11] The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

[12] G.R. No. 172671, April 16, 2009, 585 SCRA 421, 435.

[13] SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.

SECTION 2. Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions.

The Court's Ruling

As a preliminary matter, we note the unusual twists this case took, as the respondent was initially only a witness in another case — the investigation of Judge Dela Peña — where he had an active role and where he made incriminatory admissions that led, after investigation, to the docketing of a separate administrative case against him. At or about the time Judge Dela Peña was being investigated (in which investigation respondent Carbon III submitted his affidavit), the respondent stopped reporting to his office and subsequently submitted a resignation letter that the Court did not approve for lack of the required clearance. An unusual twist came when the Court, instead of directly disapproving his resignation letter and relating his resignation to the investigation in the case of Judge Dela Peña, simply dropped him from the rolls and considered him separated from the service.

To be sure, the OCA's recommendation and the subsequent Court action were unfortunate, but this lapse notwithstanding, we hold that, under the unique circumstances of this administrative matter, the respondent's absence without leave and dropping from the rolls did not place him outside our reach as he apparently intended; he cannot use his disappearance as a shield against liability for his actions while he was in office. We can likewise continue with the case against him as this case was brought while he was still an active employee of the Court.

After he has been heard through his affidavit and after giving him the opportunity to explain himself and to put up his defenses, he cannot now hide under the claim of denial of due process. Joie was clear in his complaint regarding the illegality complained about — bribery allegedly perpetrated by Judge Dela Peña through the respondent. Thus, it was a complaint, no less, against the respondent to which he responded with an admission that he indeed "followed up" the case and secured sums from Joie under the representation that these were to be given to Judge Dela Peña. In the ensuing formal investigation, the respondent failed to appear despite notice. Instead, he conveniently dropped out of sight. It was under these facts that we maintain our continuing

jurisdiction to hold the respondent administratively liable as a court employee for an illegality committed while in the service.

On the merits, we agree with the OCA's finding that the respondent is guilty of gross misconduct as charged. He admitted in his affidavit that he followed up Natasha Dioquino's case with Judge Dela Peña and that he handed over to the latter, on two occasions, sums of money from Joie. While the case against Judge Dela Peña did not prosper for lack of evidence that he indeed demanded and received money in return for a favorable ruling on Natasha Dioquino's case, what remains uncontested is that money changed hands between Joie and the respondent on the understanding that these sums would be a consideration for receiving a favorable judgment on a case that the respondent "worked on." In plainer terms, what remained proven was a case-fixing activity where the respondent was a direct participant as the middleman and fixer between the decision maker and the litigant. Under these circumstances, that Judge Dela Peña might not have been a party to the nefarious arrangement is immaterial as what remained was the respondent's demand for a bribe that implicated a judge, in fact a colleague of his own father in the Judiciary.

Thus viewed, the respondent's flawed character and unfitness for a position in the Judiciary stand out, aggravated by his shallow scheme to escape liability by dropping out of sight to render him out of the reach of our processes. As we held in the case of *Office of the Ombudsman v. Uldarico P. Andutan, Jr.*,[14] separation from the service renders a former employee out of the reach of the government's administrative processes with respect to the former employment, but this claim does not hold true if the separation from the service was in contemplation of and to escape administrative liability from an offense that took place and was investigated while the employee was still in the service.[15]

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[14] G.R. No. 164679, July 27, 2011.

[15] *Pagano v. Nazarro, Jr.*, G.R. No. 149072, September 21, 2007, 533 SCRA 622.

Under Section 52(A)(3) of the Revised Uniform Rules on Administrative Cases in the Civil Service,[16] grave misconduct carries the penalty of dismissal for the first offense. Since the respondent had earlier been declared dropped from the rolls, the penalty of dismissal is now ineffectual. In lieu of dismissal, we hereby impose an administrative fine of ₱40,000.00, with accompanying forfeiture of all the retirement or separation benefits he may be entitled to, except accrued leave credits. The ₱40,000.00 fine shall be deducted from any such accrued leave credits, with the respondent personally held liable for any deficiency which shall be directly payable to this Court. He is further declared disqualified from any future government service.

WHEREFORE, we find respondent Jesus Vincent M. Carbon III *GUILTY* of grave misconduct, and impose on him a *FINE* of Forty Thousand Pesos (₱40,000.00) and the forfeiture of whatever retirement or separation benefits may be due him, except accrued leave credits, if any. The ₱40,000.00 fine shall be deducted from any remaining accrued leave credits he may have; otherwise, we hold him personally liable for the fine to be directly paid to this Court. The Fiscal Management and Budget Office is *DIRECTED* to compute the monetary value of the respondent's leave credits and to apply any remaining credit to the satisfaction of the fine imposed. We further declare him disqualified from re-employment in any branch, agency or instrumentality of the government, including government-owned and controlled corporations.

Let a copy of this Decision be furnished the Office of the Ombudsman for whatever action it may deem appropriate.

SO ORDERED.

Del Castillo,[**] *Perez, Mendoza,*[***] and *Sereno, JJ.,* concur.

[16] CSC Memorandum Circular No. 19-99.

[**] Designated as Acting Member of the Second Division in lieu of Associate Justice Antonio T. Carpio per Special Order No. 1084 dated September 13, 2011.

[***] Designated as Acting Member of the Second Division in lieu of Associate Justice Bienvenido L. Reyes per Special Order No. 1107 dated September 27, 2011.

THIRD DIVISION

[A.M. No. MTJ-11-1792. September 28, 2011]
(Formerly OCA I.P.I. No. 10-2294-MTJ)

ERNESTO Z. ORBE, *complainant, vs.* **JUDGE MANOLITO Y. GUMARANG, Pairing Judge, Municipal Trial Court, Imus, Cavite,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; PROCEDURE FOR SMALL CLAIMS CASES; PERIOD WITHIN WHICH JUDGMENT SHOULD BE RENDERED IS FIVE (5) DAYS. —** Section 22 of the Rule of Procedure for Small Claims Cases clearly provided for the period within which judgment should be rendered, to *wit*: Section 22. *Failure of Settlement* — If efforts at settlement fail, the hearing shall proceed in an informal and expeditious manner and be terminated within one (1) day. Either party may move in writing to have another judge hear and decide the case. The reassignment of the case shall be done in accordance with existing issuances. The referral by the original judge to the Executive Judge shall be made within the same day the motion is filed and granted, and by the Executive Judge to the designated judge within the same day of the referral. ***The new judge shall hear and decide the case within five (5) days from the receipt of the order of reassignment.***

2. **ID.; ID.; THEORY BEHIND THE SMALL CLAIMS SYSTEM. —** The theory behind the small claims system is that ordinary litigation fails to bring practical justice to the parties when the disputed claim is small, because the time and expense required by the ordinary litigation process is so disproportionate to the amount involved that it discourages a just resolution of the dispute. The small claims process is designed to function quickly and informally. There are no lawyers, no formal pleadings and no strict legal rules of evidence.

3. **ID.; ID.; EXIGENCY OF PROMPT JUDGMENT ON SMALL CLAIMS CASES, EMPHASIZED. —** [T]he intent of the law in providing the period to hear and decide cases falling under the Rule of Procedure for Small Claims Cases, which is within

five (5) days from the receipt of the order of assignment, is very clear. The exigency of prompt rendition of judgment in small claims cases is a matter of public policy. There is no room for further interpretation; it does not require respondent's exercise of discretion. He is duty-bound to adhere to the rules and decide small claims cases without undue delay. The need for prompt resolution of small claims cases is further emphasized by Section 19 of the Rule, which provides that: SEC. 19. *Postponement When Allowed.* — A request for postponement of a hearing may be granted only upon proof of the physical inability of the party to appear before the court on the scheduled date and time. A party may avail of only one (1) postponement.

4. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS IGNORANCE OF THE LAW AND PROCEDURE; PRESENT WHERE JUDGE FAILED TO APPLY ELEMENTARY RULES OF PROCEDURE AS RENDERING DECISION WITHIN THE REGLEMENTARY PERIOD. — Time and again, we have ruled that when the rules of procedure are clear and unambiguous, leaving no room for interpretation, all that is needed to do is to simply apply it. Failure to apply elementary rules of procedure constitutes gross ignorance of the law and procedure. In the instant case, neither good faith nor lack of malice will exonerate respondent, as the rules violated were basic procedural rules. We cannot countenance undue delay in the disposition of cases or motions, especially now when there is an all-out effort to minimize — if not totally eradicate — the problem of congestion long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice. For obviously, justice delayed is justice denied. Delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards, and brings it into disrepute.

5. ID.; ID.; ID.; ID.; UNDUE DELAY IN RENDERING A DECISION ON SMALL CLAIMS; FINE OF ₱5,000 MADE PROPER. — Section 9 (1), Rule 140 of the Revised Rules of Court, as amended, provides that undue delay in rendering a decision or order is classified as a less serious charge, which is punishable by suspension from office, without salary and other benefits for not less than one (1) or more than three (3)

months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Considering that the Rule on small claims is a new rule, and that this is respondent judge's first violation of the rule, we deem it proper to impose a fine in the amount of ₱5,000.00.

D E C I S I O N

PERALTA, *J.*:

Before us is an administrative complaint[1] filed by complainant Ernesto Z. Orbe (Orbe) against Judge Manolito Y. Gumarang (respondent), Pairing Judge, Municipal Trial Court (MTC), Imus, Cavite for Violation of the Rule of Procedure for Small Claims Cases and the Code of Judicial Conduct.

The antecedent facts are as follows:

Orbe is the plaintiff of a small claims case docketed as Civil Case No. ICSCC 09-65 entitled *E.Z. Orbe Tax Accounting Services, thru, Ernesto Z. Orbe v. L.G.M. Silver Star Credit Corporation, represented by Librado Montano*, filed before the MTC of Imus, Cavite, presided by Judge Emily A. Geluz.

During the hearing of the case on February 9, 2010, the parties failed to reach an amicable settlement. On the same day, the case was assigned to respondent Judge Manolito Y. Gumarang, Assisting Judge of the MTC of Imus, Cavite, for the continuation of the trial.

Complainant alleged that the case was scheduled for hearing on March 4, 2010, but was postponed by respondent to March 11, 2010 because of power interruption. On March 11, 2010, again the hearing was reset by respondent Judge Gumarang to March 25, 2010 as he was due for medical check-up. On March 25, 2010, respondent conducted another Judicial Dispute Resolution (JDR), and again reset the hearing to April 15, 2010 when the parties failed to reach an amicable agreement.

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

Complainant argued that Judge Gumarang violated the Rule of Procedure for Small Claims Cases for failure to decide the civil case within five (5) days from receipt of the order of reassignment.

On August 2, 2010, the Office of the Court Administrator (OCA) directed Judge Gumarang to submit his comment on the complaint against him.[2]

In his Comment[3] dated September 13, 2010, Judge Gumarang explained that as Assisting Judge in the MTC of Bacoor, Cavite, he tried small claims cases only on Thursdays. He admitted that he failed to decide the case within five (5) working days from receipt of the order, as mandated by the Rule. However, he pointed out that the Rule needed clarification since, as in his case, the five (5) working days should be construed to refer to five (5) calendared trial dates falling on Thursdays only, considering that he allotted only one day, that is Thursday, to hear and try small claims cases.

On May 10, 2011, the OCA, in its Memorandum,[4] recommended that the instant matter be redocketed as a regular administrative complaint. It likewise found Judge Gumarang guilty of Gross Ignorance of the Law, but recommended that he be fined in the amount of Five Thousand Pesos (₱5,000.00) only for violating the Rule of Procedure for Small Claims Cases.

We agree with the findings and recommendation of the OCA.

Indeed, Section 22 of the Rule of Procedure for Small Claims Cases clearly provided for the period within which judgment should be rendered, to *wit*:

> Section 22. *Failure of Settlement* — If efforts at settlement fail, the hearing shall proceed in an informal and expeditious manner and be terminated within one (1) day. Either party may move in writing

[2] *Id.* at 43.

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

[4] *Id.* at 45-47.

to have another judge hear and decide the case. The reassignment of the case shall be done in accordance with existing issuances.

The referral by the original judge to the Executive Judge shall be made within the same day the motion is filed and granted, and by the Executive Judge to the designated judge within the same day of the referral. ***The new judge shall hear and decide the case within five (5) days from the receipt of the order of reassignment.***[5]

In this case, it is undisputed that it took more than two (2) months for respondent to render a decision on the subject case as he himself admitted the series of postponements which occurred during the pendency of the case. His lone argument was that he hears small claims cases on Thursdays only, hence, he claimed that, in his case, the period of five (5) working days being referred to by Section 22 of the Rule should pertain only to Thursdays.

We are unconvinced.

Judge Gumarang must have missed the very purpose and essence of the creation of the Rule of Procedure for Small Claims Cases, as his interpretation of the Rule is rather misplaced. It is, therefore, imperative to emphasize what the Court sought to accomplish in creating the Rule of Procedure for Small Claims Cases, to *wit*:

x x x Thus, pursuant to its rule-making power, the Court, under the present Constitution, can adopt a special rule of procedure to govern small claims cases and select pilot courts that would empower the people to bring suits before them *pro se* to resolve legal disputes involving simple issues of law and procedure without the need for legal representation and extensive judicial intervention. **This system will enhance access to justice, especially by those who cannot afford the high costs of litigation even in cases of relatively small value.** It is envisioned that by facilitating the traffic of cases through simple and expeditious rules and means, our Court can improve the perception of justice in this country, thus, giving citizens a renewed "stake" in preserving peace in the land. x x x[6]

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[5] Emphasis supplied.

[6] A.M. No. 08-8-7-SC, RULE OF PROCEDURE FOR SMALL CLAIMS CASES, EFFECTIVE OCTOBER 1, 2008, p. 34. (Emphasis supplied.)

The theory behind the small claims system is that ordinary litigation fails to bring practical justice to the parties when the disputed claim is small, because the time and expense required by the ordinary litigation process is so disproportionate to the amount involved that it discourages a just resolution of the dispute. The small claims process is designed to function quickly and informally. There are no lawyers, no formal pleadings and no strict legal rules of evidence.[7]

Thus, the intent of the law in providing the period to hear and decide cases falling under the Rule of Procedure for Small Claims Cases, which is within five (5) days from the receipt of the order of assignment, is very clear. The exigency of prompt rendition of judgment in small claims cases is a matter of public policy. There is no room for further interpretation; it does not require respondent's exercise of discretion. He is duty-bound to adhere to the rules and decide small claims cases without undue delay.

The need for prompt resolution of small claims cases is further emphasized by Section 19 of the Rule, which provides that:

> SEC. 19. *Postponement When Allowed.* — A request for postponement of a hearing may be granted only upon proof of the physical inability of the party to appear before the court on the scheduled date and time. A party may avail of only one (1) postponement.

In the instant case, it is noteworthy to mention that the postponements were not attributed to any of the parties to the case. The numerous postponements, which in some instances were upon respondent's initiative, were uncalled for and unjustified, considering that it was already established that all efforts for amicable settlement were futile. Thus, the postponements were clear violation of the Rule and defeat the very essence of the Rule.

Time and again, we have ruled that when the rules of procedure are clear and unambiguous, leaving no room for interpretation,

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[7] *Rollo,* p. 36.

all that is needed to do is to simply apply it. Failure to apply elementary rules of procedure constitutes gross ignorance of the law and procedure. In the instant case, neither good faith nor lack of malice will exonerate respondent, as the rules violated were basic procedural rules.

We cannot countenance undue delay in the disposition of cases or motions, especially now when there is an all-out effort to minimize — if not totally eradicate — the problem of congestion long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice. For obviously, justice delayed is justice denied. Delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards, and brings it into disrepute.[8]

Section 9 (1), Rule 140 of the Revised Rules of Court, as amended, provides that undue delay in rendering a decision or order is classified as a less serious charge, which is punishable by suspension from office, without salary and other benefits for not less than one (1) or more than three (3) months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Considering that the Rule on small claims is a new rule, and that this is respondent judge's first violation of the rule, we deem it proper to impose a fine in the amount of ₱5,000.00.

WHEREFORE, the Court finds Judge Manolito Y. Gumarang, Municipal Trial Court, Imus, Cavite, *GUILTY of Undue Delay in Rendering a Decision and Violation of the Rule of Procedure for Small Claims Cases*, and is hereby *ORDERED* to pay a fine of Five Thousand Pesos (₱5,000.00) and *WARNED* that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Abad, Perez,[*] *Mendoza,* and *Perlas-Bernabe, JJ.,* concur.

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[8] *Visbal v. Sescon,* 456 Phil. 552, 558-559 (2003).

[*] Designated additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1102 dated September 21, 2011.

FIRST DIVISION

[A.M. No. P-11-2972. September 28, 2011]
(Formerly OCA I.P.I. No. 10-3430-P)

YOLANDA LEACHON CORPUZ, *complainant, vs.* **SERGIO V. PASCUA, Sheriff III, Municipal Trial Court in Cities, Trece Martires City, Cavite,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFFS; DUTY IN THE IMPLEMENTATION OF WRIT OF EXECUTION. — A sheriff performs a sensitive role in the dispensation of justice. He is duty-bound to know the basic rules in the implementation of a writ of execution and be vigilant in the exercise of that authority. Sheriffs have the ministerial duty to implement writs of execution promptly. Their unreasonable failure or neglect to perform such function constitutes inefficiency and gross neglect of duty. When writs are placed in the hands of sheriffs, it is their ministerial duty to proceed with reasonable speed and promptness to execute such writs in accordance with their mandate. At the same time, sheriffs are bound to discharge their duties with prudence, caution, and attention which careful men usually exercise in the management of their affairs. Sheriffs, as officers of the court upon whom the execution of a final judgment depends, must be circumspect and proper in their behavior.

2. ID.; ID.; ID.; ID.; ID.; WRIT ENFORCED ON THE PROPERTY OF THE JUDGMENT DEBTOR ONLY; VIOLATED WHEN LEVY MADE UPON THE VEHICLE OF THE SPOUSE ON THE PRESUMPTION THAT THE SAME WAS A CONJUGAL PROPERTY. — Despite the undisputed facts that the MTCC Judgment and Writ of Execution in Criminal Case Nos. 2079 to 2082 were against Juanito only, and the Toyota Town Ace Noah with Plate No. 471 was registered in Yolanda's name solely, Sheriff Pascua proceeded to levy upon the vehicle, invoking the presumption that it was conjugal property. The power of the court in executing judgments extends only to properties unquestionably belonging to the judgment

debtor alone. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts. A sheriff is not authorized to attach or levy on property not belonging to the judgment debtor. The sheriff may be liable for enforcing execution on property belonging to a third party. If he does so, the writ of execution affords him no justification, for the action is not in obedience to the mandate of the writ. x x x Indeed, Article 160 of the New Civil Code provides that "[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." However, for this presumption to apply, the party who invokes it must first prove that the property was acquired during the marriage. Proof of acquisition during the coverture is a condition *sine qua non* to the operation of the presumption in favor of the conjugal partnership. Thus, the time when the property was acquired is material. There is no such proof in the records of the present case.

3. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS FOR MONEY; LEVY UPON THE PROPERTY OF JUDGMENT OBLIGOR ONLY IF HE CANNOT PAY, AND HE CAN CHOOSE WHICH PROPERTY TO BE LEVIED UPON. — [W]hen Sheriff Pascua proceeded in levying upon Yolanda's vehicle, he digressed far from the procedure laid down in Section 9, Rule 39 of the Rules of Court for the enforcement of judgments. x x x As the aforequoted provision clearly state, the levy upon the properties of the judgment obligor may be had by the executing sheriff only if the judgment obligor cannot pay all or part of the full amount stated in the writ of execution. If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check, or other mode acceptable to the judgment obligee, the judgment obligor is given the option to immediately choose which of his property or part thereof, not otherwise exempt from execution, may be levied upon sufficient to satisfy the judgment. If the judgment obligor does not exercise the option immediately, or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the

judgment. Therefore, the sheriff cannot and should not be the one to determine which property to levy if the judgment obligor cannot immediately pay because it is the judgment obligor who is given the option to choose which property or part thereof may be levied upon to satisfy the judgment.

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFFS; DUTY TO SHOW HIGH DEGREE OF PROFESSIONALISM IN WORK AND TO AVOID ANY KIND OF BEHAVIOR THAT WOULD DIMINISH FAITH IN THE JUDICIARY; VIOLATED WHEN SHERIFF PARKED THE LEVIED VEHICLE AT HIS HOME GARAGE. — Sheriff Pascua parked the vehicle [levied upon] at his home garage, believing that the parking area within the court premises was unsafe based on his personal experience. x x x Sheriff Pascua's explanation for parking Yolanda's vehicle at his home garage is unacceptable. Granted that it was unsafe to park the vehicle within the court premises, Sheriff Pascua should have kept the said vehicle in a bonded warehouse or sought prior authorization from the MTCC to park the same at another place. Although there is no evidence that Sheriff Pascua had also used the vehicle, the Court understands how easy it is for other people to suspect the same because the vehicle was parked at his home garage. Sheriff Pascua's actuations smacked of unprofessionalism, blurring the line between his official functions and his personal life. Time and again, the Court has held that sheriffs and deputy sheriffs play a significant role in the administration of justice. They are primarily responsible for the execution of a final judgment which is "the fruit and end of the suit and is the life of the law." Thus, sheriffs must at all times show a high degree of professionalism in the performance of their duties. As officers of the court, they are expected to uphold the norm of public accountability and to avoid any kind of behavior that would diminish or even just tend to diminish the faith of the people in the judiciary. Measured against these standards, Sheriff Pascua disappointingly fell short.

5. ID.; ID.; MISCONDUCT; PENALTY FOR SIMPLE MISCONDUCT UNDER THE ADMINISTRATIVE CODE OF 1987. — Misconduct is a transgression of an established rule of action. More particularly, misconduct is the unlawful behavior of a public officer. It means the "intentional wrongdoing

or deliberate violation of a rule of law or standard of behavior, especially by a government official." In order for misconduct to constitute an administrative offense, it should be related to or connected with the performance of the official functions and duties of a public officer. Under Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (otherwise known as The Administrative Code of 1987) and Section 52 (B)(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is a less grave offense with a penalty ranging from suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.

APPEARANCES OF COUNSEL

Perez Valencia & Perez for complainant.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before the Court is an administrative case for grave abuse of authority and gross ignorance of the law filed by Yolanda Leachon Corpuz (Yolanda) against Sergio V. Pascua (Pascua), Sheriff III, Municipal Trial Court in Cities (MTCC), Trece Martires City, Cavite.

The facts of the case are as follows:

Upon the complaint of Alicia Panganiban (Panganiban), Criminal Case Nos. 2079 to 2082 for violations of Batas Pambansa Blg. 22 were instituted against Juanito Corpuz (Juanito) before the MTCC. In an Order[1] dated June 16, 2009, the MTCC approved the Compromise Agreement[2] dated May 25, 2009 executed between Panganiban and Juanito (in which Juanito promised to pay Panganiban the sum of ₱330,000.00) and dismissed

[*] Per Special Order No. 1092 dated September 21, 2011.

[1] *Rollo*, p. 9.

[2] *Id.* at 8.

provisionally Criminal Case Nos. 2079 to 2082. On January 25, 2010, the MTCC allegedly rendered a judgment based on the Compromise Agreement, but there was no copy of said judgment in the records of this case. When Juanito failed to comply with his obligations under the Compromise Agreement, Panganiban filed Motions for Execution dated January 4, 2010 and February 25, 2010 of the MTCC judgment. On March 17, 2010, the MTCC acted favorably on Panganiban's Motions and issued a Writ of Execution addressed to the Sheriff of the MTCC of Trece Martires City, with the following decree:

> NOW, THEREFORE, you are hereby commanded to proceed to accused Juanito Corpuz who resides at No. 118 Lallana, Trece Martires City, for him to pay private complainant the amount of Php330,000.00 less the amount of Php50,000.00 allegedly paid for the first installment.
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> In (sic) the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, you shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt for execution, giving the latter, the option to immediately choose which property may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, you shall first levy on the personal properties of any and then on the real properties, if the personal properties are insufficient to answer for the (sic). You shall only (sic) so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees, and make a report to this Court every thirty (30) days on the proceeding taken, until the judgment is satisfied in full, or its effectivity expires.[3]

On June 2, 2010, Yolanda, Juanito's wife, and her daughter were in her office at the Cavite Provincial Engineering Office of Trece Martires City. At around three o'clock in the afternoon, Sheriff Pascua arrived at Yolanda's office and demanded that Yolanda surrender the Toyota Town Ace Noah with Plate No. 471, which was registered in Yolanda's name, threatening to damage the said vehicle if Yolanda would refuse to do so. Sheriff

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[3] *Id.* at 11.

Pascua tried to forcibly open the vehicle. Yolanda called her brother to ask for help. Yolanda's brother arrived after one hour. Yolanda, with her daughter and brother, went out of the office to face Sheriff Pascua. Deeply embarrassed and humiliated, and to avoid further indignities, Yolanda surrendered the key to the vehicle to Sheriff Pascua, but she did not sign any document which Sheriff Pascua asked her to sign.

Offended, humiliated, and embarrassed, Yolanda was compelled to file the present administrative complaint[4] against Sheriff Pascua. In addition to the aforementioned incident on June 2, 2010, Yolanda alleged in her complaint that Sheriff Pascua kept possession of the vehicle and even used the same on several occasions for his personal use. Yolanda attached to her complaint pictures to prove that Sheriff Pascua, instead of parking the vehicle within the court premises, in accordance with the concept of *custodia legis*, parked the vehicle in the garage of his own house. Yolanda also claimed that her vehicle was illegally confiscated or levied upon by Sheriff Pascua because the Writ of Execution, which Sheriff Pascua was implementing, was issued against Juanito, Yolanda's husband. Yolanda further pointed out that Sheriff Pascua has not yet posted the notice of sale of personal property, as required by Rule 39, Section 15 of the Rules of Court.

In his Comment,[5] Sheriff Pascua denied that he threatened and used force in levying upon the vehicle in question, and avowed that he was the one maligned when he served the Writ of Execution at Yolanda's residence on April 21, 2010 and at Yolanda's office on June 2, 2010. Yolanda delivered unsavory remarks in an unconscionable manner, maligning Sheriff Pascua in the presence of other people, during both occasions. When Sheriff Pascua first served the Writ of Execution, Yolanda uttered to him, "*Ipaglalaban ko ng patayan kapag kumuha kayo ng gamit dito, matagal ko ng pag-aari ang mga ito*."[6]

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

[5] *Id.* at 21-22.

[6] *Id.* at 21.

Sheriff Pascua averred that after the levy, he politely informed Yolanda that he would temporarily keep the vehicle at his place as there was no safe parking within the court premises. The lower floors of the building where the courts are located are being used as classrooms of the Cavite State University, and the vacant lot thereat serves as parking area for judges, prosecutors, and doctors and staff of the City Health Office. Sheriff Pascua believed that it was not safe to park the vehicle within the City Hall premises because of his personal experience, when the battery of his owner-type jeep, parked in the vicinity, was stolen. Sheriff Pascua already stated in the Sheriff's Return dated June 4, 2010 that he was keeping temporary custody of Yolanda's vehicle. He asserted that he never used the vehicle as he owns an owner-type jeep, which he uses for serving writs and other court processes, as well as for his family's needs. He likewise contradicted Yolanda's claim that no public auction has been scheduled. In fact, Yolanda already received on July 9, 2010 the Notice to Parties of Sheriff's Public Auction Sale and Notice of Sale of Execution of Personal Property.

Lastly, Sheriff Pascua argued that he only took Yolanda's vehicle after verification from the Land Transportation Office (LTO) that it was registered in Yolanda's name. Yolanda is the wife of Juanito, the accused in Criminal Case Nos. 2079 to 2082, and the vehicle is their conjugal property, which could be levied upon in satisfaction of a Writ of Execution against Juanito.

Yolanda filed a Reply[7] dated September 17, 2010, belying the averments in Sheriff Pascua's Comment. Yolanda insisted that Sheriff Pascua committed an error in levying upon the vehicle solely registered in her name to satisfy a Writ of Execution issued against her husband and an impropriety in parking the vehicle at his (Sheriff Pascua's) home garage.

In his Rejoinder[8] dated October 5, 2010, Sheriff Pascua maintained that he acted in accordance with law. It was not his

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[7] *Id.* at 38-43.

[8] *Id.* at 45-46.

duty as sheriff to show proof that the personal property he was levying upon to execute the civil aspect of the judgment was conjugal; rather, the burden fell upon Yolanda to prove that the said property was paraphernal. Sheriff Pascua further reiterated that he never used Yolanda's vehicle for his needs. The pictures submitted by Yolanda only showed that the vehicle was parked at his home garage. No picture or evidence was presented to prove that he used the vehicle. Sheriff Pascua lastly averred that he had no intention of delaying the public auction of the vehicle and was merely following the proper procedure for the reasonable appraisal of the same. He had already filed a Notice of Attachment/Levy upon Personal Property with the Register of Deeds of Trece Martires City, requested certified true copies or photocopies of the Official Receipt and Certificate of Registration of the vehicle to be used for the auction sale, and gave notice of the auction sale to Yolanda six days prior to the scheduled sale. He also gave Yolanda the opportunity to file a Third-Party Claim or proof that the vehicle was her paraphernal property, but Yolanda failed to file anything until the day of the auction sale.

On November 17, 2010, the Office of the Court Administrator (OCA) submitted its report,[9] with the following recommendation:

RECOMMENDATION: Respectfully submitted for consideration of the Honorable Court our recommendation that:

1. The instant administrative complaint be RE-DOCKETED as a regular administrative matter;
2. Sergio V. Pascua, Sheriff III, Municipal Trial Court in Cities, Trece Martires City, Cavite, be REPRIMANDED for impropriety in taking the vehicle and parking the same at his garage; and
3. Sergio V. Pascua, be SUSPENDED for a period of one (1) month and one (1) day for Simple Neglect of Duty, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.[10]

[9] *Id.* at 48-52.

[10] *Id.* at 52.

In a Resolution[11] dated February 9, 2011, we required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.

Sheriff Pascua[12] and Yolanda[13] submitted their Manifestations dated April 11, 2011 and April 12, 2011, respectively, stating that they were submitting the case for resolution based on the pleadings filed.

Resultantly, the case was already submitted for resolution.

After a thorough review of the records, the Court finds that Sheriff Pascua, in levying upon Yolanda's vehicle even though the judgment and writ he was implementing were against Juanito, then parking the same vehicle at his home garage, is guilty of simple misconduct.

A sheriff performs a sensitive role in the dispensation of justice. He is duty-bound to know the basic rules in the implementation of a writ of execution and be vigilant in the exercise of that authority.[14]

Sheriffs have the ministerial duty to implement writs of execution promptly. Their unreasonable failure or neglect to perform such function constitutes inefficiency and gross neglect of duty. When writs are placed in the hands of sheriffs, it is their ministerial duty to proceed with reasonable speed and promptness to execute such writs in accordance with their mandate.[15]

At the same time, sheriffs are bound to discharge their duties with prudence, caution, and attention which careful men usually exercise in the management of their affairs. Sheriffs, as officers

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[11] *Id.* at 53.

[12] *Id.* at 64.

[13] *Id.* at 65-66.

[14] *Sarmiento v. Mendiola*, A.M. No. P-07-2383, December 15, 2010.

[15] *Bernabe v. Eguia*, 458 Phil. 97, 107-108 (2003).

of the court upon whom the execution of a final judgment depends, must be circumspect and proper in their behavior.[16]

In the instant case, Sheriff Pascua failed to live up to the standards of conduct for his position.

Despite the undisputed facts that the MTCC Judgment and Writ of Execution in Criminal Case Nos. 2079 to 2082 were against Juanito only, and the Toyota Town Ace Noah with Plate No. 471 was registered in Yolanda's name solely, Sheriff Pascua proceeded to levy upon the vehicle, invoking the presumption that it was conjugal property.

The power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone.[17] An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts.[18]

A sheriff is not authorized to attach or levy on property not belonging to the judgment debtor. The sheriff may be liable for enforcing execution on property belonging to a third party. If he does so, the writ of execution affords him no justification, for the action is not in obedience to the mandate of the writ.[19]

Sheriff Pascua cannot rely on the presumption that the vehicle is the conjugal property of Juanito and Yolanda.

Indeed, Article 160 of the New Civil Code provides that "[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to

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[16] *Eduarte v. Ramos*, A.M. No. P-94-1069, November 9, 1994, 238 SCRA 36, 41.

[17] *Republic v. Enriquez*, 248 Phil. 838, 841 (1988); *Wong v. Intermediate Appellate Court*, G.R. No. 70082, August 19, 1991, 200 SCRA 792, 802-803.

[18] *MR Holdings, Ltd. v. Bajar*, 430 Phil. 443, 473 (2002).

[19] *Johnson & Johnson (Phils.), Inc. v. Court of Appeals*, 330 Phil. 856, 873 (1996).

the husband or to the wife." However, for this presumption to apply, the party who invokes it must first prove that the property was acquired during the marriage. Proof of acquisition during the coverture is a condition *sine qua non* to the operation of the presumption in favor of the conjugal partnership. Thus, the time when the property was acquired is material.[20] There is no such proof in the records of the present case.

Sheriff Pascua's assertions of diligence do not exculpate him from administrative liability. After inquiry from the LTO, he already discovered that the vehicle was registered in Yolanda's name only. This fact should have already prompted Sheriff Pascua to gather more information, such as when Juanito and Yolanda were married and when did Yolanda acquire the vehicle, which, in turn, would have determined whether or not Sheriff Pascua could already presume that the said vehicle is conjugal property.

Moreover, when Sheriff Pascua proceeded in levying upon Yolanda's vehicle, he digressed far from the procedure laid down in Section 9, Rule 39 of the Rules of Court for the enforcement of judgments, pertinent portions of which read:

SEC. 9. *Execution of judgments for money, how enforced.* —

(a) *Immediate payment on demand*. — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. x x x.

x x x x x x x x x

(b) *Satisfaction by levy*. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other

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[20] *Imani v. Metropolitan Bank and Trust Company*, G.R. No. 187023, November 17, 2010, 635 SCRA 357, 369.

mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment. (Underscoring supplied.)

As the aforequoted provision clearly state, the levy upon the properties of the judgment obligor may be had by the executing sheriff only if the judgment obligor cannot pay all or part of the full amount stated in the writ of execution. If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check, or other mode acceptable to the judgment obligee, the judgment obligor is given the option to immediately choose which of his property or part thereof, not otherwise exempt from execution, may be levied upon sufficient to satisfy the judgment. If the judgment obligor does not exercise the option immediately, or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment. Therefore, the sheriff cannot and should not be the one to determine which property to levy if the judgment obligor cannot immediately pay because it is the judgment obligor who is given the option to choose which property or part thereof may be levied upon to satisfy the judgment.[21]

In this case, Sheriff Pascua totally ignored the established procedural rules. Without giving Juanito the opportunity to either pay his obligation under the MTCC judgment in cash, certified bank check, or any other mode of payment acceptable to Panganiban; or to choose which of his property may be levied upon to satisfy the same judgment, Sheriff Pascua immediately levied upon the vehicle that belonged to Juanito's wife, Yolanda.

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[21] *Sarmiento v. Mendiola, supra* note 14.

To make matters worse, Sheriff Pascua parked the vehicle at his home garage, believing that the parking area within the court premises was unsafe based on his personal experience.

In previous administrative cases, sheriffs had already proffered the same excuse, *i.e.*, lack of court storage facilities for the property attached or levied upon, so as to justify their delivery of the said property to the party-creditors. In *Caja v. Nanquil*,[22] we rejected the excuse, thus:

> Respondent sheriff argues that he never delivered said personal properties to the judgment creditor but merely kept the same in a secured place owned by the latter. He brought them there because the Sheriff's Office and the Regional Trial Court of Olongapo City had no warehouse or place to keep levied personal properties. In support thereto, he presented John Aquino, Clerk of Court of the Regional Trial Court of Olongapo City, who testified that they have no designated warehouse or building where sheriffs can keep levied personal properties. In so far as large motor vehicles, the practice as to where to keep them is left at the discretion of the sheriff.
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> Respondent sheriff's argument that he kept the levied personal properties at the judgment creditor's place because the Regional Trial Court of Olongapo City does not have any warehouse or place to keep the same does not hold water. A levying officer must keep the levied properties securely in his custody. The levied property must be in the substantial presence and possession of the levying officer who cannot act as special deputy of any party litigant. They should not have been delivered to any of the parties or their representative. The court's lack of storage facility to house the attached properties is no justification. Respondent sheriff could have deposited the same in a bonded warehouse or could have sought prior authorization from the court that issued the writ of execution.[23] (Underscoring supplied.)

Sheriff Pascua's explanation for parking Yolanda's vehicle at his home garage is just as unacceptable. Granted that it was unsafe to park the vehicle within the court premises, Sheriff

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[22] A.M. No. P-04-1885, September 13, 2004, 438 SCRA 174.

[23] *Id.* at 195-196.

Pascua should have kept the said vehicle in a bonded warehouse or sought prior authorization from the MTCC to park the same at another place. Although there is no evidence that Sheriff Pascua had also used the vehicle, the Court understands how easy it is for other people to suspect the same because the vehicle was parked at his home garage. Sheriff Pascua's actuations smacked of unprofessionalism, blurring the line between his official functions and his personal life.

Time and again, the Court has held that sheriffs and deputy sheriffs play a significant role in the administration of justice. They are primarily responsible for the execution of a final judgment which is "the fruit and end of the suit and is the life of the law."[24] Thus, sheriffs must at all times show a high degree of professionalism in the performance of their duties. As officers of the court, they are expected to uphold the norm of public accountability and to avoid any kind of behavior that would diminish or even just tend to diminish the faith of the people in the judiciary.[25] Measured against these standards, Sheriff Pascua disappointingly fell short.

The OCA recommends that Sheriff Pascua be held administratively liable for impropriety and simple neglect of duty. The Court though determines that Sheriff Pascua's improper actions more appropriately constitute simple misconduct. **Misconduct is a transgression of an established rule of action.** More particularly, misconduct is the unlawful behavior of a public officer. It means the "intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official."[26] In order for misconduct to constitute an administrative offense, it should be related to or connected with the performance of the official functions and duties of a public officer.[27]

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[24] *Viaje v. Dizon*, A.M. No. P-07-2402, October 15, 2008, 569 SCRA 45, 50.

[25] *Id.* at 49-50.

[26] *Tenorio v. Perlas*, A.M. No. P-10-2817, January 26, 2011.

[27] *Id.*

Under Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (otherwise known as The Administrative Code of 1987) and Section 52(B)(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is a less grave offense with a penalty ranging from suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.

WHEREFORE, respondent Sheriff Sergio V. Pascua is found *GUILTY* of simple misconduct and is *SUSPENDED* for *TWO (2) MONTHS WITHOUT PAY*, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Bersamin, del Castillo, Perez,[**] and *Mendoza,*[***] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 170404. September 28, 2011]

FERDINAND A. CRUZ, *petitioner, vs.* **JUDGE HENRICK F. GINGOYON, [Deceased], JUDGE JESUS B. MUPAS, Acting Presiding Judge, Regional Trial Court Branch 117, Pasay City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CONTEMPT OF COURT; DIRECT CONTEMPT PRESENT WHERE CONTEMPTUOUS

[**] Per Special Order No. 1080 dated September 13, 2011.

[***] Per Special Order No. 1093 dated September 21, 2011.

STATEMENTS MADE IN PLEADINGS FILED WITH THE COURT. — "[C]ontemptuous statements made in pleadings filed with the court constitute direct contempt." "[A] pleading x x x containing derogatory, offensive or malicious statements submitted to the court or judge in which the proceedings are pending x x x has been held to be equivalent to 'misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same' within the meaning of Rule 71, Sec. 1 of the Rules of Court and, therefore, constitutes direct contempt."

2. ID.; ID.; ID.; THAT PRESIDING JUDGE IS COMMUNICATING WITH A PARTY OFF THE RECORD IS A SERIOUS ALLEGATION, CONTEMPTUOUS WHEN UNSUBSTANTIATED. — The Motion for Reconsideration filed by petitioner with the respondent court contained a serious allegation that Judge Gingoyon has been communicating with the defendant off the record, which is considered as a grave offense. This allegation is unsubstantiated and totally bereft of factual basis. In fact, when asked to adduce proof of the allegation, petitioner was not able to give any, but repeatedly argued that it is his "fair observation or conclusion." x x x [A]ssuming that the conclusion of petitioner is justified by the facts, it is still not a valid defense in cases of contempt. "Where the matter is abusive or insulting, evidence that the language used was justified by the facts is not admissible as a defense. Respect for the judicial office should always be observed and enforced." Moreover, the charge of partiality is uncalled for, and there being no scintilla of proof that Judge Gingoyon did the act complained of, petitioner's act amounts to direct contempt of court.

3. ID.; ID.; DIRECT CONTEMPT MAY BE PUNISHED SUMMARILY; *CERTIORARI* AS REMEDY THEREOF MUST BE FILED FIRST BEFORE *EX-PARTE* MOTION TO POST BOND AND QUASH WARRANT OF ARREST RELATIVE TO DIRECT CONTEMPT MAY BE ACTED UPON. — Petitioner avers that the respondent court abused its discretion in denying his *Ex-Parte* Motion to post bond and quash warrant of arrest. Petitioner insists that the respondent court should have granted his *Ex-Parte* Motion since he already filed a Petition for *Certiorari* before this Court pursuant to Rule 71 of the Rules of Court. He further avers

that respondent court violated his right to due process by fixing the bond only on December 5, 2005 or 10 days after the Orders of contempt and arrest were issued. x x x A person may be adjudged in direct contempt of court pursuant to Section 1, Rule 71 of the Rules of Court without need of a hearing but may thereafter avail of the remedies of *certiorari* or prohibition. x x x In this case, we find that the respondent court properly denied petitioner's *Ex-Parte* Motion there being no proof that he already filed a petition for *certiorari*.

4. ID.; HIERARCHY OR COURTS IN THE ISSUANCE OF EXTRAORDINARY WRITS AGAINST COURTS; STRICT OBSERVANCE THEREOF, EMPHASIZED. — We find the necessity to emphasize strict observance of the hierarchy of courts. "A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ('inferior') courts should be filed with the [RTC], and those against the latter, with the Court of Appeals (CA). A direct invocation of the Supreme Court's original jurisdiction to issue extraordinary writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition." For the guidance of the petitioner, "[t]his Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) is not exclusive." Its jurisdiction is concurrent with the CA, and with the RTC in proper cases. "However, this concurrence of jurisdiction does not grant upon a party seeking any of the extraordinary writs the absolute freedom to file his petition with the court of his choice. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition." Unwarranted demands upon this Court's attention must be prevented to allow time and devotion for pressing matters within its exclusive jurisdiction. Adhering to the policy on judicial hierarchy of courts, "[w]here the issuance of an extraordinary writ is also within the competence of the [CA] or a [RTC], it is in either of these courts that the specific action for the writ's procurement must be presented."

D E C I S I O N

DEL CASTILLO, *J.*:

While there are remedies available to a party adjudged in contempt of court, same may only be availed of when the procedures laid down for its availment are satisfied.

By this Petition for *Certiorari*,[1] petitioner Ferdinand A. Cruz (petitioner) assails the Order[2] dated November 25, 2005 issued by the now deceased Judge Henrick F. Gingoyon (Judge Gingoyon) of Branch 117, Regional Trial Court (RTC) of Pasay City (respondent court) citing him in direct contempt of court, the dispositive portion of which states:

> WHEREFORE, Ferdinand Cruz is hereby found GUILTY beyond reasonable doubt of DIRECT CONTEMPT OF COURT.
>
> Accordingly, he is hereby sentenced to suffer TWO (2) DAYS of imprisonment and to pay a fine of ₱2,000.00.
>
> SO ORDERED.[3]

Essentially, petitioner prays for this Court to declare the assailed Order void and that Judge Gingoyon abused his discretion in citing him in contempt, as well as in denying his motion to fix the amount of bond.

Antecedent Facts

This case stemmed from a Civil Complaint[4] filed by petitioner against his neighbor, Benjamin Mina, Jr. (Mina), docketed as Civil Case No. 01-0401 in the RTC of Pasay City for abatement of nuisance. In the said case, petitioner sought redress from the court to declare as a nuisance the "basketball goal" which was permanently attached to the second floor of Mina's residence

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[1] *Rollo*, pp. 3-12.

[2] Exhibit "A" of the Petition, *id.* at 12-14.

[3] *Id.* at 14.

[4] Records, pp. 1-8.

but protrudes to the alley which serves as the public's only right of way.

Mina was declared in default[5] hence petitioner presented his evidence *ex-parte*.

After trial, Judge Gingoyon, in his Decision[6] dated October 21, 2005, declared the basketball goal as a public nuisance but dismissed the case on the ground that petitioner lacked "*locus standi.*" Citing Article 701 of the Civil Code, Judge Gingoyon ruled that the action for abatement of nuisance should be commenced by the city or municipal mayor and not by a private individual like the petitioner.

In the same Decision, Judge Gingoyon also opined that:

> Plaintiffs must learn to accept the sad reality of the kind of place they live in. x x x Their place is bursting with people most of whom live in cramped tenements with no place to spare for recreation, to laze around or doing their daily household chores.
>
> Thus, residents are forced by circumstance to invade the alleys. The alleys become the grounds where children run around and play, the venue where adults do all sorts of things to entertain them or pass the time, their wash area or even a place to cook food in. Take in a few ambulant vendors who display their wares in their choice spots in the alley and their customers that mill around them, and one can only behold chaos if not madness in these alleys. But for the residents of the places of this kind, they still find order in this madness and get out of this kind of life unscathed. It's because they all simply live and let live. Walking through the alleys daily, the residents of the area have become adept at [weaving] away from the playthings that children at play throw every which way, sidestepping from the path of children chasing each other, dodging and [ducking]from awnings or canopies or clotheslines full of dripping clothes that encroach [on] the alleys. Plaintiffs appear to be fastidious and delicate and they cannot be faulted for such a desirable trait. But they can only do so within their own abode. Once they step outside the doors of their home, as it were, they cannot foist their

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[5] *Id.* at 214.

[6] *Id.* at 257-264.

delicacy and fastidiousness upon their neighbors. They must accept their alleys as the jungle of people and the site of myriad of activities that it is. They must also learn to accept the people in their place as they are; they must live and let live. Unless they choose to live in a less blighted human settlement or better still move to an upscale residential area, their only remaining choice is for them to live in perpetual conflict with their neighbors all the days of their lives.[7]

Petitioner sought reconsideration of the Decision. In his Motion for Reconsideration,[8] he took exception to the advice given by Judge Gingoyon thus:

The 12th and 13th paragraphs of the assailed decision, though only an advice of the court, are off-tangent and even spouses illegality;

Since when is living in cramped tenements become a license for people to invade the alleys and use the said alley for doing all sorts of things, *i.e.*, as wash area or cooking food? In effect, this court is making his own legislations and providing for exceptions in law when there are none, as far as nuisance is concerned;

The court might not be aware that in so doing, he is giving a wrong signal to the defendants and to the public at large that land grabbing, squatting, illegal occupation of property is all right and justified when violators are those people who live in cramped tenements or the underprivileged poor, as the court in a sweeping statement proclaimed that "residents are forced by circumstance to invade the alleys;"

For the enlightenment of the court, and as was proven during the *ex-parte* presentation of evidence by the plaintiff, Edang estate comprises properties which are subdivided and titled (plaintiffs and defendants have their own titled properties and even the right of way or alley has a separate title) and not the kind the court wrongfully perceives the place to be;

Moreover, the court has no right to impose upon the herein plaintiffs to accept their alleys as a jungle of people and the site of myriad of activities that it is. For the information of the court, plaintiffs have holdings in upscale residential areas and it is a

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[7] *Id.* at 259-260.

[8] *Id.* at 267-273.

misconception for the court to consider the Pasay City residence of the plaintiffs as a blighted human settlement. Apparently the court is very much misinformed and has no basis in his litany of eye sore descriptions;

Undersigned is at quandary what will this court do should he be similarly situated with the plaintiffs? Will the court abandon his residence, giving way to illegality in the name of live and let live principle?

Nonetheless, what remains bugling [sic] is the fact that the court in his unsolicited advice knows exactly the description of the alley where the complained nuisance is located and the specific activities that the defendants do in relation to the alley. The court should be reminded that the undersigned plaintiff presented his evidence *ex-parte* and *where else can the court gather these information about the alleys aside from the logical conclusion that the court has been communicating with the defendant, off the record, given that the latter has already been in default.*[9] (Emphasis supplied.)

Petitioner requested the respondent court to hear his motion for reconsideration on November 18, 2005.[10]

In an Order[11] dated November 11, 2005, Judge Gingoyon set the motion for hearing on November 18, 2005, a date chosen by petitioner,[12] and directed him to substantiate his serious charge or show cause on even date why he should not be punished for contempt.[13] Judge Gingoyon also opined that:

This court, more specifically this Presiding Judge, has not seen the faintest of shadow of the defendant or heard even an echo of his

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[9] *Id.* at 271-272.

[10] *Id.* at 273.

[11] Exhibit "D" of the Petition, *id.* at 26.

[12] See the Notice of Hearing in the Motion for Reconsideration, Exhibit "B" of the Petition, *id.* at 21.

[13] In the same Order, Judge Gingoyon denied the allegation of the petitioner that he was communicating with the defendant off the record, thus: *"x x x This court, more specifically this Presiding Judge, has not seen the faintest shadow of the defendant or heard even an echo of his voice up to the present. x x x."*

voice up to the present. Plaintiff Ferdinand Cruz is therefore directed to substantiate his serious charge that he "*has been communicating with the defendant off the record, given that the latter has already been declared in default.*" He is therefore ordered to show cause on November 18, 2005, why he should not be punished for contempt of court for committing improper conduct tending directly or indirectly to degrade the administration of justice.[14]

On November 18, 2005, petitioner, however, did not appear. Judge Gingoyon then *motu proprio* issued an Order[15] in open court to give petitioner another 10 days to show cause. The Order reads:

In his Motion for Reconsideration, plaintiff Ferdinand Cruz specifically prayed that he is submitting his Motion for Resolution and Approval of this court today, Friday, November 18, 2005, at 8:30 A.M. Fridays have always been earmarked for criminal cases only. Moreover, long before plaintiff filed his motion for reconsideration, this court no longer scheduled hearings for November 18, 2005 because there will be no Prosecutors on this date as they will be holding their National Convention. Nevertheless, since it is the specific prayer of the plaintiff that he will be submitting his motion for resolution and approval by the court on said date, the court yielded to his wish and set his motion for hearing on his preferred date.

When this case was called for hearing today, plaintiff did not appear. The court waited until 9:45 A.M. but still no appearance was entered by the plaintiff or any person who might represent himself as an authorized representative of the plaintiff. Instead it was the defendant and his counsel who appealed and who earlier filed an Opposition to Motion for Reconsideration.

x x x x x x x x x

In view of the failure of the plaintiff to appear in today's hearing, the court considers the motion for reconsideration submitted for resolution. As for the Order of this court for the plaintiff to show cause why he should not be punished for contempt of court, the court *[motu proprio]* grants plaintiff last ten (10) days to show cause

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[14] Records, p. 274

[15] *Id.* at 304.

why he should not be punished for contempt of court. After the lapse of the said period, the court will resolve the issue of whether or not he should be cited for contempt. x x x[16]

In his Compliance[17] to the Show Cause Order, petitioner maintained that the alleged contumacious remarks he made have a leg to stand on for the same were based on the circumstances of the instant case. He even reiterated his insinuation that Judge Gingoyon communicated with Mina by posing the query: *". . . where then did this court gather an exact description of the alley and the myriad of [sic] activities that the inhabitants of interior Edang do in relation to the alley, when the defendant was held in default and absent plaintiff's evidence so exacting as the description made by this court in paragraphs 12 and 13 of his Decision dated October 21, 2005."*[18]

On November 25, 2005, Judge Gingoyon issued an Order[19] finding petitioner guilty of direct contempt of court. The Order reads:

> Ferdinand Cruz was ordered to substantiate with facts his serious charge that the Judge "has been communicating with the defendant off the record". But instead of presenting proof of facts or stating facts, Cruz simply shot back with a query: *"Where then did this court gather an exact description of the alley and the myriad activities that the inhabitants of interior Edang do in relation to the alley, when the defendant was held in default and absent plaintiff's evidence so exacting as the description made by this court…"* By this token, Cruz adamantly stood pat on his accusation, which now appears to be wholly based on suspicion, that the Judge has been communicating with the defendant off the record.
>
> The suspicion of Ferdinand Cruz may be paraphrased thus: The only way for the Judge [to] know the blight in his place in Pasay City is for the Judge to communicate with the defendant. It is only by communicating with the defendant and by no other means may the Judge know such blight.

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[16] *Id.*

[17] *Id.* at 311-313.

[18] *Id.* at 312.

[19] *Id.* at 316-318.

Blinded by his suspicion, Cruz did not consider that as State Prosecutor, the Judge was detailed in Pasay City in 1991 and that he has been a judge in Pasay City since 1997. The nuisance that Cruz complained of, or the blight of his place, is not a unique feature of that particular place. It is replicated in many other places of the city. Indeed, it is but a microcosm of what is prevalent not only within the urban areas within Metro Manila but also in many other highly urbanized areas in the country. Judges are no hermits that they would fail to witness this blight. Cruz did not care to make this allowance for the benefit of preserving the dignity of the court.

Cruz's open accusation without factual basis that the judge is communicating with the defendant is an act that brings the court into disrepute or disrespect; or offends its dignity, affront its majesty, or challenge its authority. It constitutes contempt of court. (*People vs. De Leon*, L-10236, January 31, 1958). x x x By alleging that the judge communicated with the defendant, Cruz is in effect charging the judge of partiality. Since there is not an iota of proof that the judge did the act complained of, the charge of partiality is uncalled for and constitutes direct contempt (*Salcedo vs. Hernandez*, 61 Phil. 724; *Lualhati vs. Albert*, 57 Phil. 86; *Malolos vs. Reyes*, 111 Phil. 1113).

WHEREFORE, Ferdinand Cruz is hereby found GUILTY beyond reasonable doubt of DIRECT CONTEMPT OF COURT.

Accordingly, he is hereby sentenced to suffer TWO (2) DAYS of imprisonment and to pay a fine of ₱2,000.00.

SO ORDERED.[20]

An Order of Arrest[21] was issued against the petitioner on even date.

On December 1, 2005, at 10:00 A.M., petitioner filed an Urgent *Ex-Parte* Motion to Post Bond and Quash Warrant of Arrest (*Ex-Parte* Motion)[22] with the respondent court. In said *Ex-Parte* Motion, petitioner averred that:

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[20] *Id.* at 317-318.

[21] *Id.* at 319.

[22] *Id.* at 320-322.

x x x x x x x x x

2. To date, undersigned has already filed a Petition for *Certiorari* before the Supreme Court;

x x x x x x x x x

The respondent court denied the *Ex-Parte* Motion in its Order[23] dated December 1, 2005 based on petitioner's failure to attach the alleged duly filed Petition for *Certiorari* with the Supreme Court. The respondent court held that unless petitioner has shown proof of filing said petition for *certiorari*, he cannot avail of the remedy provided in Section 2, Rule 71 of the Rules of Court.

Meanwhile, Judge Gingoyon was slain on December 31, 2005. In a Resolution[24] dated February 1, 2006, this Court directed the incumbent Judge of Branch 117, RTC of Pasay City, Judge Jesus B. Mupas, to submit a comment on the petition "inasmuch as direct or indirect contempt pertains to the misbehavior or disrespect committed towards the court and not to judges in their personal capacities."[25]

Issues

Petitioner raises the following issues:

A.

WHETHER x x x PETITIONER [IS] GUILTY OF CONTEMPT OF COURT.

B.

WHETHER RESPONDENT COURT HAS ENOUGH FACTUAL BASIS FOR CITING PETITIONER IN CONTEMPT.

C.

WHETHER THE RESPONDENT COURT ABUSED ITS DISCRETION IN DENYING PETITIONER'S MOTION TO FIX BOND.[26]

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[23] *Id.* at 327.

[24] *Rollo*, p. 31.

[25] *Id.*

[26] *Id.* at 86.

The issues may be summed up as follows: whether the respondent court properly adjudged petitioner in direct contempt of court and whether abuse of discretion was committed by respondent court in denying the *Ex-Parte* Motion.

Petitioner contends that the alleged contumacious remark is merely a fair observation or comment and a logical conclusion made based on the detailed description given by the respondent court of what has been happening in the alley subject of the civil case. Petitioner avers that no other conclusion can be had except that Judge Gingoyon was communicating with the defendant off the record, since the exact description of what was happening in the alley was not adduced in evidence during trial. Further, petitioner contends that fair and logical conclusion founded on circumstances of the case cannot be considered contemptuous.

Petitioner likewise insists that the respondent court abused its discretion when it denied his motion to fix bond, therefore violating due process.

Our Ruling

We find the petition unmeritorious.

A pleading containing derogatory, offensive or malicious statements submitted to the court or judge wherein proceedings are pending is considered direct contempt.

"[C]ontemptuous statements made in pleadings filed with the court constitute direct contempt."[27] "[A] pleading x x x containing derogatory, offensive or malicious statements submitted to the court or judge in which the proceedings are pending x x x has been held to be equivalent to 'misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same' within the meaning of Rule 71,

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[27] *Atty. Ante v. Judge Pascua*, 245 Phil. 745, 747 (1988).

§ 1 of the Rules of Court and, therefore, constitutes direct contempt."[28]

Based on the abovementioned facts and consistent with the foregoing principles set forth, we agree with the finding of respondent court that petitioner is guilty of direct contempt of court.

The Motion for Reconsideration filed by petitioner with the respondent court contained a serious allegation that Judge Gingoyon has been communicating with the defendant off the record, which is considered as a grave offense. This allegation is unsubstantiated and totally bereft of factual basis. In fact, when asked to adduce proof of the allegation, petitioner was not able to give any, but repeatedly argued that it is his "fair observation or conclusion."[29]

Petitioner vehemently stood by his suspicion and repeated the allegation in the Compliance to the show-cause Order dated November 11, 2005 which he filed with the respondent court. The allegation was repeated despite Judge Gingoyon's outright denial of communicating with the defendant and explanation in the Order[30] dated November 25, 2005 that Judge Gingoyon was familiar with the area as he was detailed in Pasay City since 1991 as State Prosecutor, and thereafter, as judge since 1997.

Instead of showing proof of the alleged communication between Judge Gingoyon and the defendant off the record, petitioner stubbornly insisted that there is nothing contumacious about his allegation against the Judge as he was just giving his *fair* and *logical* observation. Clearly, petitioner openly accused Judge Gingoyon of wrongdoing without factual basis. Suffice it to say that this accusation is a dangerous one as it exposes Judge Gingoyon to severe reprimand and even removal from office.

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[28] *Wicker v. Hon. Arcangel*, 322 Phil. 476, 483 (1996), citing *Ang v. Judge Castro*, 221 Phil. 149, 153 (1985) and *Atty. Ante v. Judge Pascua*, 245 Phil. 745 (1988).

[29] *Rollo*, pp. 83-89.

[30] *Id.* at 12-14.

On the other hand, a careful perusal of the description as provided by Judge Gingoyon in the Decision shows but a general description of what is normally seen and what normally happens in places such as Edang Street, to wit: *"x x x place is bursting with people most of whom live in cramped tenements with no place to spare for recreation, to laze around or [do] their daily household chores x x x. The alleys become the grounds where children run around and play, the venue where adults do all sorts of things to entertain [themselves] or pass the time, their wash area or even a place to cook food in x x x. Ambulant vendors who display their wares in the alley and their customers that mill around them; x x x children chasing each other, dodging and [ducking] from awnings or canopies; x x x clotheslines full of dripping clothes that encroach [on] the alleys x x x."*[31]

The act of petitioner in openly accusing Judge Gingoyon of communicating with the defendant off the record, without factual basis, brings the court into disrepute. The accusation in the Motion for Reconsideration and the Compliance submitted by the petitioner to the respondent court is derogatory, offensive and malicious. The accusation taints the credibility and the dignity of the court and questions its impartiality. It is a direct affront to the integrity and authority of the court, subjecting it to loss of public respect and confidence, which ultimately affects the administration of justice.

Furthermore, assuming that the conclusion of petitioner is justified by the facts, it is still not a valid defense in cases of contempt. "Where the matter is abusive or insulting, evidence that the language used was justified by the facts is not admissible as a defense. Respect for the judicial office should always be observed and enforced."[32]

Moreover, the charge of partiality is uncalled for, and there being no scintilla of proof that Judge Gingoyon did the act

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

[32] *Salcedo v. Hernandez*, 61 Phil. 724, 729 (1935), citing *In re Stewart,* 118 La., 827; 43 S., 455.

complained of, petitioner's act amounts to direct contempt of court.[33]

Denial of the Ex-Parte Motion to Post Bond and Quash Warrant of Arrest is proper; there is no abuse of discretion on the part of respondent court.

Petitioner avers that the respondent court abused its discretion in denying his *Ex-Parte* Motion. Petitioner insists that the respondent court should have granted his *Ex-Parte* Motion since he already filed a Petition for *Certiorari* before this Court pursuant to Rule 71 of the Rules of Court. He further avers that respondent court violated his right to due process by fixing the bond only on December 5, 2005 or 10 days after the Orders of contempt and arrest were issued.

Petitioner's contention lacks merit.

The respondent court was well within the bounds of its authority when it denied petitioner's *Ex-Parte* Motion.

A person may be adjudged in direct contempt of court pursuant to Section 1, Rule 71 of the Rules of Court[34] without need of a hearing but may thereafter avail of the remedies of *certiorari* or prohibition.[35]

Section 2, Rule 71 of the Rules of Court provides:

Section 2. *Remedy therefrom.* — The person adjudged in direct contempt by any court may not appeal therefrom, but may avail

[33] *Malolos v. Hon. Reyes*, 111 Phil. 1113 (1961).

[34] Section 1. *Direct contempt punished summarily.* A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be the Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day, or both, if it be a lower court.

[35] Rules of Court, Rule 71, Section 2.

himself of the remedies of *certiorari* or prohibition. *The execution of the judgment shall be suspended pending resolution of such petition, provided such person files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.* (Emphasis supplied.)

In this case, we find that the respondent court properly denied petitioner's *Ex-Parte* Motion there being no proof that he already filed a petition for *certiorari*. Notably, the *Ex-Parte* Motion was filed with the respondent court on December 1, 2005 at 10:00 A.M.[36] and therein petitioner stated that he already filed a Petition for *Certiorari* with this Court. However, perusal of the records would show that the Petition for *Certiorari* was filed with the Supreme Court on the same day but at 1:06 P.M.[37] Clearly, when the motion was filed with the respondent court, it cannot be accurately said that a petition for *certiorari* was already duly filed with this Court. Significantly, the records show that respondent court was furnished a copy of the Petition for *Certiorari* by registered mail and which was received only on December 5, 2005.[38] It is therefore clear that at the time that petitioner filed the *Ex-Parte* Motion with the respondent court, he has not yet availed of the remedy of *certiorari*. In fact, it was only *after* filing the *Ex-Parte* Motion with respondent court that petitioner filed the Petition for *Certiorari* with the Supreme Court. This explained why no proof of such filing was presented by petitioner to the respondent court thus prompting it to declare that unless petitioner has shown proof of filing said petition for *certiorari*, he cannot avail of the remedy provided in Section 2, Rule 71 of the Rules of Court.[39] Petitioner thus cannot attribute abuse of discretion on the part of respondent court in denying the *Ex-Parte* Motion. To reiterate, at the time the said *Ex-Parte* Motion was filed and acted upon by the

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[36] See the RTC's stamped receipt on the motion, records, p. 320.

[37] See the Supreme Court's stamped receipt on the petition, *rollo*, p. 3.

[38] See the RTC's stamped receipt on a copy of the petition, records, p. 328.

[39] *Id.* at 327.

respondent court, petitioner was not yet entitled to the remedy prayed for. Clearly, the respondent court did not commit error, nor did it overstep its authority in denying petitioner's *Ex-Parte* Motion.

All told, we take a similar stand as Judge Gingoyon and affirm the Order adjudging petitioner guilty of direct contempt. However, as to the penalty imposed upon petitioner, we find the fine of ₱2,000.00 commensurate with the acts committed.

We also find the necessity to emphasize strict observance of the hierarchy of courts. "A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ('inferior') courts should be filed with the [RTC], and those against the latter, with the Court of Appeals (CA). A direct invocation of the Supreme Court's original jurisdiction to issue extraordinary writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition."[40] For the guidance of the petitioner, "[t]his Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus, quo warranto, habeas corpus* and injunction) is not exclusive."[41] Its jurisdiction is concurrent with the CA, and with the RTC in proper cases.[42] "However, this concurrence of jurisdiction does not grant upon a party seeking any of the extraordinary writs the absolute freedom to file his petition with the court of his choice. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition."[43] Unwarranted demands upon this Court's attention must be prevented to allow time and devotion for pressing matters within its exclusive jurisdiction.

Adhering to the policy on judicial hierarchy of courts, "[w]here the issuance of an extraordinary writ is also within the competence of the [CA] or a [RTC], it is in either of these courts that the

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[40] *People v. Cuaresma*, 254 Phil. 418, 427 (1989).

[41] *Id.* at 426.

[42] *Ouano v. PGTT International Investment Corp.*, 434 Phil. 28, 34 (2002).

[43] *Id.*, citing *Vergara, Sr. v. Judge Suelto*, 240 Phil. 719, 732 (1987).

specific action for the writ's procurement must be presented."[44] In consequence, the instant petition should have been filed with the CA as there is no allegation of any special or compelling reason to warrant direct recourse to this Court. However, to avoid further delay, we deem it practical to resolve the controversy.

Finally, it must be pointed out that on April 28, 2010, we directed petitioner to cause the entry of appearance of his counsel[45] within 15 days from notice. Petitioner failed to comply hence we directed him to show cause why he should not be disciplinarily dealt with in our Resolution dated September 6, 2010.[46] Still, petitioner failed to comply hence he was fined ₱1,000.00 in our Resolution dated January 17, 2011[47] which was increased to ₱3,000.00 in our Resolution of June 29, 2011. Consequently, petitioner is hereby directed to pay said fine of ₱3,000.00 otherwise he would be dealt with more severely.

WHEREFORE, the Petition for *Certiorari* is *DISMISSED*. The Order dated November 25, 2005 of Branch 117 of the Regional Trial Court of Pasay City finding petitioner Ferdinand A. Cruz guilty of direct contempt is *AFFIRMED with MODIFICATION*. Petitioner is hereby sentenced to pay a fine of ₱2,000.00. In addition, petitioner is ordered to *PAY* a fine of ₱3,000.00 for his repeated failure to heed the directives of this Court. Petitioner is *STERNLY WARNED* that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), Bersamin, Perez,[*] and *Mendoza,*[**] *JJ.,* concur.

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[44] *Vergara, Sr. v. Judge Suelto*, 240 Phil. 719, 733 (1987).

[45] *Rollo,* p. 121.

[46] *Id.* at 123.

[47] *Id.* at 124.

[*] In lieu of Associate Justice Martin S. Villarama, Jr., per Special Order No. 1080 dated September 13, 2011.

[**] In lieu of Chief Justice Renato C. Corona, per Special Order No. 1093 dated September 21, 2011.

FIRST DIVISION

[G.R. No. 177729. September 28, 2011]

PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION (now TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES), *petitioner, vs.* **AMALGAMATED MANAGEMENT AND DEVELOPMENT CORPORATION, FELIMON R. CUEVAS, AND JOSE A. SADDUL, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; RECORD OF PRE-TRIAL; RULE THAT ISSUES IN TRIAL LIMITED TO THOSE DEFINED IN PRE-TRIAL ORDER, MAY INCORPORATE ISSUES IMPLIEDLY INCLUDED; CASE AT BAR. — It is true that the issues to be tried between the parties in a case shall be limited to those defined in the pre-trial order, as Section 7, Rule 18 of the *Rules of Court* explicitly provides: x x x However, a pre-trial order is not intended to be a detailed catalogue of each and every issue that is to be taken during the trial, for it is unavoidable that there are issues that are *impliedly included* among those listed or that may be *inferable from those listed by necessary implication* which are as much integral parts of the pre-trial order as those expressly listed. At any rate, it remains that the petitioner impleaded Cuevas and Saddul as defendants, and adduced against them evidence to prove their liabilities. With Cuevas and Saddul being parties to be affected by the judgment, it was only appropriate for the RTC to inquire into and determine their liability for the purpose of arriving at a complete determination of the suit. Thereby, the RTC acted in conformity with the avowed reason for which the courts are organized, which was to put an end to controversies to decide the questions submitted by the litigants, and to settle the rights and obligations of the parties.

2. CIVIL LAW; OBLIGATION AND CONTRACTS; SOLIDARY OBLIGATION; ANY OF THE SOLIDARY OBLIGORS

MAY BE COMPELLED TO PERFORM THE ENTIRE OBLIGATION. — A solidary obligation existed among AMDC, Cuevas and Saddul because they had assented to be jointly and severally liable to the petitioner for whatever damages or liabilities that it might incur by virtue of the guaranty. In a solidary obligation, each debtor was liable for the entire obligation. The petitioner could compel any of the solidary obligors to perform the entire obligation.

3. ID.; ID.; DELAY IN OBLIGATION INCURRED FROM THE TIME DEMAND OF FULFILLMENT WAS MADE; DEMAND PRESENT WHEN COMPLAINT FOR DEFICIENCY CLAIM WAS FILED. — In the deed of undertaking, Cuevas and Saddul bound themselves to reimburse or to pay to the petitioner their obligation under the guaranty upon the latter's demand. The *Civil Code* provides that the obligor incurs in delay from the time the obligee *judicially* or *extrajudicially* demands the fulfillment of the obligation. x x x It is noted that the petitioner's complaint to recover its deficiency claim from obligors AMDC, Cuevas and Saddul, being a judicial demand, sufficed to render Cuevas and Saddul in delay in the payment of the deficiency claim.

4. ID.; PRESCRIPTION OF ACTIONS; PRESCRIPTIVE PERIOD OF TEN YEARS FOR DEFICIENCY CLAIM RECKONED FROM THE DATE OF FORECLOSURE OF PROPERTY MORTGAGED. — There is no dispute that the prescriptive period of the petitioner's deficiency claim is ten years under Article 1144 of the *Civil Code*. What remains in issue was the date when the prescriptive period began to run. The petitioner submits that the 10-year period should be reckoned from the date of the foreclosure. The petitioner is correct. In *Quirino Gonzales Logging Concessionaire v. Court of Appeals*, we have ruled that the 10-year period to recover a deficiency claim starts to run upon the foreclosure of the property mortgaged, *viz*: x x x [T]he Bank seeks the recovery of the deficient amount of the obligation after the foreclosure of the mortgage. Such suit is in the nature of a mortgage action because its purpose is precisely to enforce the mortgage contract. A mortgage action prescribes after ten years from the time the right of action accrued. The law gives the mortgagee the right to claim for the deficiency resulting from the price obtained in the sale of the property at public auction and the outstanding

obligation at the time of the foreclosure proceedings**. In the present case, the Bank, as mortgagee, had the right to claim payment of the deficiency after it had foreclosed the mortgage**. x x x No other conclusion can be reached even if the suit is considered as **one upon a written contract or upon an obligation to pay the deficiency which is created by law, the prescriptive period of both being also ten years.**

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS WITH A PENAL CLAUSE; COURT MAY REDUCE UNREASONABLE INTEREST RATES AND PENALTY CHARGES. — In contracts, the law empowers the courts to reduce interest rates and penalty charges that are iniquitous, unconscionable and exorbitant. Whether an interest rate or penalty charge is reasonable or excessive is addressed to the sound discretion of the courts. In determining what is iniquitous and unconscionable, courts must consider the circumstances of the case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jose M. Suratos, Jr. for AMDC and F. Cuevas.
Eduardo R. Robles for J. Saddul, Jr.

D E C I S I O N

BERSAMIN, *J.*:

The matter for resolution refers to the liability of persons who agree to be jointly and solidarily liable with the main obligor.

In its decision rendered on April 30, 2007 in C.A.-G.R. CV No. 78427,[1] the Court of Appeals (CA) affirmed the decision dated December 27, 2002 of the Regional Trial Court (RTC), Branch 148, in Makati City in Civil Case No. 94-638,[2] absolving

[1] *Rollo*, pp. 37-50; penned by Associate Justice Enrico A. Lanzanas (retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Rosalinda Asuncion-Vicente, concurring.

[2] *Id.*, pp. 145-160.

the co-obligors. Not satisfied with the result, the petitioner is now before us to assail the CA's decision.

Antecedents

The petitioner, formerly the Philippine Export and Foreign Loan Guarantee Corporation but now known as the Trade and Investment Development Corporation of the Philippines, is a government-owned and controlled-corporation created by virtue of Presidential Decree No. 1080, as amended by Republic Act No. 8497. Its primary purpose is to guarantee the foreign loans, in whole or in part, granted to any domestic entity, enterprise, or corporation, majority of the capital of which is owned by Filipino citizens.

Respondent Amalgamated Management and Development Corporation (AMDC), a domestic corporation, had as its main business the hauling of different commodities within the Middle East countries. Its co-respondents Felimon R. Cuevas (Cuevas) and Jose A. Saddul, Jr. (Saddul) were, respectively, its President and Vice-President.[3]

In early 1982, AMDC obtained from the National Commercial Bank of Saudi Arabia (NCBSA) a loan amounting to SR3.3 million (equivalent to ₱9,000,000.00) to finance the working capital requirements and the down payment for the trucks to be used in AMDC's hauling project in the Middle East. On April 23, 1982, the petitioner issued a letter of guaranty in favor of NCBSA as the lending bank upon the request of AMDC.[4] As the security for the guaranty, Amalgamated Motors Philippines Incorporated (AMPI), a sister company of AMDC, acted as an accommodation mortgagor, and executed in favor of the petitioner a real estate mortgage over two parcels of land located in Dasmariñas, Cavite and covered by Transfer Certificate of Title (TCT) No. 119031 and TCT No.119032 of the Registry of Deeds of Cavite.[5] AMDC also executed in favor of the petitioner a

[3] *Id.*, p. 10.

[4] *Id.*, p. 162.

[5] *Id.* pp. 69-70; Cuevas and Saddul signed the real estate mortgage as President and Vice-President, respectively, of AMPI.

deed of undertaking dated April 21, 1982,[6] with Cuevas and Saddul as its co-obligors. In the deed of undertaking, AMDC, Cuevas, and Saddul jointly and severally bound themselves to pay to the petitioner, as obligee, whatever damages or liabilities that the petitioner would incur by reason of the guaranty.

AMDC defaulted on the obligation. Upon demand, the petitioner paid the obligation to NCBSA. By subrogation and pursuant to the Deed of Undertaking, the petitioner then demanded that AMDC, Cuevas and Saddul should pay the obligation, but its demand was not complied with. Hence, it extra-judicially foreclosed the real estate mortgage.[7] The Provincial Sheriff of Cavite conducted a public auction, in which the petitioner acquired the mortgaged properties as the highest bidder for ₱4,688,482.00 (TCT No. 119031) and ₱69,518.00 (TCT No. 119032).[8]

On the premise that the proceeds of the foreclosure sale were not sufficient to cover the guaranty because a balance of ₱45,839,219.95 plus interest and other charges remained unpaid, the petitioner sued AMDC, Cuevas and Saddul in the RTC to collect the deficiency.[9]

In a consolidated answer,[10] AMDC and Cuevas admitted the existence of the real estate mortgage and deed of undertaking, but raised defenses, as follows: (*a*) that they did not receive from the petitioner any demand for the payment of the loan; (*b*) that the interests, penalties, fees, charges, and attorney's fees were usurious, exorbitant, unconscionable, and in violation of law; (*c*) that the value of the foreclosed properties was more than sufficient to pay the loan; (*d*) that the deficiency claim was unconscionable and unilaterally computed by the petitioner; and (*e*) that they made several payments to the petitioner in the form of rental or otherwise.

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[6] *Id.,* pp. 164-166.

[7] *Id.,* pp. 101-102.

[8] *Id.,* p. 15.

[9] *Id.,* pp. 57-66.

[10] *Id.,* pp. 133-137.

For his part, Saddul submitted a separate answer,[11] averring that he was not liable to the petitioner for any amount because he did not benefit from the guaranty; that the deed of undertaking was unenforceable for being executed without any consideration; and that the petitioner did not notify him that AMDC had incurred in delay in the payment of the obligation.

Saddul averred a cross-claim against AMDC.

AMDC, Cuevas, and Saddul all sought the dismissal of the complaint.

Ruling of the RTC

After trial, the RTC rendered its decision on December 27, 2002,[12] decreeing thusly:

> WHEREFORE, premises considered judgment is hereby rendered in favor of the plaintiff and against defendant AMDC. Defendants Cuevas and Saddul are hereby rendered absolved from the obligation as well as from the deficiency claim as a consequence, the case against them is hereby dismissed. The cross-claim of defendant/cross-claimant defendant Saddul against defendant AMDC is hereby dismissed for lack of sufficient basis to grant the same.
>
> Defendant AMDC is hereby ordered to pay the plaintiff the following:
>
> (1) The amount ₱45,839,219.25 as of March 31, 1993, representing deficiency claim;
>
> (2) The accruing interest of 6% *per annum* from April 1, 1993 until deficiency claim is fully paid.
>
> (3) The accruing penalty charge of 6% *per annum* from April 1, 1993 until deficiency claim is fully paid.
>
> (4) ₱4,583,921.92 represents attorney's fees equivalent to 10% of the deficiency claim.
>
> (5) Costs of suit.
>
> SO ORDERED.

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[11] *Id.*, pp. 138-142.

[12] *Supra*, note 2, p. 160.

Ruling of the CA

The petitioner appealed to the CA, asserting that Cuevas and Saddul should be held jointly and severally liable with AMDC on its deficiency claim; and that the rates of interest and penalty charges on the deficiency claim should each be at 16% *per annum* instead of only 6% *per annum*.

On April 30, 2007, the CA promulgated its assailed decision,[13] *viz*:

> Time and again, We stress the well-settled rule that findings of fact of the trial court as well as its calibration of the evidence of parties, its assessment of the credibility and probative weight of the witnesses, and its conclusion based on its findings are accorded by the appellate court with high respect, if not conclusive effect. In fine, findings of the trial court should not be disturbed on appeal, unless some facts or circumstances of substance and value have been overlooked which, if considered, might well affect the result of the case.
>
> In the extant case, We do not find any fact or circumstance which if considered, might affect the result of the case.
>
> WHEREFORE, premises considered, the judgment of the Regional Trial Court dated December 27, 2002 is hereby AFFIRMED *in toto*.
>
> SO ORDERED.

Issues

Hence, the petitioner appeals, raising the following issues, to wit:

(1) Whether the CA erred in affirming the RTC's ruling that Cuevas and Saddul were absolved of personal liability on the petitioner's deficiency claim;

(2) Whether the CA erred in ruling that Cuevas and Saddul had not been notified of the guaranty period extension, and had been thereby exonerated from liability on the deficiency claim;

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[13] *Supra*, note 1.

(3) Whether the CA erred in holding that Cuevas and Saddul did not receive any demand letter from the petitioner;

(4) Whether the CA erred in finding that the petitioner's claim against Cuevas and Saddul, Jr. had already prescribed; and

(5) Whether the CA erred in declaring that AMDC was liable to pay interest and penalty charge at the rate of only 6% *per annum* instead of 16% *per annum*.[14]

Ruling

The appeal is partly meritorious.

I
Pre-trial order is not exclusive about the issues to be resolved by the trial court

The petitioner posits that based on the RTC's pre-trial order,[15] the only issue to be resolved was whether there was a deficiency claim after the foreclosure of the real estate mortgage; that the liability of Cuevas and Saddul on the deficiency claim was already an admitted fact under the pre-trial order; and that the RTC improperly considered and determined their liability.[16]

The Court cannot sustain the petitioner's position.

The pre-trial order nowhere stated that Cuevas and Saddul already admitted their liability on the petitioner's deficiency claim. Their admission appearing in the pre-trial order referred only to the fact that they and AMDC had received advances in large amounts from the petitioner, and that the real estate mortgage securing the loan had already been foreclosed.

Whether Cuevas and Saddul were liable on the deficiency claim was proper for the ascertainment and determination by the RTC as the trial court and the CA as the appellate tribunal,

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[14] *Supra*, note 1, pp. 16-17.

[15] *Rollo*, pp. 143-144.

[16] *Id.*, pp. 19-20.

notwithstanding the silence of the pre-trial order on it, because such issue was deemed necessarily included in or inferred from the stated issue of whether there was a deficiency still to be paid by AMDC, Cuevas and Saddul.

It is true that the issues to be tried between the parties in a case shall be limited to those defined in the pre-trial order, as Section 7, Rule 18 of the *Rules of Court* explicitly provides:

> Section 7. *Record of pre-trial*. — The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. **Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice**. (5a, R20)

However, a pre-trial order is not intended to be a detailed catalogue of each and every issue that is to be taken during the trial, for it is unavoidable that there are issues that are *impliedly included* among those listed or that may be *inferable from those listed by necessary implication* which are as much integral parts of the pre-trial order as those expressly listed.[17]

At any rate, it remains that the petitioner impleaded Cuevas and Saddul as defendants, and adduced against them evidence to prove their liabilities. With Cuevas and Saddul being parties to be affected by the judgment, it was only appropriate for the RTC to inquire into and determine their liability for the purpose of arriving at a complete determination of the suit. Thereby, the RTC acted in conformity with the avowed reason for which the courts are organized, which was to put an end to controversies, to decide the questions submitted by the litigants, and to settle the rights and obligations of the parties.[18]

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[17] See *Velasco v. Apostol*, G.R. No. 44588, May 9, 1989, 173 SCRA 228, 232.

[18] *Arnedo v. Llorente and Liongson*, 18 Phil. 257 (1911).

II
Notice on the guaranty period extension

The petitioner insists that Cuevas and Saddul were liable on the deficiency claim despite the lack of notice to them about the extension of the guaranty.

The insistence of the petitioner has merit.

To start with, the records indicate that on several occasions, Cuevas and Saddul, as President and Vice-President, respectively, of AMDC, separately wrote to the petitioner to request the extension of the guaranty period because AMDC could not pay the obligation on its due date;[19] and that the petitioner granted each request and correspondingly sent letters to NCBSA informing it of the extensions of the guaranty period.[20] The letters granting the requests for extension of the guaranty period bore the approval and signatures of Cuevas and Saddul as President and Vice-President, respectively, of AMDC.[21] Having thus admitted their letters on the extension of the guaranty period, Cuevas and Saddul could not anymore feign ignorance of the guaranty extension.

Moreover, the deed of undertaking specifically stated that the grant of the extension of the guaranty period did not extinguish or diminish the obligation of Cuevas and Saddul under the guaranty.[22] Hence, whether or not the guaranty period was extended, and whether or not they were notified of the extension, Cuevas and Saddul remained liable under the guaranty. The stipulation, which was not illegal or immoral, necessarily bound Cuevas and Saddul. It is worth noting, too, that a solidary obligation existed among AMDC, Cuevas and Saddul because they had assented to be jointly and severally liable to the petitioner for whatever damages or liabilities that it might incur by virtue

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[19] Records, Vol. I, pp. 283-285 & 295-297.

[20] *Id.,* pp. 286-292.

[21] *Id.*

[22] *Rollo,* p. 78.

of the guaranty.[23] In a solidary obligation, each debtor was liable for the entire obligation.[24] The petitioner could compel any of the solidary obligors to perform the entire obligation.

III
Demand to pay the deficiency claim

The petitioner claims that it made a demand on Cuevas and Saddul to pay the deficiency claim,[25] but they still deny the claim.

The petitioner's claim is upheld.

In the deed of undertaking, Cuevas and Saddul bound themselves to reimburse or to pay to the petitioner their obligation under the guaranty upon the latter's demand.[26] The *Civil Code* provides that the obligor incurs in delay from the time the obligee *judicially* or *extrajudicially* demands the fulfillment of the obligation, *viz*:

> Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
>
> However, the demand by the creditor shall not be necessary in order that delay may exist:
>
> (1) When the obligation or the law expressly so declares; or
>
> (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
>
> (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.
>
> In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with

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[23] *Id.*, p. 164.

[24] *Cerezo v. Tuazon*, G.R. No. 141538, March 23, 2004, 426 SCRA 167, 186.

[25] *Rollo*, pp. 22-23.

[26] *Id.*, p. 78.

what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (1100a)

It is noted that the petitioner's complaint to recover its deficiency claim from obligors AMDC, Cuevas and Saddul, being a judicial demand, sufficed to render Cuevas and Saddul in delay in the payment of the deficiency claim.

IV

When prescriptive period for the deficiency claim began to run

There is no dispute that the prescriptive period of the petitioner's deficiency claim is ten years under Article 1144 of the *Civil Code*.[27] What remains in issue was the date when the prescriptive period began to run. The petitioner submits that the 10-year period should be reckoned from the date of the foreclosure.[28]

The petitioner is correct.

In *Quirino Gonzales Logging Concessionaire v. Court of Appeals*,[29] we have ruled that the 10-year period to recover a deficiency claim starts to run upon the foreclosure of the property mortgaged, *viz*:

> With respect to the first to the fifth causes of action, as can be gleaned from the complaint, the Bank seeks the recovery of the deficient amount of the obligation after the foreclosure of the mortgage. Such suit is in the nature of a mortgage action because its purpose is precisely to enforce the mortgage contract. A mortgage action prescribes after ten years from the time the right of action accrued.
>
> The law gives the mortgagee the right to claim for the deficiency resulting from the price obtained in the sale of the property at public auction and the outstanding obligation at the time of the foreclosure

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[27] Article 1144. The following actions must be brought within ten years from the time the right of action accrues: (1) Upon a written contract; (2) Upon an obligation created by law; and (3) Upon a judgment.

[28] *Rollo*, pp. 24-26.

[29] G.R. No. 126568, April 30, 2003, 402 SCRA 181.

proceedings**. In the present case, the Bank, as mortgagee, had the right to claim payment of the deficiency after it had foreclosed the mortgage in 1965**. **In other words, the prescriptive period started to run against the Bank in 1965**. As it filed the complaint only on January 27, 1977, more than ten years had already elapsed, hence, the action on its first to fifth causes had by then prescribed. No other conclusion can be reached even if the suit is considered as **one upon a written contract or upon an obligation to pay the deficiency which is created by law, the prescriptive period of both being also ten years** (citing Article 1144 of the Civil Code). (emphasis supplied)[30]

In view of the real property mortgage having been foreclosed on February 22, 1988 and March 24, 1988,[31] the petitioner's filing on February 17, 1994 of its complaint to recover the deficiency claim was well within the 10-year prescriptive period.

V

Rate of interest and penalty charge

The petitioner submits that the interest rate and penalty charge on the amount of the deficiency claim should each be 16% *per annum*, not 6% *per annum*, as the RTC and CA both ruled.[32]

We do not subscribe to the petitioner's submission.

In contracts, the law empowers the courts to reduce interest rates and penalty charges that are iniquitous, unconscionable and exorbitant.[33] Whether an interest rate or penalty charge is

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[30] *Id.,* p. 190.

[31] *Rollo,* pp. 101-102.

[32] *Id.*

[33] See Article 1229 of the *Civil Code*, to wit:

Article 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. **Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable**.

See also *Palmares v. Court of Appeals*, G.R. No. 126490, March 31, 1998, 288 SCRA 422, 445: *Asia Trust Development Bank v. Concepts Trading Corporation,* G.R. No. 130759, June 20, 2003 404 SCRA 449, 461: *Filinvest*

reasonable or excessive is addressed to the sound discretion of the courts. In determining what is iniquitous and unconscionable, courts must consider the circumstances of the case.[34]

Although the market value of the two parcels of land at the time of the foreclosure sale and acquisition by the petitioner totaled ₱15,225,000.00,[35] the parcels were sold to the petitioner for only ₱4,758,000.00, a price much lower than the market value. The huge disparity between the market value and the price realized at the foreclosure sale obviously gave a clear financial advantage to the petitioner, and this did not escape the attention of both the RTC and the CA. The disparity became more defined considering that the original amount of the guaranteed obligation was only ₱9,000,000.00. These circumstances notwithstanding, the RTC and the CA still granted the petitioner's deficiency claim for ₱45,839,219.95, plus interest and attorney's fees. In view of these, to still fix the interest rate and penalty charge at 16% *per annum* each would be plainly inequitable and oppressive. The Court agrees with the CA and the RTC that reducing the interest rate and penalty charge from 16% *per annum* to 6% *per annum* was justified.

WHEREFORE, we *AFFIRM* the decision the Court of Appeals promulgated on April 30, 2007, subject to the *MODIFICATION* that respondents *FELIMON R. CUEVAS* and *JOSE A. SADDUL, JR.* are *DECLARED* jointly and solidarily liable with *AMALGAMATED MANAGEMENT AND DEVELOPMENT CORPORATION* on the petitioner's deficiency claim, interest, penalty charges, and attorney's fees.

Land, Inc. v. Court of Appeals, G.R. No. 138980, September 20, 2005, 470 SCRA 260, 274: *Segovia Development Corporation v. J. L. Dumatol Realty and Development Corporation*, G.R. No. 141283, August 30, 2001, 364 SCRA 159, 169: *Patron v. Union Bank of the Philippines*, G.R. No. 177348, October 17, 2008, 569, 738, 746: *Diño v. Jardines*, G.R. No. 145871 January 31, 2006 481 SCRA 226, 238, *Florentino v. Supervalue Inc*., G.R. No. 172384, September 12, 2007, 533 SCRA 156, 167, 168.

[34] *Land Bank of the Philippines v. David*, G.R. No. 176344, 563 SCRA 172, 177-178.

[35] Records, Volume II, p. 430.

The respondents shall pay the costs of suit.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), del Castillo, Perez,[*] and *Mendoza,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 180006. September 28, 2011]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FORTUNE TOBACCO CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PRINCIPLE OF *STARE DECISIS*; APPLIED IN CASE AT BAR. — Except for the tax period and the amounts involved, the case at bar presents the same issue that the Court already resolved in 2008 in *CIR v. Fortune Tobacco Corporation.* In the 2008 *Fortune Tobacco* case, the Court upheld the tax refund claims of Fortune Tobacco after finding invalid the proviso in Section 1 of RR 17-99. x x x Following the principle of *stare decisis*, our ruling in the present case should no longer come as a surprise. The proviso in Section 1 of RR 17-99 clearly went beyond the terms of the law it was supposed to implement, and therefore entitles Fortune Tobacco to claim a refund of the overpaid excise taxes collected pursuant to this provision. The amount involved in the present case and the CIR's firm insistence of its arguments

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[*] Vice Associate Justice Martin S. Villarama, per Special Order No. 1080 dated September 13, 2011.

[**] Vice Chief Justice Renato C. Corona, per Special Order No. 1093 dated September 21, 2011.

nonetheless compel us to take a second look at the issue, but our findings ultimately lead us to the same conclusion. Indeed, we find more reasons to disagree with the CIR's construction of the law than those stated in our 2008 *Fortune Tobacco* ruling, which was largely based on the application of the rules of statutory construction.

2. TAXATION LAW; 1997 TAX CODE; RA 8240 INCORPORATED AS SECTION 145 THEREIN; SHIFT FROM *AD VALOREM* TO SPECIFIC TAXES NOT INTENDED SOLELY TO RAISE GOVERNMENT REVENUES. — That RA 8240 (incorporated as Section 145 of the 1997 Tax Code) was enacted to raise government revenues is a given fact, but this is not the sole and only objective of the law. Congressional deliberations show that the shift from *ad valorem* to specific taxes introduced by the law was also intended to curb the corruption that became endemic to the imposition of *ad valorem* taxes. Since *ad valorem* taxes were based on the value of the goods, the prices of the goods were often manipulated to yield lesser taxes. The imposition of specific taxes, which are based on the volume of goods produced, would prevent price manipulation and also cure the unequal tax treatment created by the skewed valuation of similar goods.

3. ID.; THAT TAXATION SHOULD BE UNIFORM AND EQUITABLE, VIOLATED WHEN SECTION 1 OF RR 17-99 APPLIED IN CERTAIN CASES. — The Constitution requires that taxation should be uniform and equitable. Uniformity in taxation requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities. This requirement, however, is unwittingly violated when the proviso in Section 1 of RR 17-99 is applied in certain cases.

4. ID.; 1997 TAX CODE; SECTION 145(C); HIGHER TAX RULE; NOT APPLICABLE TO CIGARS, DISTILLED SPIRITS, WINES AND FERMENTED LIQUORS UNDER THE PROVISO IN SECTION 1 OF RR 17-99. — The CIR claims that the ***proviso* in Section 1 of RR 17-99** was patterned after the third paragraph of Section 145(c) of the 1997 Tax Code. Since the law's intent was to increase revenue, it found no reason not to apply the same "higher tax rule" to excise taxes due *after* the transition period despite the absence of a

> similar text in the wording of Section 145(c). What the CIR misses in his argument is that he applied the rule not only for cigarettes, but also for cigars, distilled spirits, wines and fermented liquors: x x x When the pertinent provisions of the 1997 Tax Code imposing excise taxes on these products are read, however, there is nothing similar to the third paragraph of Section 145(c) that can be found in the provisions imposing excise taxes on distilled spirits (Section 141) and wines (Section 142). In fact, the rule will also not apply to cigars as these products fall under Section 145(a). Evidently, the 1997 Tax Code's provisions on excise taxes have omitted the adoption of certain tax measures. To our mind, these omissions are telling indications of the intent of Congress **not** to adopt the omitted tax measures; they are not simply unintended lapses in the law's wording that, as the CIR claims, are nevertheless covered by the spirit of the law. Had the intention of Congress been solely to increase revenue collection, a provision similar to the third paragraph of Section 145(c) would have been incorporated in Sections 141 and 142 of the 1997 Tax Code. This, however, is not the case. We note that Congress was not unaware that the "higher tax rule" is a proviso that should ideally apply to the increase after the transition period (as the CIR embodied in the proviso in Section 1 of RR 17-99).

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Angelo Raymundo Q. Valencia Jonathan, Andrew D. Lim and *Cecilio E. Dela Cruz* for respondent.

D E C I S I O N

BRION,[*] *J.*:

Before the Court is a petition for review on *certiorari* filed under Rule 45 of the Rules of Court by petitioner Commissioner of Internal Revenue (*CIR*), assailing the decision dated July

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[*] Designated as Acting Chairperson in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1083 dated September 13, 2011.

12, 2007[1] and the resolution dated October 4, 2007,[2] both issued by the Court of Tax Appeals (*CTA*) *en banc* in CTA E.B. No. 228.

BACKGROUND FACTS

Under our tax laws, manufacturers of cigarettes are subject to pay excise taxes on their products. Prior to January 1, 1997, the excises taxes on these products were in the form of *ad valorem* taxes, pursuant to Section 142 of the 1977 National Internal Revenue Code (*1977 Tax Code*).

Beginning January 1, 1997, Republic Act No. (*RA*) 8240[3] took effect and a shift from *ad valorem* to specific taxes was made. Section 142(c) of the 1977 Tax Code, as amended by RA 8240, reads in part:

> Sec. 142. *Cigars and cigarettes.* — x x x.
>
> (c) Cigarettes packed by machine. — There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:
>
> (1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱10.00) per pack, the tax shall be Twelve pesos (₱12.00) per pack;
>
> (2) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack, the tax shall be Eight pesos (₱8.00) per pack;
>
> (3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six pesos and fifty centavos (₱6.50) per pack, the tax shall be Five pesos (₱5.00) per pack;

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[1] Penned by CTA Justice Juanito C. Castañeda, Jr., and concurred in by CTA Justices Lovell R. Bautista, Erlina P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez; *rollo*, pp. 41-54. CTA Presiding Justice Ernesto D. Acosta dissented from the majority; *id.* at 55-63.

[2] *Id.* at 64-66. CTA Justice Ernesto D. Acosta reiterated his dissent from the majority opinion; *id.* at 67-70.

[3] An Act Amending Sections 138, 139, 140 and 142 of the National Internal Revenue Code, as amended, and For Other Purposes.

(4) If the net retail price (excluding the excise tax and the [value]-added tax) is below Five pesos (₱5.00) per pack, the tax shall be One peso (₱1.00) per pack.

x x x x x x x x x

The specific tax from any brand of cigarettes within the next three (3) years of effectivity of this Act shall not be lower than the tax [which] is due from each brand on October 1, 1996: Provided, however, That in cases where the specific tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

x x x x x x x x x

The rates of specific tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000. [emphases ours]

To implement RA 8240 and pursuant to its rule-making powers, the CIR issued Revenue Regulation No. (*RR*) 1-97 whose Section 3(c) and (d) echoed the above-quoted portion of Section 142 of the 1977 Tax Code, as amended.[4]

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[4] SEC. 3. *Rates and Bases of Tax*. – There shall be levied, assessed and collected on cigars and cigarettes excise tax as follows:

(c) Cigarettes Packed by Machine:

(1)Per pack – ₱12.00 if the net retail price per pack (exclusive of VAT and excise tax) is over ₱10.00;

(2)Per pack – ₱8.00 if the net retail price per pack (exclusive of VAT and excise tax) is over ₱6.50 but not over ₱10.00;

(3)Per pack – ₱5.00 if the net retail price per pack (exclusive of VAT and excise tax) is ₱5.00 but not over ₱6.50;

(4)Per pack – ₱1.00 if the net retail price per pack (exclusive of VAT and excise tax) is below ₱5.00.

The specific tax from any brand of cigarettes within the next three (3) years of effectivity of this Act shall not be lower than the tax which is due from each brand on October 1, 1996: Provided, however, That in cases where the specific tax rates imposed in paragraph (C), sub-paragraphs (1), (2), (3) and (4) herein above, will result in an increase in excise tax of more than

The 1977 Tax Code was later repealed by RA 8424, or the National Internal Revenue Code of 1997 (*1997 Tax Code*), and Section 142, as amended by RA 8240, was renumbered as Section 145.

This time, to implement the 12% increase in specific taxes mandated under Section 145 of the 1997 Tax Code and again pursuant to its rule-making powers, the CIR issued RR 17-99, which reads:

Section 1. *New Rates of Specific Tax*. The specific tax rates imposed under the following sections are hereby increased by twelve percent (12%) and the new rates to be levied, assessed, and collected are as follows:

Section	*Description of Articles*	*Present Specific Tax Rates (Prior to January 1, 2000)*	*New Specific Tax Rates (Effective January 1, 2000)*
145	CIGARS and CIGARETTES B) Cigarettes Packed by Machine		
	(1) Net Retail Price (excluding VAT & Excise) exceeds ₱10.00 per pack	₱12.00/pack	₱13.44/pack
	(2) Net Retail Price (excluding VAT & Excise) is ₱6.51 up to ₱10.00 per pack	₱8.00/pack	₱8.96/pack
	(3) Net Retail Price (excluding VAT & Excise) is ₱5.00 to ₱6.50 per pack	₱5.00/pack	₱5.60/pack

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seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: (a) fifty percent (50%) of the increase shall be effective in 1997; and (b) one hundred percent (100%) of the increase shall be effective in 1998.

(d) Beginning January 1, 2000, the rates of specific tax on cigars and cigarettes under paragraphs (A) and (C), sub-paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%).

(4)	Net Retail Price (excluding VAT & Excise) is below ₱5.00 per pack	₱1.00/pack	₱1.12/pack

Provided, however, that the new specific tax rate for any existing brand of cigars [and] cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000. [emphasis ours]

THE FACTS OF THE CASE

Pursuant to these laws, respondent Fortune Tobacco Corporation (*Fortune Tobacco*) paid in advance excise taxes for the year 2003 in the amount of ₱11.15 billion, and for the period covering January 1 to May 31, 2004 in the amount of ₱4.90 billion.[5]

In June 2004, Fortune Tobacco filed an administrative **claim for tax refund with the CIR for erroneously and/or illegally collected taxes in the amount of ₱491 million.**[6] Without waiting for the CIR's action on its claim, Fortune Tobacco filed with the CTA a judicial claim for tax refund.[7]

In its decision dated May 26, 2006, the CTA First Division ruled in favor of Fortune Tobacco and granted its claim for refund.[8] The CTA First Division's ruling was upheld on appeal by the CTA *en banc* in its decision dated July 12, 2007.[9] The CIR's motion for reconsideration of the CTA *en banc's* decision was denied in a resolution dated October 4, 2007.[10]

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[5] *Rollo*, p. 45.

[6] *Ibid.*

[7] *Id.* at 46-47.

[8] The CIR's motion for reconsideration of the CTA First Division's decision dated May 26, 2006 was denied in a resolution dated November 15, 2006; *id.* at 46-47.

[9] *Supra* note 1.

[10] *Supra* note 2.

THE ISSUE

Fortune Tobacco's claim for refund of overpaid excise taxes is based primarily on what it considers as an "unauthorized administrative legislation" on the part of the CIR. Specifically, **it assails the proviso in Section 1 of RR 17-99** that requires the payment of the "excise tax actually being paid prior to January 1, 2000" if this amount is higher than the **new specific tax rate**, *i.e.*, the rates of specific taxes imposed in 1997 for each category of cigarette, plus 12%. It claimed that by including the proviso, the CIR went beyond the language of the law and usurped Congress' power. As mentioned, the CTA sided with Fortune Tobacco and allowed the latter to claim the refund.

The CIR disagrees with the CTA's ruling and assails it before this Court through the present petition for review on *certiorari*. **The CIR posits that the inclusion of the proviso in Section 1 of RR 17-99 was made to carry into effect the law's intent and is well within the scope of his delegated legislative authority**.[11] He claims that the CTA's strict interpretation of the law ignored Congress' intent "to increase the collection of excise taxes by increasing specific tax rates on 'sin' products."[12] He cites portions of the Senate's deliberation on House Bill No. 7198 (the precursor of RA 8240) that conveyed the legislative intent to increase the excise taxes being paid.[13]

The CIR points out that Section 145(c) of the 1997 Tax Code categorically declares that "[t]he excise tax from any brand of cigarettes within the [three-year transition period from January 1, 1997 to December 31, 1999] shall not be lower than the tax, which is due from each brand on October 1, 1996." He posits that there is no plausible reason why the new specific tax rates due beginning January 1, 2000 should not be subject to the

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[11] *Rollo*, p. 209.

[12] *Ibid.*

[13] The CIR referred to the exchange between Senator Juan Ponce Enrile and Senators Neptali Gonzales and Franklin Drilon; Records of the Senate, No. 33, Volume II, October 16, 1996.

same rule as those due during the transition period. To the CIR, the adoption of the "higher tax rule" during the transition period unmistakably shows the intent of Congress not to lessen the excise tax collection. Thus, the CTA should have construed the ambiguity or omission in Section 145(c) in a manner that would uphold the law's policy and intent.

Fortune Tobacco argues otherwise. To it, Section 145(c) of the 1997 Tax Code read and interpreted as it is written; it imposes a 12% increase on the rates of excise taxes provided under sub-paragraphs (1), (2), (3), and (4) only; it does not say that the tax due during the transition period shall continue to be collected if the amount is higher than the new specific tax rates. It contends that the "higher tax rule" applies only to the three-year transition period to offset the burden caused by the shift from *ad valorem* to specific taxes.

THE COURT'S RULING

Except for the tax period and the amounts involved,[14] the case at bar presents the same issue that the Court already resolved in 2008 in *CIR v. Fortune Tobacco Corporation*.[15] In the 2008 *Fortune Tobacco* case, the Court upheld the tax refund claims of Fortune Tobacco after finding invalid the proviso in Section 1 of RR 17-99. We ruled:

> Section 145 states that during the transition period, *i.e.*, within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard

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[14] The 2008 Fortune Tobacco case involved refund of excise taxes amounting to ₱680,387,025.00 for the period of January 2000 to December 2001; and ₱355,385,920 for the period of January to December 2002.

[15] G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160.

to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date.

By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12% — a situation not supported by the plain wording of Section 145 of the Tax Code.[16]

Following the principle of *stare decisis*,[17] our ruling in the present case should no longer come as a surprise. The proviso in Section 1 of RR 17-99 clearly went beyond the terms of the law it was supposed to implement, and therefore entitles Fortune Tobacco to claim a refund of the overpaid excise taxes collected pursuant to this provision.

The amount involved in the present case and the CIR's firm insistence of its arguments nonetheless compel us to take a second look at the issue, but our findings ultimately lead us to the same conclusion. Indeed, we find more reasons to disagree with the CIR's construction of the law than those stated in our 2008 *Fortune Tobacco* ruling, which was largely based on the application of the rules of statutory construction.

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[16] *Id.* at 177.

[17] Under this doctrine, Courts are "to stand by precedent and not to disturb settled point." **Once the Court has "laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties or property are the same";** *In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. del Castillo,* A.M. No. 10-7-17-SC, February 8, 2011. Also, in *Ting v. Velez-Ting,* G.R. No. 166562, March 31, 2009, 582 SCRA 694, 704-705, we said that "based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Basically, it is a bar to any attempt to relitigate the same issues, necessary for two simple reasons: economy and stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code."

Raising government revenue is not the sole objective of RA 8240

That RA 8240 (incorporated as Section 145 of the 1997 Tax Code) was enacted to raise government revenues is a given fact, but this is not the sole and only objective of the law.[18] Congressional deliberations show that the shift from *ad valorem* to specific taxes introduced by the law was also intended to curb the corruption that became endemic to the imposition of *ad valorem* taxes.[19] Since *ad valorem* taxes were based on the value of the goods, the prices of the goods were often manipulated to yield lesser taxes. The imposition of specific taxes, which are based on the volume of goods produced, would prevent price manipulation and also cure the unequal tax treatment created by the skewed valuation of similar goods.

Rule of uniformity of taxation violated by the proviso in Section 1, RR 17-99

The Constitution requires that taxation should be uniform and equitable.[20] Uniformity in taxation requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities.[21] This requirement, however, is unwittingly violated when the proviso in Section 1 of RR 17-99 is applied in certain cases. To illustrate this point, we consider three brands of cigarettes, all classified as lower-priced cigarettes under Section 145(c)(4) of the 1997 Tax Code, since their net retail price is below ₱5.00 per pack:

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[18] Senator Enrile's sponsorship speech, in fact, identifies three objectives for the enactment of RA 8240: (1) to evolve a tax structure which will promote fair competition among the players in the industries concerned and generate buoyant and stable revenue for government; (2) to ensure that the tax burden is equitably distributed; and (3) to simplify the tax administration and compliance with the tax laws. Transcript of Senate Deliberations on House Bill No. 7198 dated October 15, 1996.

[19] Senate deliberations dated October 16, 1996.

[20] CONSTITUTION, Article VI, Section 28(1).

[21] *British American Tobacco v. Camacho*, G.R. No. 163583, April 15, 2009, 585 SCRA 36.

Brand[22]	Net Retail Price per pack	(A) *Ad Valorem* Tax Due prior to Jan 1997	(B) Specific Tax under Section 145(C)(4)	(C) Specific Tax Due Jan 1997 to Dec 1999	(D) New Specific Tax imposing 12% increase by Jan 2000	**(E) New Specific Tax Due by Jan 2000 per RR 17-99**
Camel KS	4.71	5.50	1.00/pack	5.50	1.12/pack	**5.50**
Champion M 100	4.56	3.30	1.00/pack	3.30	1.12/pack	**3.30**
Union American Blend	4.64	1.09	1.00/pack	1.09	1.12/pack	**1.12**

Although the brands all belong to the same category, the proviso in Section 1, RR 17-99 authorized the imposition of different (and grossly disproportionate) tax rates (see column [D]). It effectively extended the qualification stated in the **third paragraph of Section 145(c) of the 1997 Tax Code** that was supposed to apply only during the transition period:

> The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996[.]

In the process, the CIR also perpetuated the unequal tax treatment of similar goods that was supposed to be cured by the shift from *ad valorem* to specific taxes.

The omission in the law in fact reveals the legislative intent not to adopt the "higher tax rule"

The CIR claims that the **proviso in Section 1 of RR 17-99** was patterned after the third paragraph of Section 145(c) of

[22] Camel and Champion are Fortune Tobacco brands; and Union American Blend is a brand of Sterling Tobacco Corporation. See Annex "D" of the 1997 Tax Code.

the 1997 Tax Code. Since the law's intent was to increase revenue, it found no reason not to apply the same "higher tax rule" to excise taxes due *after* the transition period despite the absence of a similar text in the wording of Section 145(c). What the CIR misses in his argument is that he applied the rule not only for cigarettes, but also for cigars, distilled spirits, wines and fermented liquors:

> Provided, however, that the new specific tax rate for any existing brand of cigars [and] cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.

When the pertinent provisions of the 1997 Tax Code imposing excise taxes on these products are read, however, there is nothing similar to the third paragraph of Section 145(c) that can be found in the provisions imposing excise taxes on distilled spirits (Section 141[23]) and wines (Section 142[24]). In fact, the rule will

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[23] **SEC. 141.** ***Distilled Spirits.*** **—** On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise taxes as follows:

(a) If produced from the sap of nipa, coconut, cassava, camote, or buri palm or from the juice, syrup or sugar of the cane, provided such materials are produced commercially in the country where they are processed into distilled spirits, per proof liter, Eight pesos (₱8.00): *Provided*, That if produced in a pot still or other similar primary distilling apparatus by a distiller producing not more than one hundred (100) liters a day, containing not more than fifty percent (50%) of alcohol by volume, per proof liter, Four pesos (₱4.00);

(b) If produced from raw materials other than those enumerated in the preceding paragraph, the tax shall be in accordance with the net retail price per bottle of seven hundred fifty milliliter (750 ml.) volume capacity (excluding the excise tax and the value-added tax) as follows:

(1) Less than Two hundred and fifty pesos (₱250) — Seventy-five pesos (₱75), per proof liter;

(2) Two hundred and fifty pesos (₱250) up to Six hundred and Seventy-Five pesos (₱675) — One hundred and fifty pesos (₱150), per proof liter; and

(3) More than Six hundred and seventy-five pesos (₱675) — Three hundred pesos (₱300), per proof liter.

(c) Medicinal preparations, flavoring extracts, and all other preparations, except toilet preparations, of which, excluding water, distilled spirits for the chief ingredient, shall be subject to the same tax as such chief ingredient.

This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits, and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process.

"Spirits or distilled spirits" is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures.

"Proof spirits" is liquor containing one-half (1/2) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten thousandths (0.7939) at fifteen degrees centigrade (15^{O}C). A *"proof liter"* means a liter of proof spirits.

The rates of tax imposed under this Section shall be increased by twelve percent (12%) on January 1, 2000.

New brands shall be classified according to their current net retail price.

For the above purpose, *"net retail price"* shall mean the price at which the distilled spirit is sold on retail in ten (10) major supermarkets in Metro Manila, excluding the amount intended to cover the applicable excise tax and the value-added tax as of October 1, 1996.

The classification of each brand of distilled spirits based on the average net retail price as of October 1, 1996, as set forth in Annex "A", shall remain in force until revised by Congress.

[24] **SEC. 142.** ***Wines.*** **—** On wines, there shall be collected per liter of volume capacity, the following taxes:

(a) Sparkling wines/champagnes regardless of proof, if the net retail price per bottle (excluding the excise tax and the value-added tax) is:

(1) Five hundred pesos (₱500) or less — One hundred pesos (₱100);and

(2) More than Five hundred pesos (₱500) — Three hundred pesos (₱300).

(b) Still wines containing fourteen percent (14%) of alcohol by volume or less, Twelve pesos (₱12.00); and

(c) Still wines containing more than fourteen percent (14%) but not more than twenty-five percent (25%) of alcohol by volume, Twenty-four pesos (₱24.00).

Fortified wines containing more than twenty-five percent (25%) of alcohol by volume shall be taxed as distilled spirits. *"Fortified wines"* shall mean natural wines to which distilled spirits are added to increase their alcoholic strength.

The rates of tax imposed under this Section shall be increased by twelve percent (12%) on January 1, 2000.

New brands shall be classified according to their current net retail price.

For the above purpose, *"net retail price"* shall mean the price at which wine is sold on retail in ten (10) major supermarkets in Metro Manila, excluding

also not apply to cigars as these products fall under Section 145(a).[25]

Evidently, the 1997 Tax Code's provisions on excise taxes have omitted the adoption of certain tax measures. To our mind, these omissions are telling indications of the intent of Congress **not** to adopt the omitted tax measures; they are not simply unintended lapses in the law's wording that, as the CIR claims, are nevertheless covered by the spirit of the law. Had the intention of Congress been solely to increase revenue collection, a provision similar to the third paragraph of Section 145(c) would have been incorporated in Sections 141 and 142 of the 1997 Tax Code. This, however, is not the case.

We note that Congress was not unaware that the "higher tax rule" is a proviso that should ideally apply to the increase after the transition period (as the CIR embodied in the proviso in Section 1 of RR 17-99). During the deliberations for the law amending Section 145 of the 1997 Tax Code (RA 9334), Rep. Jesli Lapuz adverted to the "higher tax rule" *after December 31, 1999* when he stated:

> This bill serves as a catch-up measure as government attempts to collect additional revenues due it since 2001. Modifications are necessary indeed to capture the loss proceeds and prevent further erosion in revenue base. x x x. As it is, it plugs a major loophole in the ambiguity of the law as evidenced by recent disputes resulting in the government being ordered by the courts to refund taxpayers. This bill clarifies that the excise tax due on the products shall not be lower than the tax due as of the date immediately prior to the effectivity of the act or the excise tax due as of December 31, 1999.[26]

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the amount intended to cover the applicable excise tax and the value-added tax as of October 1, 1996.

The classification of each brand of wines based on its average net retail price as of October 1, 1996, as set forth in Annex "B", shall remain in force until revised by Congress.

[25] **SEC. 145.** ***Cigars and Cigarettes.*** **— (A)** ***Cigars.*** — There shall be levied, assessed and collected on cigars a tax of One peso (₱1.00) per cigar[.]

[26] House Deliberations on RA 9334 (House Bill No. 3174), October 27, 2004, p. 19.

This remark notwithstanding, the final version of the bill that became RA 9334 contained no provision similar to the proviso in Section 1 of RR 17-99 that imposed the tax due as of December 31, 1999 if this tax is higher than the new specific tax rates. Thus, it appears that despite its awareness of the need to protect the increase of excise taxes to increase government revenue, Congress ultimately decided against adopting the "higher tax rule."

WHEREFORE, in view of the foregoing, the petition is *DENIED*. The decision dated July 12, 2007 and the resolution dated October 4, 2007 of the Court of Tax Appeals in CTA E.B. No. 228 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Del Castillo,[**] *Perez, Mendoza,*[***] and *Sereno, JJ.*, concur.

SECOND DIVISION

[G.R. No. 185721. September 28, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICKY UNISA *y* ISLAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREIN, RESPECTED.

[**] Designated as Additional Member of the Second Division in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1084 dated September 13, 2011.

[***] Designated as Additional Member of the Second Division in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 1107 dated September 27, 2011.

— We rely on the trial court's assessment of the credibility of witnesses, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF *SHABU*; ELEMENTS. — For a successful prosecution of the offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti.*** Clearly, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, **merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller.** As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements of the drugs sale beyond moral certainty.

3. ID.; ID.; ILLEGAL POSSESSION OF *SHABU*; ELEMENTS. — As to the offense of illegal possession of *shabu*, a dangerous drug, it must be shown that: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. These circumstances of illegal possession of *shabu* are obtaining in the present case.

4. ID.; ID.; ID.; MERE POSSESSION OF DANGEROUS DRUGS IS *ANIMUS POSSIDENDI*. — The rule is settled that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession. The burden of evidence is, thus, shifted to the accused to explain the absence of knowledge or *animus possidendi*.

5. ID.; BUY-BUST OPERATION; FAILURE TO MARK BOODLE MONEY, NOT FATAL. — Even granting *arguendo* that the buy-bust money has not been marked, jurisprudence is clear that failure to mark the boodle money is not fatal to the cause of the prosecution. Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation **much less is it required that the boodle money be marked.** Similarly, the absence of marked money does not create a *hiatus* in the evidence for the prosecution provided that the prosecution has adequately proved the sale. Hence, the only elements necessary to consummate the crime of illegal sale of *shabu* is proof that the illicit transaction took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug as evidence. Both elements were satisfactorily proven in this case.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES. — [T]he discrepancy and contradiction in the testimonies of PO1 Forastero and PO1 Medina on whether both of them or only PO1 Forastero was introduced to appellant as relatives of the confidential informant, the same was too trivial, inconsequential and irrelevant to the elements of the offenses charged. It is too minor to warrant the reversal of the judgment of conviction against appellant. It neither affects the truth of the testimonies of prosecution witnesses nor discredits their positive identification of appellant. In contrast, such trivial inconsistencies strengthen rather than diminish the prosecution's case as they erase suspicion of a rehearsed testimony and negate any misgiving that the same was perjured.

7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF *SHABU*; PRE-OPERATION REPORT/COORDINATION SHEET AND USE OF DUSTED MONEY ARE NOT INDISPENSABLE PROOFS THEREIN. — [T]here are no provisions either in Republic Act No. 9165 or its Implementing Rules and Regulations requiring that (1) the Pre-Operation Report/ Coordination Sheet that should be transmitted to PDEA must only be signed by the person who conducted the briefing; and (2) the buy-bust money to be used in the actual buy-bust operation must be dusted with ultra-violet powder. The Pre-Operation Report/Coordination Sheet and the use of dusted money are

not indispensable to prove the illegal sale of *shabu*. These two are not part of the elements of the aforesaid offense. x x x In *People v. Roa*, this Court made the following pronouncements, thus: In the first place, **coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation.** While it is true that Section 86 [citation omitted] of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. **After all, a buy-bust is just a form of an in *flagrante* arrest** sanctioned by Section 5, Rule 113 [citation omitted] of the Rules of Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA [citation omitted]. **A buy-bust operation is not invalidated by mere non-coordination with the PDEA.** Equally, the only purpose for treating with ultra-violet powder the buy-bust money to be used in the actual buy-bust operation is for identification, that is, to determine if there was receipt of the buy-bust money by the accused in exchange for the illegal drugs he was selling. In the present case, although the buy-bust money were not laced with ultra-violet powder, still, the prosecution was able to positively identify that the two ₱100.00-peso bills recovered from appellant right after his arrest were the buy-bust money as the same were photocopied and entered in the police blotter before the actual buy-bust operation. With the foregoing, the failure to sign the Pre-Operation Report/Coordination Sheet by the person who conducted the briefing and the failure to lace the buy-bust money with ultra-violet powder do not affect or in any way diminish the authenticity of the buy-bust operation against appellant.

8. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS; THAT SEIZED DRUGS WERE NOT PHOTOGRAPHED AS REQUIRED, NOT FATAL AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED. — The argument of appellant that the police officers likewise failed to observe the requirements of Section 21, Article II of Republic Act No. 9165, primarily because the seized drugs were not photographed in his presence or his

representative or counsel, a representative from the media, a representative from the DOJ and any elected public official, stands on hollow ground. x x x [T]he prosecution's failure to conduct the required photograph of the seized drugs in compliance with the provision of Section 21, Article II of Republic Act No. 9165, will not work to the advantage of appellant. Non-compliance thereto is not fatal and will not render appellant's arrest illegal or the items seized/confiscated from him inadmissible. As can be observed, the implementing rules offer some flexibility when a *proviso* added that "non-compliance with these requirements under justifiable grounds, **as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items."** Thus, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

9. ID.; ID.; ID.; THAT SEIZED DRUGS WERE NOT MARKED AT THE PLACE OF ARREST DOES NOT RENDER THE CONFISCATED ITEMS INADMISSIBLE IN EVIDENCE. — [E]ven if the seized drugs were not marked at the place of arrest, the same does not render the confiscated items inadmissible in evidence. In *Imson v. People,* this Court made the following pronouncements: x x x **Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody.** x x x *People v. Sanchez,* however, explains that **[Republic Act] 9165 does not specify a time frame for "immediate marking," or where said marking should be done:** x x x To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. **"Immediate Confiscation" has no exact definition. Thus, in *People v. Gum-Oyen,* testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.**

10. ID.; ID.; ID.; FUNCTION OF THE CHAIN OF CUSTODY REQUIREMENT. — The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.

11. ID.; ID.; CREDENCE GIVEN TO PROSECUTION WITNESSES WHO ARE POLICE OFFICERS PRESUMED TO HAVE ACTED ON REGULAR PERFORMANCE OF DUTY. — In *People v. Gaspar* citing *People v. De Guzman*, this Court held that "in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers." In this case, appellant failed to overcome the aforesaid presumption. More telling is appellant's own admission that he only met the prosecution witnesses for the first time when he was arrested and that there was no bad blood between them. This goes to show that the prosecution witnesses were not impelled with improper motive to falsely testify against appellant.

12. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES. — Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must necessarily fail. x x x Futher both prosecution witnesses positively identified appellant in open court to be the same person they caught red-handed selling and possessing *shabu.* Appellant's bare denial, therefore, cannot prevail over such positive identification made by the prosecution witnesses. In the same way, appellant's denial cannot overcome the presumption that the police officers in this case have performed their duties in a regular and proper manner. Besides, this Court held in a *catena* of cases that the defense of denial or frame-up, like *alibi*, has been viewed with disfavor for it can just as easily be concocted and is a common and

standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.

13. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF *SHABU*; PENALTY. — Section 5, Article II of Republic Act No. 9165 clearly provides that the penalty for illegal sale of dangerous drugs, like *shabu*, regardless of its quantity and purity, shall be life imprisonment to death and a fine ranging from ₱5,000,000.00 to ₱10,000,000.00. In light, however, of the effectivity of Republic Act No. 9346, the imposition of the supreme penalty of death has been proscribed. Thus, the penalty of life imprisonment and a fine of ₱5,000,000.00 imposed upon appellant by the RTC and affirmed by the Court of Appeals for the offense of illegal sale of *shabu* is in order.

14. ID.; ID.; ILLEGAL POSSESSION OF *SHABU* THAT IS LESS THAN 5 GRAMS; PENALTY. — Section 11, Article II of Republic Act No. 9165 provides for the penalty for illegal possession of dangerous drugs, like *shabu*. For illegal possession of less than five grams of *shabu*, a dangerous drug, the penalty is imprisonment of 12 years and 1 day to 20 years and a fine ranging from ₱300,000.00 to ₱400,000.00. In this case, appellant's possession of *shabu* with an aggregate weight of 0.43 gram, that is, less than 5 grams, without any legal authority has been proven beyond reasonable doubt by the prosecution. Applying the Indeterminate Sentence Law, the penalty of 12 years and 1 day to 15 years and a fine of ₱300,000.00 imposed upon appellant by the RTC and affirmed by the appellate court for the offense of illegal possession of *shabu* is also proper.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] dated 28 February 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 01559, affirming the Decision[2] dated 2 September 2005 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 205, in Criminal Case Nos. 03-504 to 03-505, finding herein appellant Ricky Unisa *y* Islan guilty beyond reasonable doubt of the offenses of (1) illegal sale of 0.02 gram of *shabu*, a dangerous drug, in violation of Section 5,[3] Article II of Republic Act No. 9165,[4] for which he was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (2) illegal possession of 0.43 gram of *shabu*, a dangerous drug, in violation of Section 11,[5]

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[1] Penned by Associate Justice Edgardo F. Sundiam with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Monina Arevalo-Zeñarosa, concurring. *Rollo*, pp. 2-17.

[2] Penned by Judge Myrna V. Lim Verano. CA *rollo*, pp. 48-57.

[3] **SEC. 5.** ***Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals***. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any or such transactions.

[4] Otherwise known as "Comprehensive Dangerous Drugs Act of 2002."

[5] **SEC. 11.** ***Possession of Dangerous Drugs.*** — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x

Article II of Republic Act No. 9165, for which he was sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years and to pay a fine of ₱300,000.00.

Appellant Ricky Unisa *y* Islan was charged in two separate Informations[6] both dated 26 June 2003 with violation of Sections 5 and 11, Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 03-504 and Criminal Case No. 03-505. The Informations state as follows:

Criminal Case No. 03-504

That on or about the 24th day of June 2003, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, [appellant], without authority of law, did then and there willfully and unlawfully **sell, deliver and give away to another Methylamphetamine Hydrochloride**, **a dangerous drug weighing 0.02 gram** contained in one (1) small heat-sealed transparent plastic sachet, in violation of the above-cited law.[7] [Emphasis supplied].

Criminal Case No. 03-505

That on or about the 24th day of June 2003, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, [appellant], not being authorized by law, did then and there willfully and unlawfully **have in his possession, custody and control Methylamphetamine Hydrochloride, a dangerous drug weighing 0.43 grams** (sic) contained in twenty (20) small heat-sealed transparent

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(2) x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[6] Records, pp. 1 and 3.

[7] *Id.* at 1.

plastics sachets, in violation of the above-cited law.[8] [Emphasis supplied].

When arraigned, appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY[9] to both charges.

At the Pre-Trial Conference, the parties agreed to dispense with the testimony of Police Inspector Hermosila Fermindoza (P/Insp. Fermindoza) after stipulating on her expertise as forensic chemist whose testimony would consist of proving receipt of the Request for Laboratory Examination[10] of the pieces of evidence seized from appellant, which pieces of evidence were placed inside a one-half brown mailing envelope and were appended thereto, to wit: (1) one small heat-sealed transparent plastic sachet containing white crystalline substance with markings "RU"; and (2) 20 more small heat-sealed transparent plastic sachets likewise containing white crystalline substance with markings "RU-1" to "RU-20," as well as a pair of folding scissors with markings "RU-22," which were inside a black coin purse with white stripes. Similarly stipulated was that P/Insp. Fermindoza has conducted a chemical analysis of the substance and the analysis was reduced into writing[11] as evidenced by a Physical Science Report No. D-743-03s.[12]

A joint trial on the merits ensued thereafter.

The prosecution presented the testimony of Police Officers 1 Mark Sherwin Forastero (PO1 Forastero) and Percival Medina (PO1 Medina), both of whom are police operatives of the Drug Abuse Prevention and Control Office-Drug Enforcement Unit (DAPCO-DEU), Muntinlupa City.[13] PO1 Forastero and PO1

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[8] *Id.* at 3.

[9] As evidenced by Certificates of Arraignment both dated 17 September 2003 and RTC Orders both dated 17 September 2003. Records, pp. 24-27.

[10] *Id.* at 18.

[11] Per Pre-Trial Order dated 1 December 2003. Records, pp. 61-63; TSN, 16 May 2005, p. 11.

[12] Records, p. 10.

[13] Testimony of PO1 Forastero, TSN, 14 June 2004, p. 3; Testimony of PO1 Medina, TSN, 11 August 2004, p. 3.

Medina were the designated *poseur*-buyer and arresting officer, respectively, in the buy-bust operation against appellant.

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

On the basis of a series of reports received by DAPCO-DEU, Muntinlupa City, coming from concerned citizens concerning the illegal drug trade of *alias* Ricky in Quezon Street, *Purok* 7, Poblacion, Muntinlupa City, the police operatives of the aforesaid office conducted a surveillance and monitoring operation on 23 June 2003. The surveillance and monitoring operation confirmed that *alias* Ricky was, indeed, engaged in the sale of illegal drugs which usually took place late at night until dawn.[14]

Corollary thereto, on 24 June 2003, at around 8:00 p.m., P/Insp. Arsenio Silungan (P/Insp. Silungan), Chief of DAPCO-DEU, Muntinlupa City, formed a buy-bust team to conduct a buy-bust operation against *alias* Ricky. The buy-bust team was composed of the following police operatives, namely: PO1 Forastero, who was designated as the *poseur*-buyer; PO1 Medina, who was tasked as the arresting officer; Senior Police Officer 1 Zosimo Goce (SPO1 Goce), who was appointed as the team leader; SPO1 Joel Vega (SPO1 Vega); Senior Police Officer 3 Hector Macalla (SPO3 Macalla); a certain SPO3 Madriaga; PO1 Ronald Natuel (PO1 Natuel); PO1 Reynold Aguirre (PO1 Aguirre); a certain PO1 Gunayon; a certain PO1 Respicio; a certain PO1 Tan; and PO1 Joseph Tedd Leonor (PO1 Leonor); and two civilian agents, namely: Dalton Ibañez (Ibañez) and Charlie Isla (Isla), all of whom were assigned as perimeter back-up group.[15]

The buy-bust team, thereafter, prepared the buy-bust money consisting of two One Hundred Peso (₱100.00) bills in the total amount of ₱200.00 bearing Serial Nos. JX 392195 and DY 711514, respectively. PO1 Aguirre signed the buy-bust money at the bottom thereof. They were also photocopied and recorded

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[14] *Id.* at 6; *Id.* at 4-5.

[15] *Id.* at 5-7 and 14-16; *Id.* at 4-6; Court of Appeals Decision, *rollo*, p. 5; RTC Decision, CA *rollo*, p. 49.

in the police blotter as Entry No. 03-180.[16] A Pre-Operation Report/Coordination Sheet was similarly prepared and transmitted to the Philippine Drug Enforcement Agency (PDEA) *via* facsimile.[17]

After all the necessary documentary requirements had been completed, the buy-bust team proceeded to the target area, *i.e.*, Quezon Street, *Purok* 7, Poblacion, Muntinlupa City, on board two vehicles, to wit: Toyota Revo and Anfra Van with Plate Nos. SGS 492 and SFG 484, respectively. PO1 Forastero, PO1 Medina, SPO1 Goce, SPO3 Macalla, SPO3 Madriaga and the two civilian agents boarded the Toyota Revo while the rest of the buy-bust team boarded the Anfra Van.[18]

Upon reaching the area of operation at around 9:30 p.m., more or less, the buy-bust team strategically parked the Toyota Revo and the Anfra Van at *Sitio* Tipaurel and Poblacion, 50 meters away from each other. While inside the Toyota Revo, PO1 Forastero and PO1 Medina already saw their confidential informant some 40 meters away waiting for them. PO1 Forastero and PO1 Medina, nevertheless, stayed inside the Toyota Revo as they were still waiting for a text message coming from another asset who would confirm *alias* Ricky's presence at the target area. After an hour, the aforesaid asset texted SPO3 Macalla to inform the buy-bust team that *alias* Ricky was already at the target area.[19]

Accordingly, PO1 Forastero and PO1 Medina alighted from the vehicle. Upon seeing them, the confidential informant promptly approached and accompanied them to *alias* Ricky's place. At this juncture, the other members of the buy-bust team also alighted from their vehicles and followed PO1 Forastero, PO1 Medina and the confidential informant at a distance to provide perimeter security.[20]

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[16] Testimony of PO1 Forastero, TSN, 14 June 2004, p. 7; Testimony of PO1 Medina, TSN, 11 August 2004, pp. 5-6; Records, pp. 114, 117.

[17] *Id.* at 12-13; *Id.* at 8-10; *Id.* at 113.

[18] *Id.* at 15-17; *Id.* at 10-11 and 34.

[19] *Id.* at 17-19, 53-54 and 58-61; *Id.* at 11 and 33.

[20] *Id.* at 19 and 63; *Id.* at 12, 32 and 35.

After a 15-minute walk traversing a place along the train railways, PO1 Forastero, PO1 Medina and the confidential informant reached the exact place of *alias* Ricky in Quezon Street, *Purok* 7, Poblacion, Muntinlupa City. The rest of the buy-bust team then acted as perimeter guards. At a distance of about seven meters, the confidential informant saw a person wearing a white *sando* and black pants sitting by a lighted house with an open door whom he recognized and identified as *alias* Ricky. The confidential informant then pinpointed *alias* Ricky to PO1 Forastero and PO1 Medina. Thereafter, the confidential informant immediately approached *alias* Ricky and introduced him to PO1 Forastero and PO1 Medina as his relatives. After gaining the trust and confidence of *alias* Ricky, PO1 Forastero told the former that he would like to "score" ₱200.00 worth of *shabu* and he simultaneously handed to him the two ₱100.00-peso bills marked money amounting to ₱200.00. *Alias* Ricky received the marked money and, in turn, got and opened a black coin purse with white stripes from his left hand and took out a small heat-sealed transparent plastic sachet containing the suspected *shabu* and handed it to PO1 Forastero, which the latter accepted.[21]

At once, PO1 Forastero held *alias* Ricky's right hand and introduced himself as police officer. PO1 Medina then assisted PO1 Forastero in arresting *alias* Ricky by holding the latter's left hand. The other members of the buy-bust team, who were just within the vicinity, arrived. PO1 Medina recovered from the left hand of *alias* Ricky a black coin purse with white stripes containing 20 more small heat-sealed transparent plastic sachets with white crystalline substance suspected to be *shabu* and a small pair of folding scissors. The two marked ₱100.00-peso bills with Serial Nos. JX 392195 and DY 711514, respectively, amounting to ₱200.00, however, were recovered from *alias* Ricky's pocket by PO1 Forastero. The latter compared the recovered marked money with the photocopies thereof, which he brought with him in the buy-bust operation, and they matched.[22]

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[21] *Id.* at 20-22 and 64-66; *Id.* at 12-14 and 36-38.

[22] *Id.* at 22-24; *Id.* at 14-17.

Subsequently, *alias* Ricky was informed of his constitutional rights. He was, thereafter, brought by the buy-bust team to their office where they came to know his full name to be Ricky Unisa *y* Islan, the herein appellant. The items seized from the latter, which remained in the possession of PO1 Forastero and PO1 Medina on their way to their office, were immediately marked upon their arrival thereat. PO1 Forastero placed the markings "RU" representing appellant's initials on the subject of the sale, *i.e.*, one small heat-sealed transparent plastic sachet containing suspected *shabu*, while PO1 Medina marked with "RU-1" to "RU-20" (inclusive) the seized 20 more small heat-sealed transparent plastic sachets with white crystalline substance. The black coin purse with white stripes where the 20 more small heat-sealed transparent plastic sachets with white crystalline substance, together with a small pair of folding scissors, were found was likewise marked by PO1 Medina with "RU-21." The small pair of folding scissors was similarly marked by PO1 Medina with "RU-22." An inventory thereof was also made.[23]

Afterwards, a Request for Laboratory Examination[24] of the seized items and a Request for Drug Test[25] of appellant both dated 24 June 2003 were made. PO1 Forastero, PO1 Medina and PO1 Gunayon then forwarded the seized items to the Philippine National Police (PNP), Crime Laboratory, PNP Southern Police District, Fort Bonifacio, Taguig City, for laboratory examination.[26]

Appellant's drug test yielded positive result[27] as evidenced by Physical Science Report No. DT-889-03.[28] As regards the

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[23] *Id.* at 29-33 and 40-41; *Id.* at 16-21 and 39-42.

[24] Records, pp. 24-27.

[25] *Id.* at 16.

[26] Testimony of PO1 Forastero, TSN, 14 June 2004, pp. 34-35 and 41; Testimony of PO1 Medina, TSN, 11 August 2004, pp. 21-23.

[27] *Id.* at 38-39; *Id.* at 24-26.

[28] Records, p. 120.

items seized from appellant, they were all found positive[29] for the presence of *methylamphetamine hydrochloride* or *shabu*, a dangerous drug, as evidenced by Physical Science Report No. D-743-03s.[30]

The defense presented the testimony of appellant and his common-law wife, Janice Deles (Janice). As expected, appellant denied all the accusations against him and, instead, offered a different version of what transpired on the day of his arrest.[31]

Appellant, a tricycle driver, claimed that on 24 June 2003, at around 8:00 p.m., while he was inside their house at PNR Site, Purok 7, Poblacion, Muntinlupa City, fixing a broken flashlight, PO1 Forastero and PO1 Medina suddenly barged in and arrested him for the alleged illegal sale of *shabu*, a dangerous drug. Appellant denied the same but the police officers insisted that their office received several calls regarding his illegal drug activities. Appellant was then immediately handcuffed by Ibañez, one of the civilian agents of DAPCO-DEU, Muntinlupa City, and was brought out of his house where they met SPO3 Macalla to whom Ibañez purportedly handed the ₱4,200.00, which the latter recovered from appellant while they were still inside the house. Appellant vehemently denied that such money was earned by him from selling *shabu*. Instead, he explained that the said money was a loan from a certain Corazon Arciaga to be used by his common-law wife as capital for selling fruits. Appellant was, thereafter, made to board the Toyota Revo and was brought to the office of DAPCO-DEU, Muntinlupa City, where his common-law wife followed him. There, appellant professed, SPO1 Vega forced him to acknowledge possession of the pieces of evidence allegedly retrieved from him. He refused to do so. He was, thereafter, put in jail.[32]

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[29] Testimony of PO1 Forastero, TSN, 14 June 2004, p. 36; Testimony of PO1 Medina, TSN, 11 August 2004, p. 24.

[30] Records, p. 10.

[31] Testimony of appellant, TSN, 6 December 2004, pp. 3 and 18.

[32] *Id.* at 3-17, 21-22, 27 and 31.

Appellant, nonetheless, admitted that it was only at the time of his arrest that he met the arresting police officers. He did not know them prior to his arrest. There was also no bad blood between him and the police. Also, despite appellant's allegation that Ibañez took his money and gave it to SPO3 Macalla, he did not file robbery charges against them.[33]

To bolster appellant's defense of denial, his common-law wife, Janice, corroborated his testimony.

Janice maintained that appellant was not in possession and was not engaged in the illegal sale of *shabu*. Janice declared that at the time and place in question, while she was dressing up their child after giving him medicine, Ibañez, together with PO1 Forastero and PO1 Medina, hastily barged into their house. Without any arrest warrant or search warrant, Ibañez instantly handcuffed and frisked appellant. Ibañez similarly took appellant's money, which the latter borrowed from a certain Corazon Arciaga, and handed it to SPO3 Macalla. At this juncture, Janice forcefully resisted appellant's arrest and likewise tried to retrieve the money but to no avail. The police officers successfully brought appellant out of their house and boarded him inside a vehicle. Janice continuously pleaded not to take appellant but her pleas remained unheeded. Janice then followed appellant up to the office of DAPCO-DEU, Muntinlupa City.[34]

The trial court found that all the elements of the offenses charged against appellant were satisfactorily proven by the prosecution. In its Decision dated 2 September 2005, the trial court held appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165. The trial court disposed of the case as follows:

WHEREFORE, premises considered, **[appellant] Ricky Unisa is hereby found guilty beyond reasonable doubt of the offenses of illegal sale of 0.02 gram of methylamphetamine hydrochloride and possession of 0.43 gram** thereof and sentences him as follows:

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[33] *Id.* at 5, 20 and 28.

[34] Testimony of Janice Deles, TSN, 16 February 2005, pp. 3-18 and 22.

1. For Crim. Case No. 03-504 (Violation of Sec. 5, Republic Act [No.] 9165, sale of dangerous drugs) — life imprisonment and to pay a fine of PESOS: FIVE HUNDRED THOUSAND (₱500,000.00);

2. For Crim. Case No. 03-505 (Violation of Sec. 11, Republic Act [No.] 9165, possession of 0.43 gram of methylamphetamine hydrochloride) — imprisonment ranging from twelve years and one day to fifteen years (applying the Indeterminate Sentence Law) and to pay a fine of PESOS: THREE HUNDRED THOUSAND (₱300,000.00).

Costs against [appellant].

Pursuant to Section 21(7), Republic Act [No.] 9165, Trial Prosecutor Brenn S. Taplac shall, after promulgation hereof, inform the Dangerous Drugs Board of the final termination of the case and request this court for the [turnover] of the dangerous drug subject matter thereof to the PDEA for proper disposition and destruction within twenty-four hours from its receipt.[35] [Emphasis supplied]

Disconcerted, appellant appealed the Decision of the trial court to the Court of Appeals *via* Notice of Appeal.[36]

In his brief, appellant assigned the following errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE VERSION OF THE PROSECUTION'S WITNESSES WHOSE TESTIMONIES WERE FULL OF DISCREPANCIES AND INCONSISTENCIES.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE [APPELLANT] FOR VIOLATIONS OF SECTIONS 5 & 11 OF REPUBLIC ACT NO. 9165 DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.[37]

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[35] CA *rollo,* pp. 56-57.

[36] *Rollo,* pp. 18-19.

[37] Brief for the Accused-Appellant. CA *rollo,* p. 36.

The Court of Appeals, in the assailed Decision dated 28 February 2008, affirmed appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165. The Court of Appeals held that all the essential elements of illegal sale and possession of *shabu* were duly proven by the prosecution. Appellant's defense of denial collapses in the face of positive identification by the prosecution witnesses who, as police officers, enjoy in their favor the presumption of regularity in the performance of their official duties. The Court of Appeals similarly declared that the defense failed to prove ill-motive on the part of the prosecution witnesses and the other members of the buy-bust team to impute a serious offense that would certainly jeopardize the life and liberty of appellant. The Court of Appeals also stated that the inconsistencies and/or discrepancies pointed to by appellant were too trivial and inconsequential to warrant the reversal of his conviction. Such inconsistencies and/or discrepancies did not negate the fact that a buy-bust operation was conducted and as a result of which appellant was caught in *flagrante delicto* selling and possessing *shabu*. The Court of Appeals, thus, decreed:

> WHEREFORE, the Decision appealed from, being in accordance with law and the evidence, is hereby **AFFIRMED**.[38]

Still unsatisfied, appellant comes to this Court contending that the trial court gravely erred in convicting him of the offenses charged despite the existence of several facts creating serious doubts as to the veracity thereof. Appellant posits that it was quite unusual and improbable for a police officer, like PO1 Medina, to correctly remember the six-digit serial numbers of the marked money used in the buy-bust operation, which was conducted about a year earlier than his testimony, but could not remember if he placed any marking thereon. It was also quite odd for PO1 Medina not to recall the date of his last successful buy-bust operation despite his vivid recollection of the serial numbers of the marked money used in the buy-bust operation against appellant.

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[38] *Rollo*, p. 17.

Appellant further contends that the discrepancy and contradiction in the testimonies of PO1 Forastero and PO1 Medina cast doubts on the credibility of their testimonies. While PO1 Forastero maintained that he and PO1 Medina were both introduced to appellant as relatives of the confidential informant, PO1 Medina claimed otherwise.

Appellant also avers that the standard operating procedure that was supposed to be observed by the buy-bust team was tainted with irregularities, which created doubts on the authenticity of the buy-bust operation. Though it was P/Insp. Silungan who conducted the briefing on the manner of the buy-bust operation, it was PO1 Natuel who signed the Pre-Operation Report/ Coordination Sheet that was transmitted to PDEA for and on behalf of P/Insp. Silungan. Moreover, the police officers who prepared the marked money merely photocopied and entered the same in their blotter, instead, of lacing it with ultra-violet powder despite the fact that a prior surveillance and confirmation operations have been conducted before the actual buy-bust operation.

Finally, appellant asserts that the police officers likewise failed to observe the requirements laid down in Section 21[39] of Republic Act No. 9165, particularly the photographing of the seized drugs in his presence or his representative or counsel, a representative

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[39] **Section 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

from the media, a representative from the Department of Justice (DOJ) and any elected public official.

We sustain appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165.

We rely on the trial court's assessment of the credibility of witnesses, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied.[40]

For a successful prosecution of the offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.[41] **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.**[42] Clearly, the commission of the offense of illegal sale of dangerous drugs, like *shabu,* **merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller**. As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated.[43] In this case, the prosecution has amply proven all the elements of the drugs sale beyond moral certainty.

The testimony of PO1 Forastero, who acted as the *poseur*-buyer in the buy-bust operation against appellant explicitly described how the sale transaction of *shabu* between him and appellant occurred. This commenced when the confidential informant approached appellant and introduced to the latter PO1 Forastero and PO1 Medina as his relatives. The same was followed by PO1 Forastero's query to appellant if he could "score"

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[40] *People v. Lee Hoi Ming*, 459 Phil. 187, 194 (2003).

[41] *People v. Manlangit*, G.R. No. 189806, 12 January 2011.

[42] *People v. Gaspar*, G.R. No. 192816, 6 July 2011.

[43] *People v. Dela Rosa*, G.R. No. 185166, 26 January 2011.

₱200.00 worth of *shabu*, as well as the simultaneous handing over of the said amount consisting of two ₱100.00-peso bills buy-bust money to the latter. Appellant received the buy-bust money, got and opened a black coin purse with white stripes from his left hand, took out therefrom one small heat-sealed transparent plastic sachet with white crystalline substance, which was later on confirmed as *methylamphetamine hydrochloride* or *shabu* per Physical Science Report No. D-743-03s, and handed it to PO1 Forastero. The latter accepted the same. Such exchange of the buy-bust money and the small heat-sealed transparent plastic sachet with white crystalline substance later on confirmed as *shabu* between PO1 Forastero and appellant already consummated the sale transaction of illicit drugs.

Being the *poseur*-buyer, PO1 Forastero positively identified appellant, who was caught red-handed, to be the same person who sold to him one small heat-sealed transparent plastic sachet of *shabu* for a consideration of ₱200.00. When the small heat-sealed transparent plastic sachet of *shabu* was presented in court, PO1 Forastero identified it to be the same object sold to him by appellant because of the markings "RU" representing appellant's initials, which PO1 Forastero himself has written thereon. PO1 Forastero also identified in court the recovered buy-bust money from appellant consisting of two ₱100.00-peso bills amounting to ₱200.00 with the signature of PO1 Aguirre at the bottom thereof. PO1 Forastero was certain that the two ₱100-peso bills recovered from appellant were the buy-bust money because their serial numbers matched the photocopy thereof, which he had with him during the buy-bust operation.

Without a doubt, the prosecution, thus, established with the required quantum of proof, *i.e.*, proof beyond reasonable doubt, appellant's guilt for the offense of illegal sale of *shabu*, a dangerous drug, in blatant violation of Section 5, Article II of Republic Act No. 9165.

As to the offense of illegal possession of *shabu*, a dangerous drug, it must be shown that: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused

freely and consciously possessed the said drug.[44] These circumstances of illegal possession of *shabu* are obtaining in the present case.

Incident to appellant's lawful arrest resulting from the buy-bust operation, 20 more small heat-sealed transparent plastic sachets of *shabu* with an aggregate weight of 0.43 gram, which were the same kind of dangerous drug he was caught selling red-handed, where recovered in his possession by PO1 Medina, who assisted PO1 Forastero in arresting appellant. When the 20 more small heat-sealed transparent plastic sachets of *shabu* were presented in court, both PO1 Medina and PO1 Forastero identified them to be the same objects recovered from appellant while he was being frisked during his arrest for illegally selling *shabu*. PO1 Medina similarly affirmed that the markings "RU-1" to "RU-20" written thereon was done by him.

The record is also bereft of any evidence to show that appellant has the legal authority to possess the 20 more small heat-sealed transparent plastic sachets of *shabu*. The rule is settled that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession. The burden of evidence is, thus, shifted to the accused to explain the absence of knowledge or *animus possidendi*.[45] Unfortunately, the appellant in the present case miserably failed to discharge that burden. Appellant was not able to satisfactorily explain his absence of knowledge or *animus possidendi* of the *shabu* recovered in his possession.

In view thereof, this Court is fully convinced that appellant's guilt for the offense of illegal possession of *shabu* in violation of Section 11, Article II of Republic Act No. 9165, has also been aptly proven by the prosecution beyond the shadow of reasonable doubt.

Appellant contends that the following facts created serious doubts as to the veracity of the offenses charged against him

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[44] *People v. Gaspar*, *supra* note 42.

[45] *People v. Pendatun*, 478 Phil. 201, 212 (2004).

and on the credibility of the prosecution witnesses and their testimonies, to wit: (1) PO1 Medina vividly remembered the six-digit serial numbers of the marked money used in the buy-bust operation conducted about a year earlier than his testimony but failed to recall if he placed any marking thereon and likewise failed to remember the date of his last successful buy-bust operation; and (2) discrepancy and contradiction existed in the testimonies of PO1 Forastero and PO1 Medina on whether both of them were introduced to appellant by their confidential informant.

Such contention is unavailing. PO1 Medina's failure to recall if he placed any marking on the buy-bust money, as well as the date of his last successful buy-bust operation, was neither fatal nor material for the prosecution of either illegal sale or possession of *shabu* as those facts had no bearing or had nothing to do with the elements of the offenses charged. More so, PO1 Medina was not the one who marked the buy-bust money but PO1 Aguirre, one of the members of the buy-bust team. Also, PO1 Medina was not the *poseur*-buyer who handled the buy-bust money but PO1 Forastero, who was able to positively identify the same during his open court testimony. With the foregoing, PO1 Medina's failure to recall if he ever put any marking on the buy-bust money should not be taken against him.

Even granting *arguendo* that the buy-bust money has not been marked, jurisprudence is clear that failure to mark the boodle money is not fatal to the cause of the prosecution. Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation **much less is it required that the boodle money be marked**.[46] Similarly, the absence of marked money does not create a *hiatus* in the evidence for the prosecution provided that the prosecution has adequately proved the sale.[47] Hence, the only elements necessary to consummate the crime of illegal sale of *shabu* is proof that the illicit transaction took place, coupled with the presentation in court of the *corpus*

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[46] *People v. Gonzales*, 430 Phil. 504, 515 (2002).

[47] *People v. Bongalon*, 425 Phil. 96, 117 (2002).

delicti or the illicit drug as evidence.[48] Both elements were satisfactorily proven in this case.

Further, the discrepancy and contradiction in the testimonies of PO1 Forastero and PO1 Medina on whether both of them or only PO1 Forastero was introduced to appellant as relatives of the confidential informant, the same was too trivial, inconsequential and irrelevant to the elements of the offenses charged. It is too minor to warrant the reversal of the judgment of conviction against appellant. It neither affects the truth of the testimonies of prosecution witnesses nor discredits their positive identification of appellant. In contrast, such trivial inconsistencies strengthen rather than diminish the prosecution's case as they erase suspicion of a rehearsed testimony and negate any misgiving that the same was perjured.[49] As aptly observed by the Court of Appeals, thus:

> Such inconsistencies and/or discrepancies do not negate the fact that a buy-bust operation was conducted and that they took part in it by acting as a poseur-buyer and a back-up, respectively, and by effecting the arrest of the [appellant] soon after the consummation of the sale of *shabu* to poseur-buyer PO1 Forastero. x x x.[50]

We find untenable appellant's assertions that the standard operating procedure supposed to be observed by the buy-bust team was tainted with irregularities as the Pre-Operation Report/ Coordination Sheet that was transmitted to PDEA was merely signed by PO1 Natuel, a member of the buy-bust team, and not by P/Insp. Silungan, the one who conducted the briefing; and that the buy-bust money was merely photocopied and entered in the police blotter, instead, of being laced with ultra-violet powder.

To note, there are no provisions either in Republic Act No. 9165 or its Implementing Rules and Regulations requiring that (1) the Pre-Operation Report/Coordination Sheet that should be transmitted to PDEA must only be signed by the person who

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[48] *People v. Gonzales*, *supra* note 46 at 515.

[49] *People v. Garcia*, 424 Phil. 158, 184-185 (2002).

[50] Court of Appeals Decision. *Rollo*, p. 13.

conducted the briefing; and (2) the buy-bust money to be used in the actual buy-bust operation must be dusted with ultra-violet powder. The Pre-Operation Report/Coordination Sheet and the use of dusted money are not indispensable to prove the illegal sale of *shabu*. These two are not part of the elements of the aforesaid offense. To repeat, in a prosecution for illegal sale of dangerous drugs, like *shabu*, what is important is the fact that the *poseur*-buyer received *shabu* from the accused-appellant and the same was presented as evidence in court,[51] which the prosecution in this case was able to do so. As has been previously discussed, all the elements of illegal sale of *shabu* were adequately proven and established by the prosecution.

Further, emphasis must also be given to the fact that PO1 Natuel was present during the briefing on the conduct of their buy-bust operation against appellant. He has personal knowledge therefore about the manner and other significant details of the said buy-bust operation. Thus, he can properly attest to the veracity and truthfulness of the contents of the Pre-Operation Report/Coordination Sheet that was transmitted to PDEA. And, even on the assumption that the Pre-Operation Report/ Coordination Sheet that was transmitted to PDEA is disregarded such that it is as though no coordination with PDEA was made, still the genuineness and legitimacy of the buy-bust operation against appellant would stand. In *People v. Roa*,[52] this Court made the following pronouncements, thus:

> In the first place, **coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation**. While it is true that Section 86 [citation omitted] of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. **After all, a buy-bust is just a form of an in *flagrante* arrest** sanctioned by Section 5, Rule 113 [citation omitted] of the Rules of Court, which police authorities

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[51] *People v. Requiz*, 376 Phil. 750, 760 (1999).

[52] G.R. No. 186134, 6 May 2010, 620 SCRA 359.

may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA [citation omitted]. **A buy-bust operation is not invalidated by mere non-coordination with the PDEA**.[53] [Emphasis supplied].

Equally, the only purpose for treating with ultra-violet powder the buy-bust money to be used in the actual buy-bust operation is for identification, that is, to determine if there was receipt of the buy-bust money by the accused in exchange for the illegal drugs he was selling. In the present case, although the buy-bust money were not laced with ultra-violet powder, still, the prosecution was able to positively identify that the two ₱100.00-peso bills recovered from appellant right after his arrest were the buy-bust money as the same were photocopied and entered in the police blotter before the actual buy-bust operation.

With the foregoing, the failure to sign the Pre-Operation Report/ Coordination Sheet by the person who conducted the briefing and the failure to lace the buy-bust money with ultra-violet powder do not affect or in any way diminish the authenticity of the buy-bust operation against appellant. For it remains undeniable that a legitimate buy-bust operation was conducted against appellant leading to the latter's arrest for being caught in *flagrante delicto* selling and possessing *shabu*. More importantly, the prosecution was able to prove all the essential elements of the offenses charged against appellant.

The final argument of appellant that the police officers likewise failed to observe the requirements of Section 21, Article II of Republic Act No. 9165, primarily because the seized drugs were not photographed in his presence or his representative or counsel, a representative from the media, a representative from the DOJ and any elected public official, stands on hollow ground.

Section 21, paragraph 1, Article II of Republic Act No. 9165 provides:

Section 21. *Custody and Disposition of Confiscated, Seized, and/ or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs,*

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[53] *Id.* at 369-370.

Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

The same is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz.:

(a) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof: **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved** by the apprehending officer/team, shall **not render void and invalid such seizures of and custody** over said items. [Emphasis supplied]

In this case, the prosecution's failure to conduct the required photograph of the seized drugs in compliance with the provision of Section 21, Article II of Republic Act No. 9165, will not work to the advantage of appellant. Non-compliance thereto is not fatal and will not render appellant's arrest illegal or the

items seized/confiscated from him inadmissible.[54] As can be observed, the implementing rules offer some flexibility when a *proviso* added that "non-compliance with these requirements under justifiable grounds, **as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**."[55] Thus, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[56]

More so, even if the seized drugs were not marked at the place of arrest the same does not render the confiscated items inadmissible in evidence. In *Imson v. People*, this Court made the following pronouncements:

> In *People v. Resurreccion* [citation omitted] the Court held that the failure of the policemen to immediately mark the confiscated items does not automatically impair the integrity of chain of custody. The Court held:
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> > **Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody**.
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> x x x x x x x x x
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> x x x *People v. Sanchez*, however, explains that **[Republic Act] 9165 does not specify a time frame for "immediate marking," or where said marking should be done**:
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> > "What Section 21 of [Republic Act] No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure

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[54] *Imson v. People*, G.R. No. 193003, 13 July 2011 citing *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 436-437 and *People v. Campos*, G.R. No. 186526, 25 August 2010, 629 SCRA 462, 468.

[55] *People v. Manlangit*, *supra* note 42.

[56] *Imson v. People* citing *People v. Concepcion* and *People v. Campos*, *supra* note 54.

> that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation."

To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. **"Immediate Confiscation" has no exact definition. Thus, in *People v. Gum-Oyen*, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team**.[57] [Emphasis supplied].

The function of the chain of custody requirement, therefore, is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[58]

In the present case, the chain of custody of the seized drugs does not appear to have been broken. After seizure of one small heat-sealed transparent plastic sachet of suspected *shabu*, which was the subject of the sale, and 20 more small heat-sealed transparent plastic sachets also of suspected *shabu*, which were recovered from appellant on the occasion of his arrest, they

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[57] *Id.*

[58] *People v. Dela Rosa*, G.R. No. 185166, 26 January 2011 citing *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 521.

remained in the possession of PO1 Forastero and PO1 Medina, respectively, on their way to their office where PO1 Forastero marked the one small heat-sealed transparent plastic sachet of suspected *shabu* subject of the sale with appellant's initials, *i.e.*, "RU," while PO1 Medina marked the 20 more small heat-sealed transparent plastic sachets also of suspected *shabu* with "RU-1" to "RU-20," immediately upon their arrival thereat. Thereafter, the afore-named police officers, together with PO1 Gunayon, forwarded the seized drugs to the PNP Crime Laboratory, PNP Southern Police District, Fort Bonifacio, Taguig City, for laboratory examination, which yielded positive result for the presence of *methylamphetamine hydrochloride* or *shabu*, a dangerous drug, as evidenced by a Physical Science Report No. D-743-03s. The drugs seized from appellant and examined in the crime laboratory were subsequently offered as evidence in court where both PO1 Forastero and PO1 Medina positively identified and explained the markings thereon. These facts persuasively prove that the 21 small heat-sealed transparent plastic sachets of *shabu* presented in court were the same items seized from appellant during the buy-bust operation. Hence, the integrity and evidentiary value thereof were duly preserved.

In *People v. Gaspar*[59] citing *People v. De Guzman*,[60] this Court held that "in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers." In this case, appellant failed to overcome the aforesaid presumption. More telling is appellant's own admission that he only met the prosecution witnesses for the first time when he was arrested and that there was no bad blood between them. This goes to show that the prosecution witnesses were not impelled with improper motive to falsely testify against appellant.

Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated

[59] *Supra* note 42.

[60] G.R. No. 177569, 28 November 2007, 539 SCRA 306.

by any credible and convincing evidence, must necessarily fail.[61] Other than the testimony of appellant's common-law wife, whose testimony was rendered suspect because of her relationship with appellant, no other witness not related to appellant was ever presented to corroborate his claim.[62] Further, both prosecution witnesses positively identified appellant in open court to be the same person they caught red-handed selling and possessing *shabu*. Appellant's bare denial, therefore, cannot prevail over such positive identification made by the prosecution witnesses.[63] In the same way, appellant's denial cannot overcome the presumption that the police officers in this case have performed their duties in a regular and proper manner.[64] Besides, this Court held in a *catena* of cases that the defense of denial or frame-up, like *alibi*, has been viewed with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[65]

As to penalty. Section 5, Article II of Republic Act No. 9165 clearly provides that the penalty for illegal sale of dangerous drugs, like *shabu*, regardless of its quantity and purity, shall be life imprisonment to death and a fine ranging from ₱5,000,000.00 to ₱10,000,000.00. In light, however, of the effectivity of Republic Act No. 9346,[66] the imposition of the supreme penalty of death has been proscribed.[67] Thus, the penalty of life imprisonment and a fine of ₱5,000,000.00 imposed upon appellant by the RTC and affirmed by the Court of Appeals for the offense of illegal sale of *shabu* is in order.

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[61] *People v. Sultan*, G.R. No. 187737, 5 July 2010, 623 SCRA 542, 558.

[62] *People v. Gopio*, 400 Phil. 217, 263-237 (2000).

[63] *People v. Bongalon*, *supra* note 47 at 120.

[64] *People v. Gaspar*, *supra* note 42.

[65] *People v. Astudillo*, 440 Phil. 203, 224 (2002); *People v. Mustapa*, 404 Phil. 888, 898 (2001); *People v. Johnson*, 401 Phil. 734, 750 (2000).

[66] Otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[67] *People v. Villahermosa*, G.R. 186465, 1 June 2011 citing *People v. Sembrano*, G.R. No. 185848, 16 August 2010, 628 SCRA 344.

Section 11, Article II of Republic Act No. 9165, on the other hand, provides for the penalty for illegal possession of dangerous drugs, like *shabu*. For illegal possession of less than five grams of *shabu*, a dangerous drug, the penalty is imprisonment of 12 years and 1 day to 20 years and a fine ranging from ₱300,000.00 to ₱400,000.00. In this case, appellant's possession of *shabu* with an aggregate weight of 0.43 gram, that is, less than 5 grams, without any legal authority has been proven beyond reasonable doubt by the prosecution. Applying the Indeterminate Sentence Law, the penalty of 12 years and 1 day to 15 years and a fine of ₱300,000.00 imposed upon appellant by the RTC and affirmed by the appellate court for the offense of illegal possession of *shabu* is also proper.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01559 dated 28 February 2008 finding herein appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby *AFFIRMED.*

SO ORDERED.

Brion (Acting Chairperson), del Castillo,[*] *Mendoza,*[**] and *Sereno, JJ.,* concur.

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[*] Per Special Order No. 1084 dated 13 September 2011.

[**] Per Special Order No. 1107 dated 27 September 2011.

FIRST DIVISION

[G.R. No. 196390. September 28, 2011]

PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA), *petitioner, vs.* **RICHARD BRODETT and JORGE JOSEPH,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROPERTY CONFISCATED IN CRIMINAL PROCEEDINGS; COURT HAVING JURISDICTION OVER THE OFFENSE HAS THE RIGHT TO DISPOSE OF THE PROPERTY USED IN COMMITTING A CRIME; DISCUSSED. — It is not open to question that in a criminal proceeding, the court having jurisdiction over the offense has the power to order *upon conviction of an accused* the seizure of (*a*) the instruments to commit the crime, including documents, papers, and other effects that are the necessary means to commit the crime; and (*b*) contraband, the ownership or possession of which is not permitted for being illegal. As justification for the first, the accused must not profit from his crime, or must not acquire property or the right to possession of property through his unlawful act. As justification for the second, to return to the convict from whom the contraband was taken, in one way or another, is not prudent or proper, because doing so will give rise to a violation of the law for possessing the contraband again. Indeed, the court having jurisdiction over the offense has the right to dispose of property used in the commission of the crime, such disposition being an accessory penalty to be imposed on the accused, unless the property belongs to a third person not liable for the offense that it was used as the instrument to commit. In case of forfeiture of property for crime, title and ownership of the convict are absolutely divested and shall pass to the Government. But it is required that the property to be forfeited must be before the court in such manner that it can be said to be within its jurisdiction.

2. ID.; ID.; ID.; PERSONAL PROPERTY SEIZED IN CONNECTION WITH A CRIMINAL OFFENSE EITHER BY SEARCH WARRANT OR SEARCH INCIDENTAL TO

A LAWFUL ARREST; RETURN THEREOF PROPER IN THE ABSENCE OF ENSUING CRIMINAL PROSECUTION FOR ITS USE AS EVIDENCE; DISCUSSED. — According to the *Rules of Court*, personal property may be seized in connection with a criminal offense either by authority of a search warrant or as the product of a search incidental to a lawful arrest. If the search is by virtue of a search warrant, the personal property that may be seized may be that which is the subject of the offense; or that which has been stolen or embezzled and other proceeds, or fruits of the offense; or that which has been used or intended to be used as the means of committing an offense. If the search is an incident of a lawful arrest, seizure may be made of dangerous weapons or anything that may have been used or may constitute proof in the commission of an offense. Should there be no ensuing criminal prosecution in which the personal property seized is used as evidence, its return to the person from whom it was taken, or to the person who is entitled to its possession is but a matter of course, except if it is contraband or illegal *per se*. A proper court may order the return of property held solely as evidence should the Government be unreasonably delayed in bringing a criminal prosecution. The order for the disposition of such property can be made only when the case is finally terminated. Generally, the trial court is vested with considerable legal discretion in the matter of disposing of property claimed as evidence, and this discretion extends even to the manner of proceeding in the event the accused claims the property was wrongfully taken from him. In particular, the trial court has the power to return property held as evidence to its rightful owners, whether the property was legally or illegally seized by the Government. Property used as evidence must be returned once the criminal proceedings to which it relates have terminated, unless it is then subject to forfeiture or other proceedings.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); SECTION 20 ON CONFISCATION AND FORFEITURE OF THE PROCEEDS OR INSTRUMENTS OF THE UNLAWFUL ACT, INCLUDING PROPERTIES DERIVED FROM ILLEGAL TRAFFICKING OF DANGEROUS DRUGS; EXCEPTION IS THE PROPERTY OF A THIRD PERSON NOT LIABLE FOR THE UNLAWFUL ACT; DISCUSSED.

— The legal provision applicable to the confiscation and forfeiture of the proceeds or instruments of the unlawful act, including the properties or proceeds derived from illegal trafficking of dangerous drugs and precursors and essential chemicals, is Section 20 of R.A. No. 9165, which pertinently provides as follows: Section 20. *Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals.* — Every penalty imposed for the unlawful importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of any dangerous drug and/or controlled precursor and essential chemical, the cultivation or culture of plants which are sources of dangerous drugs, and the possession of any equipment, instrument, apparatus and other paraphernalia for dangerous drugs including other laboratory equipment, shall carry with it the confiscation and forfeiture, in favor of the government, of all the proceeds derived from unlawful act, including, but not limited to, money and other assets obtained thereby, and the instruments or tools with which the particular unlawful act was committed, **unless they are the property of a third person not liable for the unlawful act,** but those which are not of lawful commerce shall be ordered destroyed without delay pursuant to the provisions of Section 21 of this Act. x x x To bar the forfeiture of the tools and instruments belonging to a third person, therefore, there must be an indictment charging such third person either as a principal, accessory, or accomplice. Less than that will not suffice to prevent the return of the tools and instruments to the third person, for a mere suspicion of that person's participation is not sufficient ground for the court to order the forfeiture of the goods seized.

4. ID.; ID.; ID.; ID.; ORDERING RETURN OF THE SEIZED CAR USED IN VIOLATION OF RA NO. 9165 DURING THE PENDENCY OF THE CASE IS GRAVE ABUSE OF DISCRETION. — We note that the RTC granted *accused* Brodett's *Motion To Return Non-Drug Evidence* on November 4, 2009 when the criminal proceedings were still going on, and the trial was yet to be completed. Ordering the release of the car *at that point* of the proceedings was premature, considering that the third paragraph of Section 20, *supra*, expressly forbids the *disposition, alienation*, or *transfer* of

any property, or income derived therefrom, that has been confiscated from the accused charged under R.A. No. 9165 *during the pendency of the proceedings in the Regional Trial Court.* Section 20 further expressly requires that such property or income derived therefrom should remain in *custodia legis* in all that time and that no bond shall be admitted for the release of it. Indeed, forfeiture, if warranted pursuant to either Article 45 of the *Revised Penal Code* and Section 20 of R.A. No. 9165, would be a part of the penalty to be prescribed. The determination of whether or not the car (or any other article confiscated in relation to the unlawful act) *would be* subject of forfeiture could be made only when the judgment was to be rendered in the proceedings. Section 20 is also clear as to this. The status of the car (or any other article confiscated in relation to the unlawful act) for the duration of the trial in the RTC as being in *custodia legis* is primarily intended to preserve it as evidence and to ensure its availability as such. To release it before the judgment is rendered is to deprive the trial court and the parties access to it as evidence. Consequenty, that photographs were ordered to be taken of the car was not enough, for mere photographs might not fill in fully the evidentiary need of the Prosecution. As such, the RTC's assailed orders were issued with grave abuse of discretion amounting to lack or excess of jurisdiction for being in contravention with the express language of Section 20 of R.A. No. 9165.

APPEARANCES OF COUNSEL

Alvaro Bernabe Lazaro for petitioner.
Verano Law Firm for Richard Brodett.
Fornier Fornier Saño & Lagumbay Law Firm for Jorge Joseph.

D E C I S I O N

BERSAMIN, *J.*:

Objects of lawful commerce confiscated in the course of an enforcement of the *Comprehensive Dangerous Drugs Act of* 2002 (Republic Act No. 9165) that are the property of a third person are subject to be returned to the lawful owner who is

not liable for the unlawful act. But the trial court may not release such objects pending trial and before judgment.

Antecedents

On April 13, 2009, the State, through the Office of the City Prosecutor of Muntinlupa City, charged Richard Brodett (Brodett) and Jorge Joseph (Joseph) with a violation of Section 5, in relation to Section 26(b), of Republic Act No. 9165[1] in the Regional Trial Court (RTC) in Muntinlupa City, docketed as Criminal Case No. 09-208, the accusatory portion of the information for which reads as follows:

> That on or about the 19th day of September 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding each other, they not being authorized by law, did then and there wilfully, unlawfully, and feloniously sell, trade, deliver and give away to another, sixty (60) pieces of blue-colored tablets with Motorala (*M*) logos, contained in six (6) self-sealing transparent plastic sachets with recorded total net weight of 9.8388 grams, which when subjected to laboratory examination yielded positive results for presence of METHAMPHETAMINE, a dangerous drug.[2]

Also on April 16, 2009, the State, also through the Office of the City Prosecutor of Muntinlupa City, filed another information charging only Brodett with a violation of Section 11 of R.A. No. 9165, docketed as Criminal Case No. 09-209, with the information alleging:

> That on or about the 19th day of September 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there, wilfully, unlawfully, and feloniously have in his possession, custody and control the following:
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> a. Four (4) yellow tablets with Playboy logos and ten (10) transparent capsules containing white powdery substance

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[1] *Comprehensive Dangerous Drugs Act of 2002.*

[2] *Rollo,* p. 51.

contained in one self-sealing transparent plastic sachet having a net weight of 4.9007 grams, which when subjected to laboratory examination yielded positive results for presence of METHYLENE DIOXYMETHAMPHETAMINE (MDMA), commonly known as "Ecstasy", a dangerous drug;

b. Five (5) self-sealing transparent plastic sachets containing white powdery substance with total recorded net weight of 1.2235 grams, which when subjected to laboratory examination yielded positive results for presence of COCCAINE, a dangerous drug;

c. Five (5) self-sealing transparent plastic sachets containing white powdery substance, placed in a light-yellow folded paper, with total recorded net weight of 2.7355 grams, which when subjected to laboratory examination yielded positive results for presence of COCCAINE, a dangerous drug;

d. Three (3) self-sealing transparent plastic sachets containing dried leaves with total recorded net weight of 54.5331 grams, which when subjected to laboratory examination yielded positive results for presence of TETRAHYDROCANNABINOL, a dangerous drug.[3]

In the course of the proceedings in the RTC, on July 30, 2009, Brodett filed a *Motion To Return Non-Drug Evidence*. He averred that during his arrest, Philippine Drug Enforcement Agency (PDEA) had seized several personal non-drug effects from him, including a 2004 Honda Accord car with license plate no. XPF-551; and that PDEA refused to return his personal effects despite repeated demands for their return. He prayed that his personal effects be tendered to the trial court to be returned to himupon verification.[4]

On August 27, 2009, the Office of the City Prosecutor submitted its *Comment and Objection*,[5] proposing thereby that the delivery to the RTC of the listed personal effects for safekeeping, to be held there throughout the duration of the trial, would be to enable the Prosecution and the Defense to

[3] *Id.*, pp. 54-55.

[4] *Id.*, pp. 58-61.

[5] *Id.*, pp. 63-64.

exhaust their possible evidentiary value. The Office of the City Prosecutor objected to the return of the car because it appeared to be the instrument in the commission of the violation of Section 5 of R.A. No. 9165 due to its being the vehicle used in the transaction of the sale of dangerous drugs.

On November 4, 2009, the RTC directed the release of the car, *viz*:

> WHEREFORE, the Director of PDEA or any of its authorized officer or custodian is hereby directed to: (1) photograph the abovementioned Honda Accord, before returning the same to its rightful owner Myra S. Brodett and the return should be fully documented, and (2) bring the personal properties as listed in this Order of both accused, Richard S. Brodett and Jorge J. Joseph to this court for safekeeping, to be held as needed.
>
> SO ORDERED.[6]

PDEA moved to reconsider the order of the RTC, but its motion was denied on February 17, 2010 for lack of merit, to wit:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED for lack of merit. The Order of the Court dated November 4, 2009 is upheld.
>
> SO ORDERED.[7]

Thence, PDEA assailed the order of the RTC in the Court of Appeals (CA) by petition for *certiorari*, claiming that the orders of the RTC were issued in grave abuse of discretion amounting to lack or excess of jurisdiction.

On March 31, 2011, the CA promulgated its Decision,[8] dismissing the petition for *certiorari* thusly:

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[6] *Id.*, p. 107.

[7] *Id.*, p. 110.

[8] *Id.*, pp. 37-46; penned by Associate Justice Vicente S.E. Veloso, with Associate Justice Francisco P. Acosta and Associate Justice Ramon A. Cruz, concurring.

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Here it is beyond dispute that the Honda Accord subject of this petition is owned by and registered in the name of Myra S. Brodett, not accused Richard Brodett. Also, it does not appear from the records of the case that said Myra S. Brodett has been charged of any crime, more particularly, in the subject cases of possession and sale of dangerous drugs. Applying Section 20 of the law to the dispute at bar, We therefore see no cogent reason why the subject Honda Accord may not be exempted from confiscation and forfeiture.

x x x x x x x x x

We thus cannot sustain petitioner's submission that the subject car, being an instrument of the offense, may not be released to Ms. Brodett and should remain in *custodia legis*. The letters of the law are plain and unambiguous. Being so, there is no room for a contrary construction, especially so that the only purpose of judicial construction is to remove doubt and uncertainty, matters that are not obtaining here. More so that the required literal interpretation is consistent with the Constitutional guarantee that a person may not be deprived of life, liberty or property without due process of law.

WHEREFORE, the instant petition is DENIED and consequently DISMISSED for lack of merit.

SO ORDERED.[9]

Hence, PDEA appeals.

Issues

Essentially, PDEA asserts that the decision of the CA was not in accord with applicable laws and the primordial intent of the framers of R.A. No. 9165.[10] It contends that the CA gravely erred in its ruling; that the Honda Accord car, registered under the name of Myra S. Brodett (Ms. Brodett), had been seized from accused Brodett during a legitimate anti-illegal operation and should not be released from the custody of the law; that the *Motion to Return Non-Drug Evidence* did not intimate or allege

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[9] *Id.,* pp. 44-46.

[10] *Id.,* pp. 2-32.

that the car had belonged to a third person; and that even if the car had belonged to Ms. Brodett, a third person, her ownership did not *ipso facto* authorize its release, because she was under the obligation to prove to the RTC that she had no knowledge of the commission of the crime.

In his *Comment*,[11] Brodett counters that the petitioner failed to present any question of law that warranted a review by the Court; that Section 20 of R. A. No. 9165 clearly and unequivocally states that confiscation and forfeiture of the proceeds or instruments of the supposed unlawful act in favor of the Government may be done by PDEA, unless such proceeds or instruments are the property of a third person not liable for the unlawful act; that PDEA is gravely mistaken in its reading that the third person must still prove in the trial court that he has no knowledge of the commission of the crime; and that PDEA failed to exhaust all remedies before filing the petition for review.

The decisive issue is whether or not the CA erred in affirming the order for the release of the car to Ms. Brodett.

Ruling

The petition is meritorious.

I
Applicable laws and jurisprudence on releasing property confiscated in criminal proceedings

It is not open to question that in a criminal proceeding, the court having jurisdiction over the offense has the power to order *upon conviction of an accused* the seizure of (*a*) the instruments to commit the crime, including documents, papers, and other effects that are the necessary means to commit the crime; and (*b*) contraband, the ownership or possession of which is not permitted for being illegal. As justification for the first, the accused must not profit from his crime, or must not acquire property or the right to possession of property through his unlawful act.[12]

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[11] *Id.*, pp. 158-177.

[12] 24 CJS, *Criminal Law*, § 1733.

As justification for the second, to return to the convict from whom the contraband was taken, in one way or another, is not prudent or proper, because doing so will give rise to a violation of the law for possessing the contraband again.[13] Indeed, the court having jurisdiction over the offense has the right to dispose of property used in the commission of the crime, such disposition being an accessory penalty to be imposed on the accused, unless the property belongs to a third person not liable for the offense that it was used as the instrument to commit.[14]

In case of forfeiture of property for crime, title and ownership of the convict are absolutely divested and shall pass to the Government.[15] But it is required that the property to be forfeited must be before the court in such manner that it can be said to be within its jurisdiction.[16]

According to the *Rules of Court*, personal property may be seized in connection with a criminal offense either by authority of a search warrant or as the product of a search incidental to a lawful arrest. If the search is by virtue of a search warrant, the personal property that may be seized may be that which is the subject of the offense; or that which has been stolen or embezzled and other proceeds, or fruits of the offense; or that which has been used or intended to be used as the means of committing an offense.[17] If the search is an incident of a lawful arrest, seizure may be made of dangerous weapons or anything that may have been used or may constitute proof in the commission of an offense.[18] Should there be no ensuing criminal prosecution in which the personal property seized is used as evidence, its return to the person from whom it was taken, or to the person who is entitled to its possession is but a matter of

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[13] *Villaruz v. Court of First Instance*, 71 Phil. 72 (1940).

[14] *United States v. Bruhez*, 28 Phil. 305 (1914).

[15] *United States v. Surla*, 20 Phil. 163 (1911).

[16] *United States v. Filart and Singson*, 30 Phil. 80 (1915).

[17] Section 3, Rule 126, *Rules of Court*.

[18] Section 13, Rule 126, *Rules of Court*.

course,[19] except if it is contraband or illegal *per se*. A proper court may order the return of property held solely as evidence should the Government be unreasonably delayed in bringing a criminal prosecution.[20] The order for the disposition of such property can be made only when the case is finally terminated.[21]

Generally, the trial court is vested with considerable legal discretion in the matter of disposing of property claimed as evidence,[22] and this discretion extends even to the manner of proceeding in the event the accused claims the property was wrongfully taken from him.[23] In particular, the trial court has the power to return property held as evidence to its rightful owners, whether the property was legally or illegally seized by the Government.[24] Property used as evidence must be returned once the criminal proceedings to which it relates have terminated, unless it is then subject to forfeiture or other proceedings.[25]

II
Order of release was premature and made in contravention of Section 20, R.A. No. 9165

It is undisputed that the ownership of the confiscated car belonged to Ms. Brodett, who was not charged either in connection with the illegal possession and sale of illegal drugs involving Brodett and Joseph that were the subject of the criminal proceedings in the RTC, or even in any other criminal proceedings.

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[19] *Caterpillar, Inc. v. Samson*, G.R. No. 164605, October 27, 2006, 505 SCRA 704, 711.

[20] 24 CJS, *Criminal Law*, §1733, c., citing *United States v. Premises Known as 608 Taylor Ave., Apartment 302, Pittsburgh, Pennsylvania*, C.A. Pa., 584 F. 2d 1297.

[21] *Padilla v. United States*, C.A. Cal., 267 F. 2d 351

[22] 24 CJS, *Criminal Law*, §1733, c., citing *State v. Allen*, 66 N.W. 2d 830, 159 Neb. 314.

[23] *Id.*, citing *Hutchinson v. Rosetti*, 205 N.Y.S. 2d 526, 24 Misc. 2d 949.

[24] *Id.*, citing *United States v. Estep*, C.A. 10(Okl.), 760 F. 2d 1060.

[25] *Id.*, citing *United States v. Premises Known as 608 Taylor Ave., Apartment 302, Pittsburgh, Pennsylvania*, C.A. Pa., 584 F. 2d 1297.

In its decision under review, the CA held as follows:

A careful reading of the above provision shows that **confiscation and forfeiture** in drug-related cases pertains to "all the **proceeds and properties derived** from the unlawful act, including but not limited to, **money and other assets** obtained thereby, and **the instruments or tools** with which the particular unlawful act was committed ***unless they are the property of a third person not liable for the unlawful act***." Simply put, **the law exempts from the effects of confiscation and forfeiture any property that is owned by a third person who is not liable for the unlawful act**.

Here, it is beyond dispute that the **Honda Accord** subject of this petition is **owned by and registered in the name of Myra S. Brodett, not accused Richard Brodett**. Also, it does not appear from the records of the case that said Myra S. Brodett has been charged of any crime, more particularly, in the subject cases of possession and sale of dangerous drugs. Applying Section 20 of the law to the dispute at bar, We therefore see no cogent reason why the subject Honda Accord may not be exempted from confiscation and forfeiture.

Basic is the rule in statutory construction that when the law is clear and unambiguous, the court has no alternative but to apply the same according to its clear language. The Supreme Court had steadfastly adhered to the doctrine that the first and fundamental duty of courts is to apply the law according to its express terms, interpretation being called only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application.

We thus cannot sustain petitioner's submission that the subject car, being an instrument of the offense, may not be released to Ms. Brodett and should remain in *custodia legis*. The letters of the law are plain and unambiguous. Being so, there is no room for a contrary construction, especially so that the only purpose of judicial construction is to remove doubt and uncertainty, matters that are not obtaining here. More so that the required literal interpretation is not consistent with the Constitutional guarantee that a person may not be deprived of life, liberty or property without due process of law.[26] (emphases are in the original text)

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

The legal provision applicable to the confiscation and forfeiture of the proceeds or instruments of the unlawful act, including the properties or proceeds derived from illegal trafficking of dangerous drugs and precursors and essential chemicals, is Section 20 of R.A. No. 9165, which pertinently provides as follows:

Section 20. *Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals*. — Every penalty imposed for the unlawful importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of any dangerous drug and/or controlled precursor and essential chemical, the cultivation or culture of plants which are sources of dangerous drugs, and the possession of any equipment, instrument, apparatus and other paraphernalia for dangerous drugs including other laboratory equipment, shall carry with it the confiscation and forfeiture, in favor of the government, of all the proceeds derived from unlawful act, including, but not limited to, money and other assets obtained thereby, and the instruments or tools with which the particular unlawful act was committed, **unless they are the property of a third person not liable for the unlawful act**, but those which are not of lawful commerce shall be ordered destroyed without delay pursuant to the provisions of Section 21 of this Act.

After conviction in the Regional Trial Court in the appropriate criminal case filed, the Court shall immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense and all the assets and properties of the accused either owned or held by him or in the name of some other persons if the same shall be found to be manifestly out of proportion to his/her lawful income: Provided, however, That if the forfeited property is a vehicle, the same shall be auctioned off not later than five (5) days upon order of confiscation or forfeiture.

During the pendency of the case in the Regional Trial Court, no property, or income derived therefrom, which may be confiscated and forfeited, shall be disposed, alienated or transferred and the same shall be in *custodia legis* and no bond shall be admitted for the release of the same.

The proceeds of any sale or disposition of any property confiscated or forfeited under this Section shall be used to pay all proper expenses

incurred in the proceedings for the confiscation, forfeiture, custody and maintenance of the property pending disposition, as well as expenses for publication and court costs. The proceeds in excess of the above expenses shall accrue to the Board to be used in its campaign against illegal drugs.[27]

There is no question, for even PDEA has itself pointed out, that the text of Section 20 of R.A. No. 9165 relevant to the confiscation and forfeiture of the proceeds or instruments of the unlawful act is similar to that of Article 45 of the *Revised Penal Code*, which states:

Article 45. *Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*. — Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, **unless they be the property of a third person not liable for the offense**, but those articles which are not subject of lawful commerce shall be destroyed.

The Court has interpreted and applied Article 45 of the *Revised Penal Code* in *People v. Jose*,[28] concerning the confiscation and forfeiture of the car used by the four accused when they committed the forcible abduction with rape, although the car did not belong to any of them, holding:

x x x Article 45 of the *Revised Penal Code* bars the confiscation and forfeiture of an instrument or tool used in the commission of the crime if such "be the property of a third person not liable for the offense," it is the sense of this Court that the order of the court below for the confiscation of the car in question should be set aside and that the said car should be ordered delivered to the intervenor for foreclosure as decreed in the judgment of the Court of First Instance of Manila in replevin case. x x x[29]

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[27] Emphasis supplied.

[28] No. L-28232, February 6, 1971, 37 SCRA 450.

[29] *Id.*, p. 482.

Such interpretation is extended by analogy to Section 20, *supra*. To bar the forfeiture of the tools and instruments belonging to a third person,therefore, there must be an indictment charging such third person either as a principal, accessory, or accomplice. Less than that will not suffice to prevent the return of the tools and instruments to the third person, for a mere suspicion of that person's participation is not sufficient ground for the court to order the forfeiture of the goods seized.[30]

However, the Office of the City Prosecutor proposed through its *Comment and Objection* submitted on August 27, 2009 in the RTC[31] that the delivery to the RTC of the listed personal effects for safekeeping, to be held there throughout the duration of the trial, would be to enable the Prosecution and the Defense *to exhaust their possible evidentiary value*. The Office of the City Prosecutor further objected to the return of the car because it appeared to be the vehicle used in the transaction of the sale of dangerous drugs, and, as such, was the instrument in the commission of the violation of Section 5 of R.A. No. 9165.

On its part, PDEA regards the decision of the CA to be not in accord with applicable laws and the primordial intent of the framers of R.A. No. 9165,[32] and contends that the car should not be released from the custody of the law because it had been seized from accused Brodett during a legitimate anti-illegal operation. It argues that the *Motion to Return Non-Drug Evidence* did not intimate or allege that the car had belonged to a third person; and that even if the car had belonged to Ms. Brodett, a third person, her ownership did not *ipso facto* authorize its release, because she was under the obligation to prove to the RTC that she had no knowledge of the commission of the crime. It insists that the car is a property in *custodia legis* and may not be released during the pendency of the trial.

We agree with PDEA and the Office of the City Prosecutor.

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[30] I Reyes, *The Revised Penal Code*, 15th Edition, pp. 638-639.

[31] *Rollo*, pp. 63-64.

[32] *Id.*, pp. 2-32.

We note that the RTC granted *accused* Brodett's *Motion To Return Non-Drug Evidence* on November 4, 2009 when the criminal proceedings were still going on, and the trial was yet to be completed. Ordering the release of the car *at that point* of the proceedings was premature, considering that the third paragraph of Section 20, *supra*, expressly forbids the *disposition, alienation*, or *transfer* of any property, or income derived therefrom, that has been confiscated from the accused charged under R.A. No. 9165 *during the pendency of the proceedings in the Regional Trial Court.* Section 20 further expressly requires that such property or income derived therefrom should remain in *custodia legis* in all that time and that no bond shall be admitted for the release of it.

Indeed, forfeiture, if warranted pursuant to either Article 45 of the *Revised Penal Code* and Section 20 of R.A. No. 9165, would be a part of the penalty to be prescribed. The determination of whether or not the car (or any other article confiscated in relation to the unlawful act) *would be* subject of forfeiture could be made only when the judgment was to be rendered in the proceedings. Section 20 is also clear as to this.

The status of the car (or any other article confiscated in relation to the unlawful act) for the duration of the trial in the RTC as being in *custodia legis* is primarily intended to preserve it as evidence and to ensure its availability as such. To release it before the judgment is rendered is to deprive the trial court and the parties access to it as evidence. Consequently, that photographs were ordered to be taken of the car was not enough, for mere photographs might not fill in fully the evidentiary need of the Prosecution. As such, the RTC's assailed orders were issued with grave abuse of discretion amounting to lack or excess of jurisdiction for being in contravention with the express language of Section 20 of R.A. No. 9165.

Nonetheless, the Court need not annul the assailed orders of the RTC, or reverse the decision of the CA. It appears that on August 26, 2011 the RTC promulgated its decision on the merits in Criminal Case No. 09-208 and Criminal Case No. 09-209, acquitting both Brodett and Joseph and further ordering the

return to the accused of all non-drug evidence except the buy-bust money and the genuine money, because:

> The failure of the prosecution therefore to establish all the links in the chain of custody is fatal to the case at bar. The Court cannot merely rely on the presumption of regularity in the performance of official function in view of the glaring blunder in the handling of the *corpus delicti* of these cases. The presumption of regularity should bow down to the presumption of innocence of the accused. Hence, the two (2) accused BRODETT and JOSEPH should be as it is hereby ACQUITTED of the crimes herein charged for Illegal Selling and Illegal Possession of Dangerous Drugs.
>
> WHEREFORE, premises considered, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, RICHARD BRODETT *y* SANTOS and JORGE JOSEPH *y* JORDANA are ACQUITTED of the crimes charged in Criminal Case Nos. 09-208 and 09-209.
>
> The subject drug evidence are all ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. **All the non-drug evidence except the buy bust money and the genuine money are ordered returned to the accused**.
>
> The genuine money used in the buy bust operation as well as the genuine money confiscated from both accused are ordered escheated in favor of the government and accordingly transmitted to the National Treasury for proper disposition. (emphasis supplied)[33]

The directive to return the non-drug evidence has overtaken the petition for review as to render further action upon it superfluous. Yet, the Court seizes the opportunity to perform its duty to formulate guidelines on the matter of confiscation and forfeiture of non-drug articles, including those belonging to third persons not liable for the offense, in order to clarify the extent of the power of the trial court under Section 20 of R.A. No. 9165.[34] This the Court must now do in view of the

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[33] Judgment dated August 26, 2011 rendered in Criminal Case No. 09-208 and Criminal Case No. 09-209.

[34] *Salonga v. Cruz Paño*, G.R. No. 59524, February 18, 1985, 134 SCRA 438, 463; *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 215.

question about the confiscation and forfeiture of non-drug objects being susceptible of repetition in the future.[35]

We rule that henceforth the Regional Trial Courts shall comply strictly with the provisions of Section 20 of R.A. No. 9165, and should not release articles, whether drugs or non-drugs, for the duration of the trial and before the rendition of the judgment, even if owned by a third person who is not liable for the unlawful act.

IN VIEW OF THE FOREGOING, the petition for review is *DENIED.*

The Office of the Court Administrator is directed to disseminate this decision to all trial courts for their guidance.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), del Castillo, Perez,[*] and *Mendoza,*[**] *JJ.,* concur.

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[35] *David v. Macapagal-Arroyo,* G.R. No. 171396, May 3, 2006, 489 SCRA 160, 215; *Albaña v. Commission on Elections,* G.R. No. 163302, July 23, 2004, 435 SCRA 98; *Acop v. Guingona, Jr.,* G.R. No. 134855, July 2, 2002, 383 SCRA 577; *Sanlakas v. Executive Secretary,* G.R. No. 159085, February 3, 2004, 421 SCRA 656.

[*] Vice Associate Justice Martin S. Villarama, Jr. per Special Order No. 1080 dated September 13, 2011.

[**] Vice Chief Justice Renato C. Corona, per Special Order No. 1093 dated September 21, 2011.

THIRD DIVISION

[G.R. No. 168552. October 3, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JERRY JACALNE *y* GUTIERREZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON ARE ENTITLED TO THE HIGHEST RESPECT AND WILL NOT BE DISTURBED ON APPEAL. — Time and again, we have ruled that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. The trial court has the singular opportunity to observe the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.

2. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION UNDER ARTICLE 267 THEREOF, AS AMENDED BY REPUBLIC ACT (RA) 7659; ELEMENTS THEREOF. — Kidnapping and serious illegal detention is defined and punished under Article 267 of the Revised Penal Code (RPC), as amended by Republic Act (RA) 7659. x x x The crime has the following elements: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping is 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 three days; (b) it is committed by simulating

public authority; (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 official.

3. ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR. — Records show that the prosecution established the above elements. It is undisputed that appellant is a private individual. As to the second, third and fourth elements, we agree with the trial court, as affirmed by the CA, that Jomarie's and Marissa's testimonies adequately showed that indeed, appellant kidnapped Jomarie, a minor, and detained her for more or less an hour.

4. ID.; ID.; ID.; ID.; ID.; ESSENCE OF THE CRIME IS THE ACTUAL DEPRIVATION OF THE VICTIM'S LIBERTY. — The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with the intent of the accused to effect it. It includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time. It involves a situation where the victim cannot go out of the place of confinement or detention, or is restricted or impeded in his liberty to move. In this case, appellant dragged Jomarie, a minor, to his house after the latter refused to go with him. Upon reaching the house, he tied her hands. When Jomarie pleaded that she be allowed to go home, he refused. Although Jomarie only stayed outside the house, it was inside the gate of a fenced property which is high enough such that people outside could not see what happens inside. Moreover, when appellant tied the hands of Jomarie, the former's intention to deprive Jomarie of her liberty has been clearly shown. For there to be kidnapping, it is enough that the victim is restrained from going home. Because of her tender age, and because she did not know her way back home, she was then and there deprived of her liberty. This is irrespective of the length of time that she stayed in such a situation. It has been repeatedly held that if the victim is a minor, the duration of his detention is immaterial. This notwithstanding the fact also that appellant, after more or less one hour, released Jomarie and instructed her on how she could go home.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONIES OF PROSECUTION WITNESSES WHO WERE NOT SHOWN TO HAVE ANY

ILL MOTIVE TO TESTIFY AGAINST THE ACCUSED; CASE AT BAR. — Against the categorical testimonies of the prosecution witnesses, appellant can only offer the defense of denial. However, denial is a self-serving negative evidence, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters. Like alibi, denial is inherently a weak defense, which cannot prevail over the positive and credible testimonies of prosecution witnesses who, as in this case, were not shown to have any ill-motive to testify against appellant. While indeed the defense offered the testimonies of three witnesses who claimed that they heard Jomarie deny that it was appellant who committed the crime, said evidence is insufficient to rebut Jomarie's testimony in court on how the crime was committed and who committed it. Appellant himself admitted that Jomarie and Marissa have no reason to lie. In other words, he cannot attribute any ill-motive on the part of the prosecution witnesses to fabricate a story and implicate him in the commission of the crime charged.

6. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; PROPER PENALTY IN CASE AT BAR. — Article 267 of the RPC prescribes the penalty of *reclusion perpetua* to death. There being no aggravating or modifying circumstance in the commission of the offense, the RTC (as affirmed by the CA), correctly imposed the penalty of *reclusion perpetua*, pursuant to Article 63 of the RPC. In line with prevailing jurisprudence, appellant shall be made to answer for ₱50,000.00 as civil indemnity. Pursuant to Article 2219 of the Civil Code, appellant shall likewise be liable for the payment of ₱50,000.00 as moral damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For resolution is the appeal filed by appellant Jerry G. Jacalne assailing the Court of Appeals (CA) Decision[1] dated March 31, 2005 in CA-G.R. CR-H.C. No. 00473.

The facts of the case follow.

In an Information[2] dated March 15, 1996, appellant was charged with Kidnapping and Serious Illegal Detention committed as follows:

> That on or about the 8th day of March 1996, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is a private individual, without legal authority or justifiable motive, did then and there kidnap and detain JOMARIE J. ROSALES, a female, minor (7 years old) for the purpose of depriving complainant of her liberty.
>
> CONTRARY TO LAW.[3]

During the arraignment, appellant pleaded "not guilty" to the crime charged.[4] Trial on the merits ensued.

The prosecution established the following facts:

On March 8, 1996, at 8:00 in the morning, the victim Jomarie Rosales (Jomarie), then seven (7) years of age, female, residing at No. 142 Mabuhay Street, Las Piñas City and a grade 1 pupil, attended her classes at the CAA Elementary School in Las Piñas from 8:00 to 10:00 in the morning.[5] While on her way home,

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[1] Penned by Associate Justice Salvador J. Valdez, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Magdangal M. de Leon, concurring; *rollo*, pp. 40-54.

[2] Records, pp. 1-2.

[3] *Id.* at 1.

[4] *Id.* at 14-15.

[5] TSN, November 14, 1996, pp. 2-4.

Jomarie noticed that appellant was following her. She ran, but appellant eventually caught up with her.[6] Appellant told her that she should go with him, but Jomarie refused and told him that her mother would be angry.[7] Jomarie held on to a post, but appellant dragged and forced her to go to his house at Patola Street which is 100 to 150 meters away.[8]

When they reached appellant's house, appellant placed Jomarie at the back of the steel gate of his fenced residence.[9] Thereafter, appellant went inside the house then returned with a piece of rope.[10] He used the rope in tying the hands of Jomarie.[11] Jomarie pleaded that she be released because her mother would be worried, but appellant refused.[12]

After more or less one hour, appellant untied Jomarie's hands and instructed her to walk straight toward the road. He even told her not to turn left, otherwise, she would not be able to reach home. Appellant also threatened her not to tell anybody of what happened or else he would kill her.[13]

Jomarie reached home around noon then took her lunch.[14] She did not tell her mother Marissa Rosales (Marissa) about the incident because of fear, until after three days.[15] Marissa reported the incident to the *barangay* and had it blottered.[16] Jomarie and Marissa went to Patola Street where the house of

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[6] *Id.* at 4-5.

[7] *Id.* at 5.

[8] *Id.*

[9] *Id.* at 5-7.

[10] *Id.* at 6.

[11] *Id.*

[12] *Id.* at 7.

[13] *Id.*

[14] *Id.* at 8.

[15] *Id.* at 9.

[16] TSN, July 17, 1996, p. 4.

appellant is located. Upon seeing appellant, Jomarie pointed him as the person who committed the crime.[17]

On March 14, 1996, Jomarie, accompanied by her mother, executed a Sworn Statement[18] before SPO1 Benjamin M. Javier. While inside the police station, Jomarie identified appellant (who was inside the investigation room) as the perpetrator.[19]

Appellant, on the other hand, denied the accusation against him. He explained that on March 12, 1996, while in his house painting a tricycle, Jomarie, Marissa, and two others approached him then asked if he is familiar with a *nipa* hut or a house surrounded by plants, which he answered in the negative.[20] They likewise mentioned to him about an incident whereby a child was tied and raped. After telling them that he was not aware of the incident, the four left.[21] In the afternoon of the same day, Marissa and Jomarie allegedly returned to his place. This time, they talked to appellant's neighbors. The following day, he was arrested.[22]

The defense also presented Marites Calzado,[23] George Resurreccion[24] and Joseph Conmigo, as witnesses.[25] Their testimonies tend to prove that in many occasions, Jomarie denied that it was appellant who kidnapped her.[26]

On May 29, 2000, the Regional Trial Court of Las Piñas City (RTC), Branch 275, rendered a Decision[27] finding the

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[17] *Id.*

[18] Exhibit "B"; records, p. 45.

[19] *Id.*

[20] TSN, February 12, 1998, pp. 2-3.

[21] *Id.* at 3.

[22] *Id.* at 4-5.

[23] TSN, August 24, 1998, pp. 1-8.

[24] TSN, October 26, 1998, pp. 1-10.

[25] TSN, February 10, 1999, pp. 1-10.

[26] *Rollo*, p. 44.

[27] Penned by Judge Bonifacio Sanz Maceda; records, pp. 118-129.

appellant guilty beyond reasonable doubt of the crime charged and sentenced him to suffer the penalty of *reclusion perpetua*.

Appellant appealed to this Court. Conformably with our ruling in *People v. Mateo*,[28] however, the case was referred to the CA for intermediate review.[29]

In its Decision[30] dated March 31, 2005, the CA affirmed *in toto* the decision of the court *a quo*. Thus, this appeal raising the sole error:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF KIDNAPPING WITH SERIOUS ILLEGAL DETENTION.[31]

Appellant assails the trial and appellate courts' appreciation of the credibility of the witnesses for the prosecution. He submits that the court failed to consider certain facts and circumstances, which have affected the credibility of Jomarie.[32] He explains that Jomarie either failed to identify appellant or has categorically denied that he was the one who allegedly kidnapped her.[33]

We do not find any reason to depart from the conclusions of the trial and appellate courts.

Time and again, we have ruled that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[34]

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[28] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[29] Resolution dated November 24, 2004, CA *rollo*, p. 127.

[30] *Supra* note 1.

[31] *Rollo*, p. 28.

[32] CA *rollo*, p. 62.

[33] *Rollo*, p. 36.

[34] *People v. Roxas*, G.R. No. 172604, August 17, 2010, 628 SCRA 378, 393.

The trial court has the singular opportunity to observe the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[35]

Kidnapping and serious illegal detention is defined and punished under Article 267 of the Revised Penal Code (RPC), as amended by Republic Act (RA) 7659:

> 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.
>
> 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.

The crime has the following elements: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any

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[35] *People v. Cruz, Jr.*, G.R. No. 168446, September 18, 2009, 600 SCRA 449, 464.

manner deprives the latter of his liberty; (3) the act of detention or kidnapping is 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 three days; (b) it is committed by simulating public authority; (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 official.[36]

Records show that the prosecution established the above elements.

It is undisputed that appellant is a private individual. As to the second, third and fourth elements, we agree with the trial court, as affirmed by the CA, that Jomarie's and Marissa's testimonies adequately showed that indeed, appellant kidnapped Jomarie, a minor, and detained her for more or less an hour.

The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled with the intent of the accused to effect it.[37] It includes not only the imprisonment of a person but also the deprivation of his liberty in whatever form and for whatever length of time.[38] It involves a situation where the victim cannot go out of the place of confinement or detention, or is restricted or impeded in his liberty to move.[39]

In this case, appellant dragged Jomarie, a minor, to his house after the latter refused to go with him. Upon reaching the house, he tied her hands. When Jomarie pleaded that she be allowed

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[36] *People of the Philippines v. Joel Baluya y Notarte*, G.R. No. 181822, April 13, 2011; *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 615-616; *People v. Mamantak*, G.R. No. 174659, July 28, 2008, 560 SCRA 298, 306-307; *People v. Jatulan*, G.R. No. 171653, April 24, 2007, 522 SCRA 174, 183; *People v. Garalde*, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 353.

[37] *People of the Philippines v. Joel Baluya y Notarte*, *supra* note 36; *People v. Mamantak*, *supra* note 36, at 307.

[38] *Id.*

[39] *People of the Philippines v. Joel Baluya y Notarte*, *supra* note 36.

to go home, he refused. Although Jomarie only stayed outside the house, it was inside the gate of a fenced property which is high enough such that people outside could not see what happens inside. Moreover, when appellant tied the hands of Jomarie, the former's intention to deprive Jomarie of her liberty has been clearly shown. For there to be kidnapping, it is enough that the victim is restrained from going home.[40] Because of her tender age, and because she did not know her way back home, she was then and there deprived of her liberty.[41] This is irrespective of the length of time that she stayed in such a situation. It has been repeatedly held that if the victim is a minor, the duration of his detention is immaterial.[42] This notwithstanding the fact also that appellant, after more or less one hour, released Jomarie and instructed her on how she could go home.

Against the categorical testimonies of the prosecution witnesses, appellant can only offer the defense of denial. However, denial is a self-serving negative evidence, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters.[43] Like alibi, denial is inherently a weak defense, which cannot prevail over the positive and credible testimonies of prosecution witnesses who, as in this case, were not shown to have any ill-motive to testify against appellant.[44]

While indeed the defense offered the testimonies of three witnesses who claimed that they heard Jomarie deny that it was appellant who committed the crime, said evidence is insufficient to rebut Jomarie's testimony in court on how the crime was committed and who committed it. Appellant himself admitted that Jomarie and Marissa have no reason to lie. In other words,

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[40] *People of the Philippines v. Alberto Anticamara y Cabillo and Fernando Calaguas Fernandez a.k.a. Lando Calaguas*, G.R. No. 178771, June 8, 2011.

[41] *People of the Philippines v. Joel Baluya y Notarte*, *supra* note 36.

[42] *People v. Mamantak*, *supra* note 36, at 307; *People v. Jatulan*, *supra* note 36, at 183.

[43] *People of the Philippines v. Joel Baluya y Notarte*, *supra* note 36.

[44] *Id.*

he cannot attribute any ill-motive on the part of the prosecution witnesses to fabricate a story and implicate him in the commission of the crime charged.

Article 267 of the RPC prescribes the penalty of *reclusion perpetua* to death. There being no aggravating or modifying circumstance in the commission of the offense, the RTC (as affirmed by the CA), correctly imposed the penalty of *reclusion perpetua*, pursuant to Article 63 of the RPC.[45]

In line with prevailing jurisprudence,[46] appellant shall be made to answer for ₱50,000.00 as civil indemnity. Pursuant to Article 2219[47] of the Civil Code, appellant shall likewise be liable for the payment of ₱50,000.00 as moral damages.[48]

WHEREFORE, premises considered, the Court of Appeals Decision dated March 31, 2005 in CA-G.R. CR-H.C. No. 00473, is *AFFIRMED* with *MODIFICATION*.

Appellant Jerry G. Jacalne is hereby found guilty beyond reasonable doubt of Kidnapping and Serious Illegal Detention and is meted the penalty of *reclusion perpetua*. He is likewise ordered to pay the victim Jomarie Rosales ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[45] *People v. Madsali, supra* note 36.

[46] *People of the Philippines v. Alberto Anticamara y Cabillo and Fernando Calaguas Fernandez a.k.a. Lando Calaguas, supra* note 40; *People v. Madsali, supra* note 36, at 622.

[47] Art. 2219. Moral damages may be recovered in the following and analogous cases:

x x x x x x x x x

(5) Illegal or arbitrary detention or arrest;

[48] *People of the Philippines v. Alberto Anticamara y Cabillo and Fernando Calaguas Fernandez a.k.a. Lando Calaguas, supra* note 40; *People v. Madsali, supra* note 36, at 622.

FIRST DIVISION

[G.R. No. 177218. October 3, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NOEL T. SALES,** *appellant.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; PARENTAL DISCIPLINE; THE IMPOSITION OF PARENTAL DISCIPLINE ON CHILDREN OF TENDER YEARS MUST ALWAYS BE WITH THE VIEW OF CORRECTING THEIR ERRONEOUS BEHAVIOR. — The imposition of parental discipline on children of tender years must always be with the view of correcting their erroneous behavior. A parent or guardian must exercise restraint and caution in administering the proper punishment. They must not exceed the parameters of their parental duty to discipline their minor children. It is incumbent upon them to remain rational and refrain from being motivated by anger in enforcing the intended punishment. A deviation will undoubtedly result in sadism.

2. ID.; ID.; ID.; ID.; APPELLANT MOTIVATED NOT BY AN HONEST DESIRE TO DISCIPLINE THE CHILDREN FOR THEIR MISDEEDS BUT BY AN EVIL INTENT OF VENTING HIS ANGER; CASE AT BAR. — Prior to whipping his sons, appellant was already furious with them because they left the family dwelling without permission and that was already preceded by three other similar incidents. This was further aggravated by a report that his sons stole a pedicab thereby putting him in disgrace. Moreover, they have no money so much so that he still had to borrow so that his wife could look for the children and bring them home. From these, it is therefore clear that appellant was motivated not by an honest desire to discipline the children for their misdeeds but by an evil intent of venting his anger. This can reasonably be concluded from the injuries of Noemar in his head, face and legs. It was only when Noemar's body slipped from the coconut tree to which he was tied and lost consciousness that appellant stopped the beating. Had not Noemar lost consciousness, appellant would most likely not have ceased from his sadistic act. His subsequent

attempt to seek medical attention for Noemar as an act of repentance was nevertheless too late to save the child's life. It bears stressing that a decent and responsible parent would never subject a minor child to sadistic punishment in the guise of discipline.

3. CRIMINAL LAW; REVISED PENAL CODE; CRIMINAL LIABILITY UNDER ARTICLE 4 [1] THEREOF; IN THE CASE AT BAR, IN BEATING HIS SON NOEMAR AND INFLICTING UPON HIM PHYSICAL INJURIES, APPELLANT COMMITTED A FELONY, WITH NOEMAR EXPIRING AS A DIRECT CONSEQUENCE OF THE BEATING. — Appellant attempts to evade criminal culpability by arguing that he merely intended to discipline Noemar and not to kill him. However, the relevant portion of Article 4 of the Revised Penal Code states: "Art. 4. *Criminal liability*. — Criminal liability shall be incurred: 1. By any person committing a felony (*delito*) although the wrongful act done be different from that which he intended. x x x" In order that a person may be criminally liable for a felony different from that which he intended to commit, it is indispensable (a) that a felony was committed and (b) that the wrong done to the aggrieved person be the direct consequence of the crime committed by the perpetrator. Here, there is no doubt that appellant in beating his son Noemar and inflicting upon him physical injuries, committed a felony. As a direct consequence of the beating suffered by the child, he expired. Appellant's criminal liability for the death of his son, Noemar, is thus clear.

4. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; INSUFFICIENCY OF EVIDENCE TO PROVE THAT VICTIM'S DEATH WAS DUE TO HIS POOR HEALTH; CASE AT BAR. — Appellant's claim that it was Noemar's heart ailment that caused his death deserves no merit. This declaration is self-serving and uncorroborated since it is not substantiated by evidence. While Dr. Salvador Betito, a Municipal Health Officer of Tinambac, Camarines Sur issued a death certificate indicating that Noemar died due to cardio-pulmonary arrest, the same is not sufficient to prove that his death was due mainly to his poor health. It is worth emphasizing that Noemar's cadaver was never examined. Also, even if appellant presented his wife, Maria, to lend credence to his contention, the latter's testimony did not help as same

was even in conflict with his testimony. Appellant testified that Noemar suffered from a weak heart which resulted in his death while Maria declared that Noemar was suffering from epilepsy. Interestingly, Maria's testimony was also unsubstantiated by evidence.

5. CRIMINAL LAW; REVISED PENAL CODE; PARRICIDE; DEFINED. — Article 246 of the Revised Penal Code defines parricide as follows: "Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death." "Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of accused."

6. ID.; ID.; ID.; ALL THE ELEMENTS OF PARRICIDE ARE PRESENT IN CASE AT BAR. — In the case at bench, there is overwhelming evidence to prove the first element, that is, a person was killed. Maria testified that her son Noemar did not regain consciousness after the severe beating he suffered from the hands of his father. Thereafter, a quack doctor declared Noemar dead. Afterwards, as testified to by Maria, they held a wake for Noemar the next day and then buried him the day after. Noemar's Death Certificate was also presented in evidence. There is likewise no doubt as to the existence of the second element that the appellant killed the deceased. Same is sufficiently established by the positive testimonies of Maria and Junior. Maria testified that on September 20, 2002, Noemar and his younger brother, Junior, were whipped by appellant, their father, inside their house. The whipping continued even outside the house but this time, the brothers were tied side by side to a coconut tree while appellant delivered the lashes indiscriminately. For his part, Junior testified that Noemar, while tied to a tree, was beaten by their father in the head. Because the savagery of the attack was too much for Noemar's frail body to endure, he lost consciousness and died from his injuries immediately after the incident. As to the third element, appellant himself admitted that the deceased is his child. While Noemar's birth certificate was not presented, oral evidence of

filial relationship may be considered. As earlier stated, appellant stipulated to the fact that he is the father of Noemar during the pre-trial conference and likewise made the same declaration while under oath. Maria also testified that Noemar and Junior are her sons with appellant, her husband. These testimonies are sufficient to establish the relationship between appellant and Noemar.

7. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ITS ESSENCE IS "TO SAVE THE AUTHORITIES THE TROUBLE AND EXPENSE THAT MAY BE INCURRED FOR HIS SEARCH AND CAPTURE"; IN THE CASE AT BAR, APPELLANT SURRENDERED TO THE POLICE SPONTANEOUSLY. — The trial court correctly appreciated the mitigating circumstance of voluntary surrender in favor of appellant since the evidence shows that he went to the police station a day after the *barangay* captain reported the death of Noemar. The presentation by appellant of himself to the police officer on duty in a spontaneous manner is a manifestation of his intent "to save the authorities the trouble and expense that may be incurred for his search and capture" which is the essence of voluntary surrender.

8. ID.; ID.; LACK OF INTENTION TO COMMIT SO GRAVE A WRONG; NOT APPRECIATED WHERE APPELLANT ADOPTED MEANS TO ENSURE THE SUCCESS OF THE SAVAGE BATTERING OF HIS SONS; CASE AT BAR. — However, there was error in appreciating the mitigating circumstance of lack of intention to commit so grave a wrong. Appellant adopted means to ensure the success of the savage battering of his sons. He tied their wrists to a coconut tree to prevent their escape while they were battered with a stick to inflict as much pain as possible. Noemar suffered injuries in his face, head and legs that immediately caused his death. "The mitigating circumstance of lack of intent to commit so grave a wrong as that actually perpetrated cannot be appreciated where the acts employed by the accused were reasonably sufficient to produce and did actually produce the death of the victim.

9. ID.; PARRICIDE; AWARD OF DAMAGES AND PROPER PENALTY THEREFOR; CASE AT BAR.— We find proper the trial court's award to the heirs of Noemar of the sums of

₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages. However, the award of exemplary damages of ₱25,000.00 should be increased to ₱30,000.00 in accordance with prevailing jurisprudence. "In addition, and in conformity with current policy, we also impose on all the monetary awards for damages an interest at the legal rate of 6% from the date of finality of this Decision until fully paid." As regards the penalty, parricide is punishable by *reclusion perpetua* to death. The trial court imposed the penalty of *reclusion perpetua* when it considered the presence of the mitigating circumstances of voluntary surrender and lack of intent to commit so grave a wrong. However, even if we earlier ruled that the trial court erred in considering the mitigating circumstance of lack of intent to commit so grave a wrong, we maintain the penalty imposed. This is because the exclusion of said mitigating circumstance does not result to a different penalty since the presence of only one mitigating circumstance, which is, voluntary surrender, with no aggravating circumstance, is sufficient for the imposition of *reclusion perpetua* as the proper prison term.

10. ID.; SLIGHT PHYSICAL INJURIES; INJURIES WHICH SHALL INCAPACITATE THE OFFENDED PARTY FOR LABOR FROM ONE TO NINE DAYS OR SHALL REQUIRE MEDICAL ATTENDANCE DURING THE SAME PERIOD; PROPER PENALTY; CASE AT BAR. — We give full faith and credence to the categorical and positive testimony of Junior that he was beaten by his father and that by reason thereof he sustained injuries. His testimony deserves credence especially since the same is corroborated by the testimony of his mother, Maria, and supported by medical examination. We thus find that the RTC correctly held appellant guilty of the crime of slight physical injuries. We likewise affirm the penalty imposed by the RTC. Dr. Primavera testified that the injuries sustained by Junior should heal in one week upon medication. Hence, the trial court correctly meted upon appellant the penalty under paragraph 1, Article 266 of the Revised Penal Code which provides: ART. 266. *Slight Physical Injuries and maltreatment.* — The crime of slight physical injuries shall be punished: 1. By *arresto menor* when the offender has inflicted physical injuries whch shall incapacitate the offended party for labor from one to nine days or shall require medical attendance during the same period. x x x There being no mitigating or aggravating circumstance present in the commission of the crime, the penalty

shall be in its medium period. The RTC was thus correct in imposing upon appellant the penalty of twenty (20) days of *arresto menor* in its medium period.

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.*:

A father ought to discipline his children for committing a misdeed. However, he may not employ sadistic beatings and inflict fatal injuries under the guise of disciplining them.

This appeal seeks the reversal of the December 4, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01627 that affirmed the August 3, 2005 Joint Decision[2] of the Regional Trial Court (RTC), Branch 63 of Calabanga, Camarines Sur in Criminal Case Nos. RTC'03-782 and RTC'03-789, convicting appellant Noel T. Sales (appellant) of the crimes of parricide and slight physical injuries, respectively. The Information[3] for parricide contained the following allegations:

That on or about the 20th day of September, 2002, at around or past 8:00 o'clock in the evening at Brgy. San Vicente, Tinambac, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with evident premeditation and [in] a fit of anger, did then and there willfully, unlawfully and feloniously hit [several] times, the different parts of the body of his legitimate eldest son, Noemar Sales, a 9-year old minor, with a [piece of] wood, measuring more or less one meter in length and

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[1] CA *rollo*, pp. 101-110, penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Presiding Justice Ruben T. Reyes and Associate Justice Vicente S.E. Veloso.

[2] *Id.* at 15-32; penned by Judge Freddie D. Balonzo.

[3] Records (Criminal Case No. RTC'03-782), p. 1.

one [and] a half inches in diameter, [thereby] inflicting upon the latter mortal wounds, which cause[d] the death of the said victim, to the damage and prejudice of the latter's heirs in such amount as may be proven in court.

ACTS CONTRARY TO LAW.[4]

On the other hand, the Information[5] in Criminal Case No. RTC'03-789 alleges that appellant inflicted slight physical injuries in the following manner:

That on or about the 20th day of September, 2002, at around or past 8:00 o'clock in the evening, at Brgy. San Vicente, Tinambac, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named [accused] assault[ed] and hit with a piece of wood, one Noel Sales, Jr., an 8-year old minor, his second legitimate son, thereby inflicting upon him physical injuries which have required medical attendance for a period of five (5) days to the damage and prejudice of the victim's heirs in such amount as may be proven in court.

ACTS CONTRARY TO LAW.[6]

When arraigned on April 11, 2003 and July 1, 2003, appellant pleaded not guilty for the charges of parricide[7] and slight physical injuries[8] respectively. The cases were then consolidated upon manifestation of the prosecution which was not objected to by the defense.[9] During the pre-trial conference, the parties agreed to stipulate that appellant is the father of the victims, Noemar Sales (Noemar) and Noel Sales, Jr. (Junior); that at the time of the incident, appellant's family was living in the conjugal home

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[4] *Id.*

[5] Records (Criminal Case No. RTC'03-789), p. 1.

[6] *Id.*

[7] See Order dated April 11, 2003, records (Criminal Case No. RTC'03-782), p. 15.

[8] See Order dated July 1, 2003, records (Criminal Case No. RTC'03-789), p. 24.

[9] See p. 2 of the RTC's Joint Decision, *supra* note 3.

located in *Barangay* San Vicente, Tinambac, Camarines Sur; and, that appellant voluntarily surrendered to the police.[10]

Thereafter, trial ensued.

The Version of the Prosecution

On September 19, 2002, brothers Noemar and Junior, then nine and eight years old, respectively, left their home to attend the fluvial procession of Our Lady of Peñafrancia without the permission of their parents. They did not return home that night. When their mother, Maria Litan Sales (Maria), looked for them the next day, she found them in the nearby *Barangay* of Magsaysay. Afraid of their father's rage, Noemar and Junior initially refused to return home but their mother prevailed upon them. When the two kids reached home at around 8 o'clock in the evening of September 20, 2002, a furious appellant confronted them. Appellant then whipped them with a stick which was later broken so that he brought his kids outside their house. With Noemar's and Junior's hands and feet tied to a coconut tree, appellant continued beating them with a thick piece of wood. During the beating Maria stayed inside the house and did not do anything as she feared for her life.

When the beating finally stopped, the three walked back to the house with appellant assisting Noemar as the latter was staggering, while Junior fearfully followed. Maria noticed a crack in Noemar's head and injuries in his legs. She also saw injuries in the right portion of the head, the left cheek, and legs of Junior. Shortly thereafter, Noemar collapsed and lost consciousness. Maria tried to revive him and when Noemar remained motionless despite her efforts, she told appellant that their son was already dead. However, appellant refused to believe her. Maria then told appellant to call a quack doctor. He left and returned with one, who told them that they have to bring Noemar to a hospital. Appellant thus proceeded to take the unconscious Noemar to the junction and waited for a vehicle to take them to a hospital. As there was no vehicle and because another quack doctor they

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[10] See Pre-Trial Order, records (Criminal Case No. RTC'03-782), p. 22.

met at the junction told them that Noemar is already dead, appellant brought his son back to their house.

Noemar's wake lasted only for a night and he was immediately buried the following day. His body was never examined by a doctor.

The Version of the Defense

Prior to the incident, Noemar and Junior had already left their residence on three separate occasions without the permission of their parents. Each time, appellant merely scolded them and told them not to repeat the misdeed since something untoward might happen to them. During those times, Noemar and Junior were never physically harmed by their father.

However, Noemar and Junior again left their home without their parents' permission on September 16, 2002 and failed to return for several days. Worse, appellant received information that his sons stole a pedicab. As they are broke, appellant had to borrow money so that his wife could search for Noemar and Junior. When his sons finally arrived home at 8 o'clock in the evening of September 20, 2002, appellant scolded and hit them with a piece of wood as thick as his index finger. He hit Noemar and Junior simultaneously since they were side by side. After whipping his sons in their buttocks three times, he noticed that Noemar was chilling and frothing. When Noemar lost consciousness, appellant decided to bring him to a hospital in Naga City by waiting for a vehicle at the crossroad which was seven kilometers away from their house.

Appellant held Noemar while on their way to the crossroad and observed his difficulty in breathing. The pupils of Noemar's eyes were also moving up and down. Appellant heard him say that he wanted to sleep and saw him pointing to his chest in pain. However, they waited in vain since a vehicle never came. It was then that Noemar died. Appellant thus decided to just bring Noemar back to their house.

Appellant denied that his son died from his beating since no parent could kill his or her child. He claimed that Noemar died as a result of difficulty in breathing. In fact, he never complained

of the whipping done to him. Besides, appellant recalled that Noemar was brought to a hospital more than a year before September 2002 and diagnosed with having a weak heart.

On the other hand, Maria testified that Noemar suffered from epilepsy. Whenever he suffers from epileptic seizures, Noemar froths and passes out. But he would regain consciousness after 15 minutes. His seizures normally occur whenever he gets hungry or when scolded.

The death of Noemar was reported to the police by the *barangay* captain.[11] Thereafter, appellant surrendered voluntarily.[12]

Ruling of the Regional Trial Court

In a Joint Decision,[13] the trial court held that the evidence presented by the prosecution was sufficient to prove that appellant was guilty of committing the crimes of parricide and slight physical injuries in the manner described in the Informations. In the crime of parricide, the trial court did not consider the aggravating circumstance of evident premeditation against appellant since there is no proof that he planned to kill Noemar. But the trial court appreciated in his favor the mitigating circumstances of voluntary surrender and lack of intent to commit so grave a wrong. The dispositive portion of said Joint Decision reads:

> WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of Noel Sales, beyond reasonable doubt, he is found guilty of parricide in Crim. Case No. RTC'03-782 and sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay the heirs of Noemar Sales, the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱25,000,00 as exemplary damages and to pay the costs.
>
> Furthermore, accused Noel Sales is also found guilty beyond reasonable doubt of the crime of slight physical injuries in Crim.

[11] See Certification of the Tinambac Municipal Police Station dated July 26, 2003, *id.* at 25.

[12] See Certification of the Tinambac Municipal Police Station dated June 26, 2003, *id.* at 26.

[13] *Supra* note 2.

Case No. RTC'03-789 and sentenced to suffer the penalty of twenty (20) days of *Arresto Menor* in its medium period.

Accused Noel Sales is likewise meted the accessory penalties as provided under the Revised Penal Code. Considering that herein accused has undergone preventive imprisonment, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment in accordance with and subject to the conditions provided for in Article 29 of the Revised Penal Code.

SO ORDERED.[14]

Appellant filed a Notice of Appeal[15] which was given due course in an Order[16] dated September 21, 2005.

Ruling of the Court of Appeals

However, the appellate court denied the appeal and affirmed the ruling of the trial court. The dispositive portion of its Decision[17] reads as follows:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed decision dated August 3, 2005 in Criminal Case Nos. RTC'03-782 and RTC'03-789 for Parricide and Slight Physical Injuries, respectively, is **AFFIRMED**.

Pursuant to *Section 13(c), Rule 124 of the Revised Rules of Criminal Procedure*, appellant may appeal this case to the Supreme Court via a Notice of Appeal filed before this Court.

SO ORDERED.[18]

Issues

Hence, appellant is now before this Court with the following two-fold issues:

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[14] CA *rollo*, p. 32.

[15] *Id.* at 33.

[16] *Id.* at 34.

[17] *Supra* note 1.

[18] CA *rollo*, pp. 109-110.

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

II

THE COURT *A QUO* GRAVELY ERRED IN NOT GIVING WEIGHT TO THE TESTIMONIES OF THE DEFENSE WITNESSES.[19]

Our Ruling

The appeal is without merit.

The Charge of Parricide

Appellant admits beating his sons on September 20, 2002 as a disciplinary measure, but denies battering Noemar to death. He believes that no father could kill his own son. According to him, Noemar had a weak heart that resulted in attacks consisting of loss of consciousness and froth in his mouth. He claims that Noemar was conscious as they traveled to the junction where they would take a vehicle in going to a hospital. However, Noemar had difficulty in breathing and complained of chest pain. He contends that it was at this moment that Noemar died, not during his whipping. To substantiate his claim, appellant presented his wife, Maria, who testified that Noemar indeed suffered seizures, but this was due to epilepsy.

The contentions of appellant fail to persuade. The imposition of parental discipline on children of tender years must always be with the view of correcting their erroneous behavior. A parent or guardian must exercise restraint and caution in administering the proper punishment. They must not exceed the parameters of their parental duty to discipline their minor children. It is incumbent upon them to remain rational and refrain from being motivated by anger in enforcing the intended punishment. A deviation will undoubtedly result in sadism.

Prior to whipping his sons, appellant was already furious with them because they left the family dwelling without permission

[19] *Id.* at 42.

and that was already preceded by three other similar incidents. This was further aggravated by a report that his sons stole a pedicab thereby putting him in disgrace. Moreover, they have no money so much so that he still had to borrow so that his wife could look for the children and bring them home. From these, it is therefore clear that appellant was motivated not by an honest desire to discipline the children for their misdeeds but by an evil intent of venting his anger. This can reasonably be concluded from the injuries of Noemar in his head, face and legs. It was only when Noemar's body slipped from the coconut tree to which he was tied and lost consciousness that appellant stopped the beating. Had not Noemar lost consciousness, appellant would most likely not have ceased from his sadistic act. His subsequent attempt to seek medical attention for Noemar as an act of repentance was nevertheless too late to save the child's life. It bears stressing that a decent and responsible parent would never subject a minor child to sadistic punishment in the guise of discipline.

Appellant attempts to evade criminal culpability by arguing that he merely intended to discipline Noemar and not to kill him. However, the relevant portion of Article 4 of the Revised Penal Code states:

> Art. 4. *Criminal liability*. — Criminal liability shall be incurred:
>
> 1. By any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.
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> x x x x x x x x x

In order that a person may be criminally liable for a felony different from that which he intended to commit, it is indispensable (a) that a felony was committed and (b) that the wrong done to the aggrieved person be the direct consequence of the crime committed by the perpetrator.[20] Here, there is no doubt that appellant in beating his son Noemar and inflicting upon him physical injuries, committed a felony. As a direct consequence of the beating suffered by the child, he expired. Appellant's criminal liability for the death of his son, Noemar, is thus clear.

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[20] REYES, L. B., *THE REVISED PENAL CODE*, Volume I, 2008, p. 68.

Appellant's claim that it was Noemar's heart ailment that caused his death deserves no merit. This declaration is self-serving and uncorroborated since it is not substantiated by evidence. While Dr. Salvador Betito, a Municipal Health Officer of Tinambac, Camarines Sur issued a death certificate indicating that Noemar died due to cardio-pulmonary arrest, the same is not sufficient to prove that his death was due mainly to his poor health. It is worth emphasizing that Noemar's cadaver was never examined. Also, even if appellant presented his wife, Maria, to lend credence to his contention, the latter's testimony did not help as same was even in conflict with his testimony. Appellant testified that Noemar suffered from a weak heart which resulted in his death while Maria declared that Noemar was suffering from epilepsy. Interestingly, Maria's testimony was also unsubstantiated by evidence.

Moreover, as will be discussed below, all the elements of the crime of parricide are present in this case.

All the Elements of Parricide are present in the case at bench.

We find no error in the ruling of the trial court, as affirmed by the appellate court, that appellant committed the crime of parricide.

Article 246 of the Revised Penal Code defines parricide as follows:

> Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

"Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of accused."[21]

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[21] *People v. Castro*, G.R. No. 172370, October 6, 2008, 567 SCRA 586, 606.

In the case at bench, there is overwhelming evidence to prove the first element, that is, a person was killed. Maria testified that her son Noemar did not regain consciousness after the severe beating he suffered from the hands of his father. Thereafter, a quack doctor declared Noemar dead. Afterwards, as testified to by Maria, they held a wake for Noemar the next day and then buried him the day after. Noemar's Death Certificate[22] was also presented in evidence.

There is likewise no doubt as to the existence of the second element that the appellant killed the deceased. Same is sufficiently established by the positive testimonies of Maria and Junior. Maria testified that on September 20, 2002, Noemar and his younger brother, Junior, were whipped by appellant, their father, inside their house. The whipping continued even outside the house but this time, the brothers were tied side by side to a coconut tree while appellant delivered the lashes indiscriminately. For his part, Junior testified that Noemar, while tied to a tree, was beaten by their father in the head. Because the savagery of the attack was too much for Noemar's frail body to endure, he lost consciousness and died from his injuries immediately after the incident.

As to the third element, appellant himself admitted that the deceased is his child. While Noemar's birth certificate was not presented, oral evidence of filial relationship may be considered.[23] As earlier stated, appellant stipulated to the fact that he is the father of Noemar during the pre-trial conference and likewise made the same declaration while under oath.[24] Maria also testified that Noemar and Junior are her sons with appellant, her husband. These testimonies are sufficient to establish the relationship between appellant and Noemar.

Clearly, all the elements of the crime of parricide are obtaining in this case.

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[22] Records (Criminal Case RTC'03-782), p. 35.

[23] *People v. Malabago*, 333 Phil. 20, 27 (1996).

[24] TSN, September 22, 2004, p. 2.

There is Mitigating Circumstance of Voluntary Surrender but not Lack of Intention to Commit so Grave a Wrong

The trial court correctly appreciated the mitigating circumstance of voluntary surrender in favor of appellant since the evidence shows that he went to the police station a day after the *barangay* captain reported the death of Noemar. The presentation by appellant of himself to the police officer on duty in a spontaneous manner is a manifestation of his intent "to save the authorities the trouble and expense that may be incurred for his search and capture"[25] which is the essence of voluntary surrender.

However, there was error in appreciating the mitigating circumstance of lack of intention to commit so grave a wrong. Appellant adopted means to ensure the success of the savage battering of his sons. He tied their wrists to a coconut tree to prevent their escape while they were battered with a stick to inflict as much pain as possible. Noemar suffered injuries in his face, head and legs that immediately caused his death. "The mitigating circumstance of lack of intent to commit so grave a wrong as that actually perpetrated cannot be appreciated where the acts employed by the accused were reasonably sufficient to produce and did actually produce the death of the victim."[26]

The Award of Damages and Penalty for Parricide

We find proper the trial court's award to the heirs of Noemar of the sums of ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages. However, the award of exemplary damages of ₱25,000.00 should be increased to ₱30,000.00 in accordance with prevailing jurisprudence.[27] "In addition, and in conformity with current policy, we also impose on all the monetary awards

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[25] *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 637.

[26] *Oriente v. People*, G.R. No. 155094, January 30, 2007, 513 SCRA 348, 365.

[27] *People v. Latosa*, G.R. No. 186128, June 23, 2010.

for damages an interest at the legal rate of 6% from the date of finality of this Decision until fully paid."[28]

As regards the penalty, parricide is punishable by *reclusion perpetua* to death. The trial court imposed the penalty of *reclusion perpetua* when it considered the presence of the mitigating circumstances of voluntary surrender and lack of intent to commit so grave a wrong. However, even if we earlier ruled that the trial court erred in considering the mitigating circumstance of lack of intent to commit so grave a wrong, we maintain the penalty imposed. This is because the exclusion of said mitigating circumstance does not result to a different penalty since the presence of only one mitigating circumstance, which is, voluntary surrender, with no aggravating circumstance, is sufficient for the imposition of r*eclusion perpetua* as the proper prison term. Article 63 of the Revised Penal Code provides in part as follows:

> Art. 63. *Rules for the application of indivisible penalties.* — 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 x x x x x x
>
> 3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
>
> x x x x x x x x x

The crime of parricide is punishable by the indivisible penalties of *reclusion perpetua* to death. With one mitigating circumstance, which is voluntary surrender, and no aggravating circumstance, the imposition of the lesser penalty of *reclusion perpetua* and not the penalty of death on appellant was thus proper.[29]

The Charge of Slight Physical Injuries

The victim himself, Junior testified that he, together with his brother Noemar, were beaten by their father, herein appellant,

[28] *People v. Campos*, G.R. No. 176061, July 4, 2011.

[29] *People v. Juan*, 464 Phil. 507, 513-515 (2004).

while they were tied to a coconut tree. He recalled to have been hit on his right eye and right leg and to have been examined by a physician thereafter.[30] Maria corroborated her son's testimony.[31]

Junior's testimony was likewise supported by Dr. Ursolino Primavera, Jr. (Dr. Primavera) of Tinambac Community Hospital who examined him for physical injuries. He issued a Medical Certificate for his findings and testified on the same. His findings were (1) muscular contusions with hematoma on the right side of Junior's face just below the eye and on both legs, which could have been caused by hitting said area with a hard object such as a wooden stick and, (2) abrasions of brownish color circling both wrist with crust formation which could have been sustained by the patient due to struggling while his hands were tied. When asked how long does he think the injuries would heal, Dr. Primavera answered one to two weeks.[32] But if applied with medication, the injuries would heal in a week.[33]

We give full faith and credence to the categorical and positive testimony of Junior that he was beaten by his father and that by reason thereof he sustained injuries. His testimony deserves credence especially since the same is corroborated by the testimony of his mother, Maria, and supported by medical examination. We thus find that the RTC correctly held appellant guilty of the crime of slight physical injuries.

Penalty for Slight Physical Injuries

We likewise affirm the penalty imposed by the RTC. Dr. Primavera testified that the injuries sustained by Junior should heal in one week upon medication. Hence, the trial court correctly meted upon appellant the penalty under paragraph 1, Article 266 of the Revised Penal Code which provides:

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[30] TSN, November 11, 2003, pp. 6-8.

[31] TSN, September 3, 2003, pp. 3-5.

[32] TSN, August 26, 2003, pp. 3-9.

[33] *Id.* at 13.

ART. 266. *Slight Physical Injuries and maltreatment.* — The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days or shall require medical attendance during the same period.

x x x x x x x x x

There being no mitigating or aggravating circumstance present in the commission of the crime, the penalty shall be in its medium period. The RTC was thus correct in imposing upon appellant the penalty of twenty (20) days of *arresto menor* in its medium period.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01627 that affirmed the Joint Decision of the Regional Trial Court, Branch 63 of Calabanga, Camarines Sur in Criminal Case Nos. RTC'03-782 and RTC'03-789, convicting Noel T. Sales of the crimes of parricide and slight physical injuries is *AFFIRMED with MODIFICATIONS* that the award of exemplary damages is increased to ₱30,000.00. In addition, an interest of 6% is imposed on all monetary awards from date of finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 179195. October 3, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANGELINO YANSON,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE AND CATEGORICAL TESTIMONY IDENTIFIED APPELLANT AS THE PERPETRATOR OF THE CRIME; CASE AT BAR. — Appellant argues that although Galfo testified that he noticed two persons following them, he however failed to specify who these persons were. We are not persuaded. Contrary to appellant's asseveration, Galfo positively and categorically identified him as the perpetrator of the crime. x x x Appellant also asserts that in Galfo's sworn statement before the police officers, he did not identify him as the assailant; that Galfo described him only through his outfit without any mention at all of his features or identifying marks notwithstanding that he (Galfo) was familiar with him. Appellant thus concludes that all these circumstances create doubt as to whether he was indeed the assailant. Appellant's contentions deserve scant consideration. A close scrutiny of Galfo's sworn statement reveals that although appellant's name was not specifically mentioned, he was however referred to as the "companion" or "*kasa*" of Salcedo. Besides, the failure to specifically mention his name does not foreclose the fact that he was the assailant. It must be recalled that during his testimony in court, Galfo positively and categorically identified appellant as the perpetrator of the crime. As such, any alleged inconsistency in the sworn statement of Galfo *vis-à-vis* his testimony in open court is more apparent than real. x x x More importantly, Galfo's narration in his sworn statement is consistent in all material points with his testimony in open court.

2. ID.; ID.; ID.; PEOPLE REACT DIFFERENTLY WHEN CONFRONTED WITH A FRIGHTFUL OCCURRENCE; CASE AT BAR. — Appellant next posits that Galfo's behavior after the stabbing incident is not in accord with the normal

course of things. Appellant finds it strikingly odd or unusual for Galfo to take a rest for 30 minutes at his house after having witnessed the stabbing incident. Also, he could not fathom why the victim's family would not immediately come to the rescue of their fallen kin after they have been informed about the incident. This contention deserves no merit. Jurisprudence is replete with pronouncements that people react differently when confronted with a frightful occurrence. Some may react violently while others may exhibit nonchalance or even boredom. "[T]he settled rule is that witnessing a crime is an unusual experience that elicits different reactions from witnesses for which no clear-cut standard of behavior can drawn. Different people react differently to a given situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience." In this case, the fact that Galfo took a 30-minute rest before reporting the incident to the relatives of the victim does not in any way militate against his credibility. Moreover, that the relatives of the deceased did not immediately come to his succor does not in any way contradict the finding that appellant was the assailant.

3. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE THEREOF IS THAT THE ATTACK COMES WITHOUT A WARNING AND IN A SWIFT, DELIBERATE, AND UNEXPECTED MANNER; CASE AT BAR. — "There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted." The prosecution established that appellant suddenly stabbed the victim from behind thereby giving him no opportunity to resist the attack or defend himself.

4. ID.; ID.; MURDER; PROPER PENALTY; CASE AT BAR. — Article 248 of the Revised Penal Code (RPC) provides for the penalty of *reclusion perpetua* to death for the crime of murder. In this case, considering the qualifying circumstance of treachery, and there being no other aggravating or mitigating circumstances, both the trial court and the CA properly imposed the penalty of *reclusion perpetua* on the appellant, pursuant to Article 63, paragraph 2, of the RPC.

5. ID.; ID.; ID.; DAMAGES THAT MAY BE AWARDED; CASE AT BAR. — "[W]hen death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages." In this case, we find that the trial court, as affirmed by the CA, correctly awarded the heirs of the deceased ₱50,000.00 as moral damages. However, as regards the award of civil indemnity, the same must be increased to ₱75,000.00 in line with prevailing jurisprudence. Civil indemnity is "granted to the heirs of the victim without need of proof other than the commission of the crime;" while "moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs." Anent the award of actual damages, we find that the CA correctly deleted the same. The victim's mother, Aquilina Magan, who was presented to prove the civil liability of the appellant acknowledged having lost the receipts. Thus, the CA correctly awarded ₱25,000.00 as temperate damages in lieu of actual damages. "Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved." Likewise, the heirs of Magan are also entitled to an award of exemplary damages. "An aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code. The award of ₱30,000.00 as exemplary damages is, therefore, proper under current jurisprudence." Anent the award of ₱20,000.00 as attorney's fees, we note that the same has not been assailed. Hence, we sustain its award.

6. ID.; ID.; ID.; ID.; DAMAGES NOW SUBJECT TO INTEREST AT THE LEGAL RATE OF 6%. — Finally, consistent with

the current policy, "we also impose on all the monetary awards for damages an interest at the legal rate of 6% from date of finality of this Decision 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 April 25, 2001, the Regional Trial Court (RTC) of San Miguel, Jordan, Guimaras, Branch 65, rendered a Decision[1] in Criminal Case No. 0016 finding appellant Angelino Yanson (appellant) guilty beyond reasonable doubt of murder while acquitting his co-accused, Rolando Salcedo (Salcedo).

Appellant filed an appeal with the Court of Appeals (CA) which was docketed as CA-G.R. CR-H.C. No. 00115. However, in its July 21, 2006 Decision,[2] the CA affirmed with modification the Decision of the RTC.

Hence, this appeal.

Factual Antecedents

On July 2, 1991, an Information[3] was filed charging appellant and Salcedo with the crime of murder allegedly committed as follows:

That on or about the 12th day of May, 1991, in the municipality of Jordan, Subprovince of Guimaras, Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the said accused armed with knives, and with intent to kill, taking advantage of their superior

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[1] CA *rollo*, pp. 25-41; penned by Judge Merlin D. Deloria.

[2] *Rollo*, pp. 5-12; penned by Associate Justice Vicente L. Yap and concurred in by Associate Justices Arsenio J. Magpale and Romeo F. Barza.

[3] Records, p. 1.

strength and the darkness of the night, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously stab for several times one Carlito Magan, hitting him on the different parts of his body which caused his instant death.

CONTRARY TO LAW.[4]

During their arraignment on October 8, 1991, Salcedo and appellant both entered pleas of "not guilty."[5] Trial on the merits thereafter ensued.

Version of the Prosecution

In the afternoon of May 12, 1991, Elmo Galfo (Galfo) and the victim, Carlito Magan (Magan), were drinking whisky in the store of a certain Lorna Tamson (Tamson).[6] After a while, they were joined by appellant and Salcedo.[7] They finished drinking at around 8:45 in the evening[8] after which Galfo and Magan walked home together.[9]

After traversing a distance of about half a kilometer, Galfo noticed two persons following them,[10] one of whom suddenly stabbed Magan at the back.[11] Galfo positively identified the appellant as the person who stabbed Magan. Galfo tried to approach the victim but appellant and his companion, Salcedo, rushed towards him thus prompting him to run away for safety. While running, however, he managed to look back and saw appellant and Salcedo stab the victim some more.[12]

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[4] *Id.*

[5] *Id.* at 92.

[6] TSN, November 20, 1991, pp. 22-23.

[7] *Id.* at 23-24.

[8] *Id.* at 25.

[9] *Id.* at 27.

[10] *Id.* at 28.

[11] *Id.*

[12] *Id.* at 29-32.

According to Dr. Edgardo Jabasa, the Provincial Health Officer of Guimaras,[13] the victim suffered eight stab wounds,[14] two of which were fatal and were inflicted at the back.[15]

Version of the Defense

Appellant denied the charge against him. He testified that on May 12, 1991 at around six o'clock in the evening, he and Salcedo joined Galfo and Magan who were drinking whisky[16] inside the store of Tamson.[17] After two hours, he and Salcedo left the store, went directly to the house of Salcedo,[18] ate their supper and slept.[19] The following morning, he and Salcedo worked at the latter's farm.[20] He came to know about Magan's death only on May 23, 1991 when the police officers went to his house.[21]

The defense did not present Salcedo to corroborate the testimony of appellant.

Ruling of the Regional Trial Court

Considering that the Information did not allege conspiracy between the two accused, the trial court found each of them responsible only for his own act.[22]

The trial court found the testimony of Galfo that he personally saw appellant stab Magan at the back as credible because he was positioned only five arms length away from the victim.

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[13] *Id.* at 2.

[14] *Id.* at 5-11.

[15] *Id.* at 12.

[16] TSN, December 16, 1993, p. 9.

[17] *Id.* at 7.

[18] *Id.* at 18.

[19] *Id.* at 19.

[20] *Id.* at 19.

[21] *Id.* at 20.

[22] Records, p. 546.

The trial court also appreciated the qualifying circumstance of treachery considering the suddenness and the surreptitiousness of the attack on the victim.[23] However, it did not lend credence to Galfo's testimony that he also saw Salcedo stab the victim. According to the trial court, it would be highly improbable for Galfo to look back and witness the stabbing by Salcedo while running at a fast pace. Thus, it exonerated Salcedo of any participation in the crime.[24]

The dispositive portion of the April 25, 2001 Decision of the RTC reads:

> WHEREFORE, premises considered, judgment is rendered finding accused Angelino Yanson GUILTY beyond reasonable doubt of the crime of murder defined and penalized under Article 248 of the Revised Penal Code. Said accused is hereby sentenced to suffer a penalty of *Reclusion Perpetua*, plus all accessory penalties attached thereto.
>
> Accused Angelino Yanson is also directed to pay the heirs of Carlito Magan the amount of One Hundred Thirty Three Thousand Six Hundred Fifty (₱133,650.00) Pesos, broken down as follows:
>
> ₱ 13,650.00 - as actual expenses;
> 50,000.00 - as indemnity for the death of Carlito Magan;
> 50,000.00 - as moral damages; and
> 20,000.00 - as attorney's fees.
>
> Rolando Salcedo is ACQUITTED of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.
>
> The bailbonds posted by the two (2) accused are ordered cancelled.
>
> Accused Angelino Yanson is ordered arrested.
>
> Cost against the accused.
>
> SO ORDERED.[25]

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[23] *Id.* at 548.

[24] *Id.* at 548.

[25] *Id.* at 548-549.

Appellant moved for reconsideration[26] but same was denied in an Order[27] dated October 9, 2002.

Appellant filed his Notice of Appeal[28] before this Court. However, conformably with our ruling in *People v. Mateo*,[29] we resolved to refer this case to the CA for appropriate action and disposition.[30]

Ruling of the Court of Appeals

The CA affirmed the trial court's finding that it was indeed appellant who stabbed Magan. Aside from his positive identification by Galfo, the CA also found appellant's defense of alibi to be weak and undeserving of belief because he failed to prove that it was physically impossible for him to be at the crime scene. The CA also found that the trial court correctly appreciated the qualifying circumstance of treachery as Magan was unsuspecting of any harm that would befall him when appellant suddenly stabbed him at the back thereby giving him no opportunity to raise any defense to protect himself. His stab wounds at the back also proved fatal.

The CA however deleted the award of actual damages as there were no receipts presented to support the claim. In lieu thereof, it awarded temperate damages of ₱25,000.00.

The dispositive portion of the CA Decision reads:

> WHEREFORE, finding the instant appeal devoid of merit, the same is hereby DENIED and the Decision of the Regional Trial Court of San Miguel, Jordan, Guimaras, Branch 65 dated 25 April 2001 in Criminal Case No. 0016 for murder is AFFIRMED with modification of the award granted. The award of ₱13,650.00 as actual damages is deleted and in its stead, the award of ₱25,000.00 as temperate damages, is substituted.

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[26] *Id.* at 552-561.

[27] *Id.* at 574.

[28] *Id.* at 576.

[29] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[30] CA *rollo*, p. 90.

Costs against accused-appellant.

SO ORDERED.[31]

On October 15, 2007, we accepted appellant's appeal and informed the parties that they may file their respective supplemental briefs.[32] The parties however failed to file their supplemental briefs. Consequently they are deemed to have waived the filing of the same.[33] This case is therefore being resolved based on the arguments presented by the parties in their briefs filed before the CA.

Our Ruling

The appeal is without merit.

Galfo positively identified appellant as the person who stabbed the victim.

Appellant argues that although Galfo testified that he noticed two persons following them, he however failed to specify who these persons were.[34]

We are not persuaded. Contrary to appellant's asseveration, Galfo positively and categorically identified him as the perpetrator of the crime. Galfo testified thus:

ATTY. ALINIO: Who stabbed Carlito Magan?
WITNESS: Angelino Yanson.

ATTY. ALINIO: Where was Angelino Yanson when he stabbed Carlito Magan in relation to the latter?
WITNESS: At the back of Carlito Magan, to his left.

ATTY. ALINIO: How far were you from Carlito Magan when Angelino Yanson stabbed Carlito Gambito Magan?
WITNESS: Around five (5) steps away.

ATTY. ALINIO: What happened to Carlito Magan when he was stabbed by Angelino Yanson?

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[31] *Id.* at 127.

[32] *Rollo*, p. 18.

[33] Resolution dated July 28, 2008; *id.*, unpaged.

[34] CA *rollo*, p. 68.

WITNESS: He ran towards me then shouted, "I am hit, I am wounded".

ATTY. ALINIO: And what did you do when Carlito Magan approached you?

WITNESS: I was also approaching to help him.

ATTY. ALINIO: Where was Carlito Magan when you approached him?

WITNESS: He was lying face down [on] the ground.

ATTY. ALINIO: In other words, he fell to the ground and he was lying face downward?

WITNESS: Yes, sir.

ATTY. ALINIO: When you approached Carlito Magan to help him, what happened?

WITNESS: I was about to help him but the two (2) of them rushed towards me.

ATTY. ALINIO: What kind of night was that when you were walking along the road going to your house from the store of Lorna Tamson?

WITNESS: It was a clear night because there were stars.

ATTY. ALINIO: Because Angelino Yanson and Rolando Salcedo rushed towards you when you were about to help Carlito Magan, what did you do?

WITNESS: I ran but looking backward.

ATTY. ALINIO: When they, meaning Rolando Salcedo and Angelino Yanson rushed towards you what [were] they x x x holding, if any?

WITNESS: They were holding a knife.

ATTY. ALINIO: While you were running looking backward, what did you see?

WITNESS: I saw that they stabbed Carlito several times at the back.

ATTY. ALINIO: Who stabbed Carlito Magan several times at the back?

WITNESS: The two (2) of them.

ATTY. ALINIO: Where was Angelino Yanson in relation to Carlito Magan who was lying face downward while he was stabbing Carlito?

WITNESS: Carlito was struggling while the other was stabbing him.

ATTY. ALINIO: What about Rolando Salcedo?
WITNESS: He was also there x x x.

ATTY. ALINIO: Where did you proceed?
WITNESS: I went home to our house.[35]

Galfo's failure to mention appellant in his sworn statement before the police authorities does not militate against Galfo's credibility.

Appellant also asserts that in Galfo's sworn statement before the police officers, he did not identify him as the assailant;[36] that Galfo described him only through his outfit without any mention at all of his features or identifying marks notwithstanding that he (Galfo) was familiar with him.[37] Appellant thus concludes that all these circumstances create doubt as to whether he was indeed the assailant.

Appellant's contentions deserve scant consideration. A close scrutiny of Galfo's sworn statement reveals that although appellant's name was not specifically mentioned, he was however referred to as the "companion" or "*kas-a*"of Salcedo.[38] Besides, the failure to specifically mention his name does not foreclose the fact that he was the assailant. It must be recalled that during his testimony in court, Galfo positively and categorically identified appellant as the perpetrator of the crime. As such, any alleged inconsistency in the sworn statement of Galfo *vis-a-vis* his testimony in open court is more apparent than real. In *Mercado v. People*,[39] we declared that —

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[35] TSN, November 20, 1991, pp. 29-32.

[36] CA *rollo*, p. 68.

[37] *Id.* at 69.

[38] Records, pp. 5-5A.

[39] G.R. No. 161902, September 11, 2009, 599 SCRA 367, 379 citing *Decasa v. Court of Appeals*, G.R. No. 172184, July 10, 2007, 527 SCRA 267.

x x x [T]his Court had consistently ruled that the **alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects** to justify a reversal of judgment. Such discrepancies do not necessarily discredit the witness since *ex parte* affidavits are almost always incomplete. A sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken *ex parte* are generally considered to be inferior to the testimony given in open court.

x x x x x x x x x

The discrepancies in [the witness]'s testimony do not damage the essential integrity of the prosecution's evidence in its material whole. Instead, **the discrepancies only erase suspicion that the testimony was rehearsed or concocted. These honest inconsistencies serve to strengthen rather than destroy [the witness]'s credibility**.

More importantly, Galfo's narration in his sworn statement is consistent in all material points with his testimony in open court, to wit:

> 7. Q: Can you narrate to me the facts of the incident?
> A: That at about 7:30 o'clock in the evening of May 12, 1991, while Carlito Magan and I were drinking at the store of Lorna Tamson at Brgy. Sapal, Jordan, Guimaras, Iloilo, Rolando Salcedo and his companion arrived at the said store and then we drunk together and after (30) thirty minutes of drinking, all of us went home wherein Carlito Magan and I were ahead of them but instead of going their way, Rolando Salcedo and his companion followed us and with a distance of about half a kilometer from the place where we drank, they reached us and upon reaching us, without any provocation they stabbed Carlito Magan with their knives and upon seeing the incident, I attempted to help Carlito Magan but they turned on me and so I ran away leaving Carlito Magan with wounds.[40]

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[40] Records, p. 5.

People react differently when confronted with a startling or frightful experience.

Appellant next posits that Galfo's behavior after the stabbing incident is not in accord with the normal course of things.[41] Appellant finds it strikingly odd or unusual for Galfo to take a rest for 30 minutes at his house after having witnessed the stabbing incident. Also, he could not fathom why the victim's family would not immediately come to the rescue of their fallen kin after they have been informed about the incident.[42]

This contention deserves no merit. Jurisprudence is replete with pronouncements that people react differently when confronted with a frightful occurrence. Some may react violently while others may exhibit nonchalance or even boredom. "[T]he settled rule is that witnessing a crime is an unusual experience that elicits different reactions from witnesses for which no clear-cut standard of behavior can be drawn. Different people react differently to a given situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience."[43]

In this case, the fact that Galfo took a 30-minute rest before reporting the incident to the relatives of the victim does not in any way militate against his credibility. Moreover, that the relatives of the deceased did not immediately come to his succor does not in any way contradict the finding that appellant was the assailant.

The qualifying circumstance of treachery attended the commission of the crime.

Both the trial court and the CA correctly appreciated the qualifying aggravating circumstance of treachery. "There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution,

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[41] CA *rollo*, p. 69.

[42] *Id.* at 69-70.

[43] *People v. Labitad*, 431 Phil. 453, 458 (2002).

which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted."[44]

The prosecution established that appellant suddenly stabbed the victim from behind thereby giving him no opportunity to resist the attack or defend himself. As correctly observed by the appellate court:

> It is apparent that there was treachery in the killing of [Magan]. As surely testified by [Galfo], [appellant] followed the unsuspecting victim when he was going home and thereafter, deliberately stabbed him in the back which resulted in the falling of [Magan] to the ground and rendering him defenseless to [appellant's] further attacks. Verily, [appellant] employed means which insured the killing of [Magan] and such means assured him from the risk of [Magan's] defense had he made any. It must also be noted that [Magan] was stabbed four times in the back and two of these wounds were the proximate cause of his death. Stabbing from behind is a good indication of treachery x x x[45]

The proper penalty.

Article 248 of the Revised Penal Code (RPC) provides for the penalty of *reclusion perpetua* to death for the crime of murder. In this case, considering the qualifying circumstance of treachery, and there being no other aggravating or mitigating circumstances, both the trial court and the CA properly imposed the penalty of *reclusion perpetua* on the appellant, pursuant to Article 63, paragraph 2, of the RPC.[46]

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[44] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747.

[45] CA *rollo*, p. 126.

[46] Article 63 of the Revised Penal Code provides in part:

The award of damages.

"[W]hen death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages."[47]

In this case, we find that the trial court, as affirmed by the CA, correctly awarded the heirs of the deceased ₱50,000.00 as moral damages.[48] However, as regards the award of civil indemnity, the same must be increased to ₱75,000.00 in line with prevailing jurisprudence.[49] Civil indemnity is "granted to the heirs of the victim without need of proof other than the commission of the crime;"[50] while "moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs."[51]

Anent the award of actual damages, we find that the CA correctly deleted the same. The victim's mother, Aquilina Magan, who was presented to prove the civil liability of the appellant[52] acknowledged having lost the receipts.[53] Thus, the CA correctly awarded ₱25,000.00 as temperate damages in lieu of actual damages.[54] "Under Article 2224 of the Civil Code, temperate

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x x x x x x 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 x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[47] *People v. Del Rosario*, G.R. No. 189580, February 9, 2011.

[48] *Id.*

[49] *People v. Campos*, G.R. No. 176061, July 4, 2011.

[50] *Id.*

[51] *Id.*

[52] TSN, September 24, 1992, p. 3.

[53] *Id.* at 4.

[54] *People v. Del Rosario*, *supra* note 47.

damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved."[55]

Likewise, the heirs of Magan is also entitled to an award of exemplary damages. "An aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code. The award of ₱30,000.00 as exemplary damages is, therefore, proper under current jurisprudence."[56]

Anent the award of ₱20,000.00 as attorney's fees, we note that the same has not been assailed. Hence, we sustain its award.

Finally, consistent with the current policy, "we also impose on all the monetary awards for damages an interest at the legal rate of 6% from date of finality of this Decision until fully paid."[57]

WHEREFORE, the appeal is *DENIED*. The assailed July 21, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00115 is *AFFIRMED* with *MODIFICATIONS*. Appellant Angelino Yanson is found *GUILTY* beyond reasonable doubt of *MURDER*, and is hereby sentenced to suffer the penalty of *reclusion perpetua*. Appellant is also ordered to pay the heirs of Carlito Magan the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, ₱30,000.00 as exemplary damages and ₱20,000.00 as attorney's fees. All monetary awards for damages shall earn interest at the legal rate of 6% from date of finality of this Decision until fully paid.

SO ORDERED.

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

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[55] *People v. Campos, supra* note 49.

[56] *People v. Del Rosario, supra* note 47.

[57] *People v. Campos, supra* note 49.

EN BANC

[A.M. No. 2011-07-SC. October 4, 2011]

SUPREME COURT, *complainant, vs.* **EDDIE V. DELGADO, UTILITY WORKER II, JOSEPH LAWRENCE M. MADEJA, CLERK IV, AND WILFREDO A. FLORENDO, UTILITY WORKER II, ALL OF THE OFFICE OF THE CLERK OF COURT, SECOND DIVISION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; SUPREME COURT ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; GRAVE MISCONDUCT, COMMISSION OF; ACTS OF RESPONDENTS COMPLEMENT EACH OTHER IN REMOVING THREE (3) PAGES FROM SUBJECT AGENDA; CASE AT BAR. — We begin with the obvious and from the admissions during the initial investigation when there was yet not enough time for device and advice. Respondents Madeja and Florendo asked respondent Delgado for a copy of several items included in the 30 May 2011 *Agenda*. Acceding to the request, respondent Delgado removed pages 58, 59 and 70 from a copy of the *Agenda* entrusted to him for stitching and gave them to respondents Madeja and Delgado. Veritably, the acts of respondents complement each other; they are but completions of a common Grave Misconduct. x x x It must be stressed that insofar as the involvement of respondent Delgado is concerned, there is no longer any issue to be resolved. Respondent Delgado has been consistent with his admission of involvement during both the initial investigation in the OCC-SD and the formal investigation of the OAS. **It is, therefore, already settled fact that respondent Delgado was the person who actually removed the pages 58, 59 and 70 from the subject *Agenda***. What remains in dispute is the participation of respondents Madeja and Florendo in the removal of the pages in the subject *Agenda*. As stated earlier, both respondents Madeja and Florendo vehemently denied having been involved in the taking of the missing *Agenda* pages during the formal investigation of the OAS. This sharply contradicts their reported

admission of complicity during the initial investigation conducted by the OCC-SD. **The evidence at hand, however, point out that respondents Madeja and Florendo, indeed, connived with respondent Delgado in removing the three (3) pages from a copy of the 30 May 2011 *Agenda***. The denial of respondents Madeja and Florendo, in a complete turnaround from an earlier admission, is unavailing as against the positive, straightforward and consistent statements of respondent Delgado.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL OF RESPONDENTS MADEJA AND FLORENDO CANNOT PREVAIL OVER THE POSITIVE STATEMENTS OF DELGADO THAT CATEGORICALLY IDENTIFIED RESPONDENTS AS THE PERSONS WHO INDUCED HIM TO REMOVE THE PAGES FROM SUBJECT AGENDA; CASE AT BAR. — Respondent Delgado's statements, not only in the initial investigation but also in the formal investigation, were unwavering in their implication of respondents Madeja and Florendo. **Respondent Delgado categorically identified respondents Madeja and Florendo as the persons who induced him to remove several pages from a copy of the 30 May 2011 *Agenda* and thereafter obtained them**. x x x It was never shown that respondent Delgado was motivated by any ill will in implicating respondents Madeja and Florendo. As a witness, the credibility of respondent Delgado remained unsullied. We find his statements worthy of belief. x x x The unsubstantiated denial of respondents, therefore, falters in light of the direct and positive statements of respondent Delgado. The basic principle in Evidence is that denials, unless supported by clear and convincing evidence, cannot prevail over the affirmative testimony of truthful witnesses.

3. POLITICAL LAW; SUPREME COURT ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; GRAVE MISCONDUCT; REMOVAL OF AGENDA PAGES, A BLATANT DISREGARD OF DUTIES AS COURT PERSONNEL; DISMISSAL, A PROPER PENALTY; CASE AT BAR. — The act of the respondents in causing the removal of several pages in a copy of the 30 May 2011 *Agenda* is a malevolent transgression of their duties as court personnel — particularly, as employees detailed at the OCC-SD. The act

is unauthorized and a blatant disregard of the standard operating procedures observed by the office in handling confidential documents, such as the *Agenda*. It compromised the ability of the OCC-SD to efficiently perform its functions and also imperiled the environment of confidentiality the office is supposed to be clothed with. As court employees, respondents clearly committed a willful breach of the trust reposed upon them by this Court. They thereby violated Sections 1 and 3, Canon IV of the *Code of Conduct for Court Personnel*, x x x. The acts of the respondents fall squarely under the offense **Grave Misconduct**. In ***Valera v. Ombudsman***, We defined the offense as follows: Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. **The misconduct is grave if it involves** any of the additional elements of corruption, **willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence**. Rule IV, Section 52(A) (3) of the *Revised Uniform Rules on Administrative Cases in the Civil Service*, on the other hand, classifies Grave Misconduct as a grave offense punishable with **Dismissal** even in its first commission.

4. ID.; ID.; ID.; ID.; ID.; THE CAJOLING EMPLOYED BY RESPONDENTS MADEJA AND FLORENDO IS AS MUCH A PART OF THE GRAVE MISCONDUCT AS THE ACT OF REMOVING THE *AGENDA* PAGES ITSELF; CASE AT BAR. — The fact that respondents Madeja and Florendo merely induced the removal of, but did not actually remove, the missing pages from the subject *Agenda*, do not make their liability any less than that of respondent Delgado. After all, the evidence in this case adequately shows the existence of connivance among the respondents. The evidence in this case establishes that respondent Delgado came to remove the missing pages from the subject *Agenda* because he acceded to the request of respondents Madeja and Florendo. The removal of the *Agenda* pages was undoubtedly done for the benefit of respondents Madeja and Florendo. Verily, the cajoling employed by respondents Madeja and Florendo is as much a part of the Grave Misconduct as the act of removing the *Agenda* pages itself. The proposal is intricately linked and inseparable with the submission. As to their liability, therefore, Respondents

Madeja and Floredo must stand in equal footing with respondent Delgado.

5. ID.; ID.; STRICTEST STANDARD OF HONESTY, INTEGRITY AND UPRIGHTNESS EXPECTED FROM COURT EMPLOYEES; CASE AT BAR. — This Court had already held that the conduct and behavior of all officials and employees of an office involved in the administration of justice, from the highest judicial official to the lowest personnel, requires them to live up to the strictest standard of honesty, integrity and uprightness in order to maintain public confidence in the judiciary. Court employees, as the *Code of Conduct for Court Personnel* puts it, "serve as sentinels of justice" and "any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it." In the case at bench, the respondents palpably failed to meet the high standard expected from them as court employees. Their conduct is neither excusable nor tolerable. The respondents, through their acts, have proven themselves to be unfit for continued employment in the judiciary.

D E C I S I O N

***PER CURIAM*:**

The present administrative matter is based on the following facts:

On 2 June 2011, Supreme Court Associate Justice and Second Division Chairperson Antonio T. Carpio caused the transmittal of two (2) sealed *Agenda* to the Office of Clerk of Court — Second Division (OCC-SD).[1] Contained in the *Agenda* are the itemized lists of cases taken up by the Court's Second Division during the sessions held on 30 May and 1 June 2011, as well as the handwritten marginal notes of Justice Carpio showing the specific actions adopted by the division on each case item.[2] The transmittal of the *Agenda* was made for the purpose of

[1] Sworn Statement of Ms. Christine S. Puno dated 15 June 2011, p. 3.

[2] *See* Attachments to Memorandum of Atty. Laurea and Atty. Tuazon to Justice Antonio T. Carpio dated 6 June 2011.

allowing the Second Division Clerk of Court to prepare the draft minutes of the 30 May and 1 June 2011 sessions.[3]

Inside the OCC-SD

Ms. Christine S. Puno (Ms. Puno), an Executive Assistant III at the OCC-SD, received the two (2) *Agenda* on behalf of the office.[4] Ms. Puno is the duly designated personnel of the OCC-SD authorized to receive and open the sealed *Agenda* coming from the Office of Justice Carpio.[5] Promptly, Ms. Puno forwarded both *Agenda* to Atty. Ma. Luisa L. Laurea (Atty. Laurea)—the Second Division Clerk of Court.[6]

Atty. Laurea instructed Ms. Puno to have the *Agenda* photocopied, beginning with the one for the 30 May 2011 session.[7] As is customary, the 30 May 2011 *Agenda* was ordered to be photocopied in two (2) sets: one to serve as a duplicate of Atty. Laurea, while the other as a copy of the Agenda Division of the office.[8] The original *Agenda* will be left with the Minutes Division, which will draft the minutes of the session.[9]

Following the instructions of Atty. Laurea, Ms. Puno gave the 30 May 2011 *Agenda* to Mr. Julius Irving C. Tanael (Mr. Tanael)—a Utility Worker II at the OCC-SD—for photocopying.[10] Mr. Tanael is one of only four personnel in the OCC-SD who are authorized to make photocopies of *Agenda* with actions.[11]

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[3] *See* Rule 11, Section 3 of *The Internal Rules of the Supreme Court* (A.M. No. 10-4-20-SC)

[4] Sworn Statement of Ms. Christine S. Puno dated 15 June 2011, pp. 1, 3 and 6.

[5] *Id.* at 2-3 and 5.

[6] *Id.* at 6.

[7] *Id.*

[8] *Id.* at 15.

[9] *Id.*

[10] Sworn Statement of Mr. Julius Irving C. Tanael dated 4 July 2011, p. 4.

[11] *Id.* at 2.

Upon completing his task, Mr. Tanael reckoned that the copies of the 30 May 2011 *Agenda* were too voluminous to be bound by mere staple wire.[12] Hence, Mr. Tanael gave the finished copies to herein respondent Eddie V. Delgado (Delgado) for stitching.[13]

Upon finishing with the stitching, respondent Delgado returned the two (2) copies of the 30 May 2011 *Agenda* to Mr. Tanael.[14] In turn, Mr. Tanael gave one copy to the Agenda Division and another copy to Ms. Puno for transmittal to Atty. Laurea.[15]

Before Ms. Puno could furnish Atty. Laurea her copy of the 30 May 2011 *Agenda*, however, she caught respondent Delgado acting suspiciously while holding and reading sheets of pink-colored papers, which are similar to that used by the OCC-SD in photocopying *Agenda*.[16] She then saw respondent Delgado keep the same sheets inside the drawer of his office desk.[17]

It was at that point that Ms. Puno began to suspect that the sheets held, read and kept by respondent Delgado might have been taken from the copies of the 30 May 2011 *Agenda*.[18] Thus, Ms. Puno at once requested Mr. Tanael to help check whether the pages of the said photocopies were complete.[19]

The inspection of the duplicates revealed that one copy of the 30 May 2011 *Agenda*—the one given to the Agenda Division—had missing pages, pages 58, 59 and 70.[20] Later, Ms. Puno was able to confirm her suspicion as she found two (2) of the missing pages *i.e.*, pages 58 and 59, hidden below a pile of

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[12] *Id.* at 4.

[13] *Id.*

[14] *Id.* at 5.

[15] *Id.*

[16] Sworn Statement of Ms. Christine S. Puno dated 15 June 2011, p. 6.

[17] *Id.* at 6-7.

[18] *Id.*

[19] *Id.*

[20] *Id.*

expediente[21] inside the drawer of respondent Delgado's desk.[22] She and Mr. Tanael then stapled back the recovered pages 58 and 59, and replaced the still unaccounted page 70 in the copy of the Agenda Division.[23]

After office hours, Ms. Puno confided what happened to Ms. Auralyn Veloso (Ms. Veloso) and Atty. Teresita A. Tuazon (Atty. Tuazon).[24] Ms. Veloso is an Assistant Records Officer in OCC-SD, while Atty. Tuazon is the Assistant Clerk of Court of the Second Division.[25]

On 6 June 2011, Atty. Tuazon reported the incident involving the missing pages of a copy of the 30 May 2011 *Agenda* to Atty. Laurea.[26] Alarmed, Atty. Laurea called respondent Delgado, Ms. Puno and Atty. Tuazon in her office for an initial investigation.[27]

Initial Investigation

In the presence of Atty. Laurea, Atty. Tuazon and Ms. Puno, respondent Delgado candidly admitted during the initial investigation that he took pages 58, 59 and 70 from one of the copies of the 30 May 2011 *Agenda*.[28] However, respondent Delgado also disclosed that he removed the pages from the subject *Agenda* only as a favor to herein respondents Joseph Lawrence Madeja (Madeja) and Wilfredo A. Florendo (Florendo).[29]

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[21] The *expediente* is a document that summarizes the various actions taken by this Court on any given case.

[22] Sworn Statement of Ms. Christine S. Puno dated 15 June 2011, p. 6-7. *See* also Sworn Statement of Mr. Julius Irving C. Tanael dated 4 July 2011, p. 6.

[23] Sworn Statement of Mr. Julius Irving C. Tanael dated 4 July 2011, p. 7.

[24] Sworn Statement of Ms. Christine S. Puno dated 15 June 2011, p. 7.

[25] Sworn Statement of Atty. Teresita A. Tuazon dated 15 June 2011, pp. 1 and 11.

[26] *Id.* at 11.

[27] *Id.*

[28] Memorandum of Atty. Laurea and Atty. Tuazon to Justice Antonio T. Carpio dated 6 June 2011.

[29] *Id.*

As it turned out, after respondent Delgado received the copies of the 30 May 2011 *Agenda* for stitching, he was approached by respondents Madeja and Florendo who expressed interest on certain items apparently included in the *Agenda*.[30] Respondents Madeja and Florendo then asked respondent Delgado if he could provide them with a copy.[31] Respondent Delgado professed that out of "*pakikisama*" he removed the would-be missing pages from one of the copies entrusted to him for stitching and gave them to respondents Madeja and Florendo.[32] Respondents Madeja and Florendo, however, would eventually return these pages to respondent Delgado because, purportedly, none of the items about which they were interested was in them.[33]

After hearing the confession and incriminating statements of respondent Delgado, Atty. Laurea called for respondents Madeja and Florendo to join the initial investigation.[34]

For their part, respondents Madeja and Florendo admitted during the initial investigation that they asked for and, in fact, obtained the missing pages in the 30 May 2011 *Agenda*.[35] Respondent Madeja even admitted giving his copy of the missing pages to a certain "*Dading*."[36] *Dading* was later identified to be Melquiades S. Briones, (Mr. Briones) a Clerk III in the Office of the Clerk of Court —*En Banc*.[37] Both respondents Madeja and Florendo attested that court employees from other Divisions had been requesting for copies of the *Agenda*, to which they were inclined to accede in exchange for tokens like "*pang-merienda*" or "*pamasahe*."[38]

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[30] Sworn Statement of Mr. Eddie V. Delgado dated 4 July 2011, p. 4.

[31] *Id.* at 5.

[32] *Id.* at 10.

[33] *Id.* at 14.

[34] Sworn Statement of Ms. Christine S. Puno dated 15 June 2011, p. 12.

[35] Memorandum of Atty. Laurea and Atty. Tuazon to Justice Antonio T. Carpio dated 6 June 2011.

[36] *Id.*

[37] *Id.*

[38] *Id.*

Upon conclusion of the initial investigation, Atty. Laurea and Atty. Tuazon prepared a Memorandum[39] summarizing the statements made by the respondents during the course of the investigation. This Memorandum was then submitted to Justice Carpio, as Chairman of this Court's Second Division.[40]

Formal Investigation

On 8 June 2011, this Court, through its Second Division, issued a Resolution[41] treating the Memorandum submitted by Atty. Laurea and Atty. Tuazon as a formal administrative complaint against the respondents. In the same Resolution, the Complaints and Investigation Division of the Office of Administrative Services (OAS) was tasked to conduct a formal investigation on the matter and to thereafter submit an evaluation, report and recommendation.[42] The Resolution also placed the respondents under preventive suspension for ninety (90) days.[43]

Acting on the Resolution, the OAS directed the respondents to submit their respective written explanations on the Memorandum.[44] In compliance with this directive, respondent Florendo submitted a Plea for Judicial Clemency and Understanding with Motion to Lift Preventive Suspension[45] on 15 June 2011. On 17 June 2011, respondent Madeja filed his Comment/Explanation.[46] Respondent Delgado, however, failed to submit any written explanation.[47]

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[39] *Id.*

[40] *Id.*

[41] Resolution dated 8 June 2011.

[42] *Id.*

[43] *Id.*

[44] Memorandum of Atty. Eden T. Candelaria to Chief Justice Renato C. Corona dated 1 September 2011, p. 3.

[45] Plea for Judicial Clemency and Understanding with Motion to Lift Preventive Suspension dated 15 June 2011.

[46] Comment/Explanation dated 17 June 2011.

[47] Memorandum of Atty. Eden T. Candelaria to Chief Justice Renato C. Corona dated 1 September 2011, p. 4.

The OAS also conducted separate hearings on 15 June 2011 and 4 July 2011, wherein the statements of the respondents,[48] Atty. Tuazon,[49] Ms. Puno,[50] Mr. Tanael,[51] Mr. Briones[52] and one Mr. Willy M. Mercado[53] were taken.

In their written explanations as well as statements during the formal hearings, both respondent Madeja and Florendo adamantly denied having made any admission during the initial investigation regarding their complicity in the removal of the missing pages in the copy of the 30 May 2011 *Agenda*.[54] They submit that there is no actual evidence that shows that they have knowledge of or involvement in the actions of respondent Delgado.[55]

Respondent Delgado in his statement during the formal hearings, on the other hand, stood by his admissions during the initial investigation.[56]

The OAS Recommendation

On 1 September 2011, the OAS submitted to this Court a Memorandum[57] embodying its findings and evaluation. In sum, it considered respondent Delgado guilty of **Grave Misconduct**

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[48] Sworn Statement of Mr. Eddie V. Delgado dated 4 July 2011, pp. 1-19; Sworn Statement of Mr. Joseph Lawrence M. Madeja dated 4 July 2011, pp. 1-17; Sworn Statement of Mr. Wilfredo A. Florendo dated 4 July 2011, pp. 1-16.

[49] Sworn Statement of Atty. Teresita A. Tuazon dated 15 June 2011, pp. 1- 18.

[50] Sworn Statement of Ms. Christine S. Puno dated 15 June 2011, pp. 1-18.

[51] Sworn Statement of Mr. Julius Irving C. Tanael dated 4 July 2011, pp. 1-15.

[52] Sworn Statement of Mr. Melquiades A. Briones dated 4 July 2011, pp. 1-10.

[53] Sworn Statement of Mr. Willy M. Mercado dated 15 June 2011, pp. 1-8.

[54] Sworn Statement of Mr. Joseph Lawrence M. Madeja dated 4 July 2011, pp. 5-6; Sworn Statement of Mr. Wilfredo A. Florendo dated 4 July 2011, pp. 6-7.

[55] *Id.*

[56] Sworn Statement of Mr. Eddie V. Delgado dated 2011, p. 7.

[57] Memorandum of Atty. Eden T. Candelaria to Chief Justice Renato C. Corona dated 1 September 2011, pp. 1-14.

for his unauthorized removal of pages 58, 59 and 70 in a copy of the 30 May 2011 *Agenda*.[58] The OAS also found respondents Madeja and Florendo guilty of **Conduct Prejudicial to the Best Interest of the Service**, for their participation in the unauthorized removal of the said pages.[59]

Thus, following the *Revised Uniform Rules on Administrative Cases in the Civil Service*,[60] the OAS made the following recommendations:[61]

> a. that Eddie V. Delgado, casual Utility Worker II, be found guilty of grave misconduct and conduct prejudicial to the best interest of the service for having been directly involved in the unauthorized taking of three (3) pages from the Agenda with Action dated May 30, 2011, and be **dismissed** from the service with forfeiture of all benefits, except accrued leave credits, if he has any, and with prohibition from reemployment in any branch, agency or instrumentality of the government including government-owned or controlled corporations; and
>
> b. that Joseph Lawrence M. Madeja, Clerk IV, and Wilfredo A. Florendo, Utility Worker II, be found guilty of conduct prejudicial to the best interest of the service, and be **suspended for six (6) months without pay**, with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely. The period of ninety (90) days preventive suspension they have thus served so far shall be credited to them in the service of said penalty. (Emphasis supplied)

OUR RULING

We modify the findings and recommendations of the OAS.

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[58] *Id.* at 11.

[59] *Id.*

[60] Civil Service Commission Memorandum Circular (MC) No. 19, series of 1999.

[61] Memorandum of Atty. Eden T. Candelaria to Chief Justice Renato C. Corona dated 1 September 2011, pp. 13-14.

We begin with the obvious and from the admissions during the initial investigation when there was yet not enough time for device and advice. Respondents Madeja and Florendo asked respondent Delgado for a copy of several items included in the 30 May 2011 *Agenda*. Acceding to the request, respondent Delgado removed pages 58, 59 and 70 from a copy of the *Agenda* entrusted to him for stitching and gave them to respondents Madeja and Delgado. Veritably, the acts of respondents complement each other; they are but completions of a common Grave Misconduct.

Respondents' Complicity

It must be stressed that insofar as the involvement of respondent Delgado is concerned, there is no longer any issue to be resolved. Respondent Delgado has been consistent with his admission of involvement during both the initial investigation in the OCC-SD and the formal investigation of the OAS.[62] **It is, therefore, already settled fact that respondent Delgado was the person who actually removed the pages 58, 59 and 70 from the subject *Agenda*.**

What remains in dispute is the participation of respondents Madeja and Florendo in the removal of the pages in the subject *Agenda*. As stated earlier, both respondents Madeja and Florendo vehemently denied having been involved in the taking of the missing *Agenda* pages during the formal investigation of the OAS.[63] This sharply contradicts their reported admission of complicity during the initial investigation conducted by the OCC-SD.

The evidence at hand, however, point out that respondents Madeja and Florendo, indeed, connived with respondent Delgado in removing the three (3) pages from a copy of the 30 May 2011 *Agenda*. The denial of respondents Madeja and Florendo, in a complete turnaround from an earlier admission,

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[62] Sworn Statement of Mr. Eddie V. Delgado dated 4 July 2011, p. 7.

[63] Sworn Statement of Mr. Joseph Lawrence M. Madeja dated 4 July 2011, pp. 5-6; Sworn Statement of Mr. Wilfredo A. Florendo dated 4 July 2011, pp. 6-7

is unavailing as against the positive, straightforward and consistent statements of respondent Delgado.

First. Respondent Delgado's statements, not only in the initial investigation but also in the formal investigation, were unwavering in their implication of respondents Madeja and Florendo. **Respondent Delgado categorically identified respondents Madeja and Florendo as the persons who induced him to remove several pages from a copy of the 30 May 2011 *Agenda* and thereafter obtained them**.[64] Thus, as respondent Delgado relates during the formal investigation:[65]

Q: *Itong nangyaring insidente noong June 2, 2011, ano ang naging partisipasyon mo dito?*
A: *Ganito po ang pangyayari, kasi po* ***lumapit sa akin ang kasama ko****.*

Q: *Sinong kasama mo?*
A: *Si* ***Florendo at si Madeja****.*

Q: *Willie Florendo at si…..?*
A: *Joseph Madeja.*

Q: *Okay.*
A: *Nung time pong 'yun wala naman pong ….. kasi po pinatahi lang sa akin 'yun.*

Q: *Ang alin?*
A: *Yung agenda po.*

Q: *Pinatahi sa 'yo 'yung agenda?*
A: *Opo.*

Q: *Pagkatapos?*
A: *Wala po sa loob ko. Tinanong nila ako kung nand'yan pa ang agenda, sabi ko, "Ganun, ganun." Yung May 30, "Tingnan mo nga kung and'yan 'yung item ganun. Wala naman sa akin," sabi ko, "Andito," sabi ko. "Bigyan mo nga ako," sabing ganun.*

x x x x x x x x x

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[64] Sworn Statement of Mr. Eddie V. Delgado dated 4 July 2011, pp. 4-5.

[65] *Id.* at 4-5, 7, 13, 14 and 16.

Q: ***Paano mong ginawa 'yung pagbibigay ng copy ng agenda kina Madeja?***
A: ***Tiningnan ko lang po 'yun kung anong item tapos inabot ko lang sa kanila.***

x x x x x x x x x

Q: ***Yung items na 'yun ay nakapaloob dito sa pages 58, 59 and 70 at 'yun ang binigay mo sa kanila?***
A: ***Opo.***

x x x x x x x x x

Q: *Kung ang nawawalang pages ay tatlo, ibig mong sabihin, tatlo din ang tinanggal?*
A: *Usually, Ma'am, 'yung hiningi po ni Joseph Madeja, mali ang item na naibigay ko sa kanya. Hindi niya na po naibalik sa akin inilagay lang niya dun sa mga scratch ko. Nagkamali po ng ano …..…*

Q: *Kumbaga ang intended page ay nasa page 5 & 7, ang naibigay mo* page 3?
A: *Parang ganito po, may item po 'yan kasi. Kunwari, number 1,2,3,4,5,6 may number pa ng item ang naibigay ko sa kanya ay yung number hindi 'yung item. Kunwari, sabi ninyo page 70, ang naibigay ko sa kanya hindi 'yung mismong item number kaya ang sabi niya, "Mali ito."*

x x x x x x x x x

Q: ***Noong mali ang page na ibinigay mo, ibinalik ba sa 'yo o hindi?***
A: ***Inilagay na lang po sa side ko, sabi niya, "Mali ang ibinigay mo." Kasi binigyan na ako ni [Ms. Puno] ng kopya…. nung kulang kaya hindi ko na inano yun****.*

Q: *Hindi ka ba man lang nag-take ng initiative na kahit papano ay xerox lang ang ibigay mo sa kanila?*
A: *Hindi po kasi pwedeng… pag ibinigay mo sa nag-se-xerox…..*
Q: *Kasi makikita niya?*
A: *Opo.*

Q: *So, makikita niya at hinayaan mong ma-discover na may nawawalang pahina, tama ba ako?*
A: *Tama po.*

Q: **In, effect,** ***ang ini-establish ko ngayon ay magkaka-kuntyaba kayo?***
A: ***Yun na din po ang magiging ano nun eh.***

x x x x x x x x x
Emphasis supplied)

Second. It was never shown that respondent Delgado was motivated by any ill will in implicating respondents Madeja and Florendo. As a witness, the credibility of respondent Delgado remained unsullied. We find his statements worthy of belief.[66]

Third. The unsubstantiated denial of respondents, therefore, falters in light of the direct and positive statements of respondent Delgado. The basic principle in Evidence is that denials, unless supported by clear and convincing evidence, cannot prevail over the affirmative testimony of truthful witnesses.[67]

Respondent's Administrative Liability

Having established the involvement of each respondent in the removal of the pages of the subject *Agenda*, We next determine their administrative culpability.

We lay first the premises:

1. As stated beforehand, the 30 May 2011 *Agenda* contain an itemized list of cases taken up by the Court's Second Division during the sessions held on the concerned date and the handwritten marginal notes of Justice Carpio noting the specific actions adopted by the division on each case.[68] Under Rule 11, Section 5 of the *Internal Rules of the Supreme Court*,[69] such a document is considered confidential.

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[66] See *Gan v. People*, G.R. No. 165884, 23 April 2007, 521 SCRA 550, 575.

[67] *People v. Anticamara*, G.R. No. 178771, 8 June 2011; *Gan v. People*, G.R. No. 165884, 23 April 2007, 521 SCRA 550, 574-575.

[68] *See* Attachments to Memorandum of Atty. Laurea and Atty. Tuazon to Justice Antonio T. Carpio dated 6 June 2011.

[69] Rule 11, Section 5 of *The Internal Rules of the Supreme Court* (A.M. No. 10-4-20-SC) provides:

2. Owing to the confidential nature of the contents of an *Agenda*, the OCC-SD follows a very strict procedure in handling them.[70] Thus, as can be gathered from the factual narration, only a few specified personnel within the OCC-SD are authorized to have access to an *Agenda* — *e.g.*, only Ms. Puno is authorized to receive and open; only four (4) persons are authorized to photocopy.[71]

3. None of the respondents is entitled to a copy of an *Agenda*.[72] None of them has any authority to be informed of the contents of an *Agenda*, much less to obtain a page therefrom.[73]

    a. Respondent Delgado holds a casual appointment[74] as a Utility Worker II in the OCC-SD. His primary work in the said office is to stitch pleadings, records and other court documents.[75]

Sec. 5. *Confidentiality of minutes prior to release*. — The Offices of the Clerk of Court and of the Division Clerks of Court are bound by strict confidentiality on the action or actions taken by the Court prior to the approval of the draft of the minutes of the court session release of the resolutions embodying the Court action or actions.

A resolution is considered officially released once the envelope containing a final copy of it addressed to the parties has been transmitted to the process server for personal service or to the mailing section of the Judicial Records Office. Only after its official release may a resolution be made available to the public.

[70] Memorandum of Atty. Eden T. Candelaria to Chief Justice Renato C. Corona dated 1 September 2011, page 10.

[71] *Id.*

[72] *Id.* at 11.

[73] *Id.*

[74] Respondent Delgado's casual employment had recently been renewed for the period July 2011 to December 2011, *id.* at 13. See also Approval of the Honorable Chief Justice Renato C. Corona dated 31 May 2011, Re: Renewal of Casual Appointment effective 1 July 2011.

[75] Sworn Statement of Mr. Eddie V. Delgado dated 4 July 2011, p. 2.

b. Respondent Madeja holds a permanent appointment as Clerk IV in the OCC-SD. His primary task in the said office is the inventory of case *rollos*.[76]

c. Respondent Florendo holds a permanent appointment as Utility II in the OCC-SD. As such, he performs various duties in the office like receiving and delivering case *rollos*, releasing of agenda reports and stitching court records.[77]

Given the foregoing, We find that there are adequate grounds to hold respondents administratively liable.

First. The act of the respondents in causing the removal of several pages in a copy of the 30 May 2011 *Agenda* is a malevolent transgression of their duties as court personnel—particularly, as employees detailed at the OCC-SD. The act is unauthorized and a blatant disregard of the standard operating procedures observed by the office in handling confidential documents, such as the *Agenda*. It compromised the ability of the OCC-SD to efficiently perform its functions and also imperiled the environment of confidentiality the office is supposed to be clothed with.

As court employees, respondents clearly committed a willful breach of the trust reposed upon them by this Court. They thereby violated Sections 1 and 3, Canon IV of the *Code of Conduct for Court Personnel*,[78] to wit:

CANON IV
PERFORMANCE OF DUTIES

SECTION 1. **Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours**.

x x x x x x x x x.

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[76] Sworn Statement of Mr. Joseph Lawrence M. Madeja dated 4 July 2011, p. 2.

[77] Sworn Statement of Mr. Wilfredo A. Florendo dated 4 July 2011, p. 2.

[78] A.M. No. 03-06-13-SC, promulgated on 13 April 2004.

SECTION 3. **Court personnel shall not alter, falsify, destroy or mutilate any record within their control**.

This provision does not prohibit amendment, correction or expungement of records or documents pursuant to a court order. (Emphasis supplied)

Second. The acts of the respondents fall squarely under the offense **Grave Misconduct**. In ***Valera v. Ombudsman***,[79] We defined the offense as follows:

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. **The misconduct is grave if it involves** any of the additional elements of corruption, **willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence**.[80] (Emphasis supplied)

Rule IV, Section 52(A) (3) of the *Revised Uniform Rules on Administrative Cases*[81] *in the Civil Service,* on the other hand, classifies Grave Misconduct as a grave offense punishable with **Dismissal** even in its first commission.

Third. The fact that respondents Madeja and Florendo merely induced the removal of, but did not actually remove, the missing

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[79] G.R. No. 167278, 27 February 2008, 547 SCRA 42.

[80] *Id.* at 59 citing *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, 26 February 2004, 424 SCRA 16; *Civil Service Commission v. Juliana Ledesma*, G.R. No. 154521, 30 September 2005, 471 SCRA 589.

[81] Rule IV, Section 52(A)(3) of the Revised Uniform Rules on Administrative Cases (CSC MC No. 19, s. 1999) provides:

Section 52. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on the gravity or depravity and effects on the government service.

A. The following are **grave offenses** with their corresponding penalties:

1. x x x.

2. x x x.

3. Grave Misconduct

1st offense – Dismissal

x x x. (Emphasis supplied)

pages from the subject *Agenda*, do not make their liability any less than that of respondent Delgado. After all, the evidence in this case adequately shows the existence of connivance among the respondents.

The evidence in this case establishes that respondent Delgado came to remove the missing pages from the subject *Agenda* because he acceded to the request of respondents Madeja and Florendo.[82] The removal of the *Agenda* pages was undoubtedly done for the benefit of respondents Madeja and Florendo.

Verily, the cajoling employed by respondents Madeja and Florendo is as much a part of the Grave Misconduct as the act of removing the *Agenda* pages itself. The proposal is intricately linked and inseparable with the submission. As to their liability, therefore, Respondents Madeja and Florendo must stand in equal footing with respondent Delgado.

Fourth. This Court had already held that the conduct and behavior of all officials and employees of an office involved in the administration of justice, from the highest judicial official to the lowest personnel, requires them to live up to the strictest standard of honesty, integrity and uprightness in order to maintain public confidence in the judiciary.[83] Court employees, as the *Code of Conduct for Court Personnel* puts it, "serve as sentinels of justice" and "any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it."[84]

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[82] Sworn Statement of Mr. Eddie V. Delgado dated 4 July 2011, pp. 4-5, and 7.

[83] *In Re: Improper Solicitation of Court Employees*, A.M. No. 2008-12-SC, 24 April 2009, 586 SCRA 325, 333 citing *Villaros v. Orpiano*, 459 Phil. 1, 8 (2003); *Igoy v. Soriano*, A.M. No. 2001-9-SC, 11 October 2001, 367 SCRA 70, 80 (2001); *Loyao, Jr. v. Armecin*, A.M. No. P-99-1329, 1 August 2000, 337 SCRA 47.

[84] 4th whereas clause of the Code of Conduct for Court Personnel (A.M. No. 03-06-13-SC). *See* also *Villaceran v. Rosete*, A.M. No. MTJ-08-1727, 22 March 2011; *Guerrero v. Ong*, A.M. No. P-09-2676, 16 December 2009, 608 SCRA 257, 263.

In the case at bench, the respondents palpably failed to meet the high standard expected from them as court employees. Their conduct is neither excusable nor tolerable. The respondents, through their acts, have proven themselves to be unfit for continued employment in the judiciary.

WHEREFORE, in light of the foregoing premises, the respondents Eddie V. Delgado, Utility Worker II, Joseph Lawrence M. Madeja, Clerk IV and Wilfredo A. Florendo, Utility Worker II, all of the Office of the Clerk of Court, Second Division are hereby *DISMISSED* from the service, with *FORFEITURE OF ALL BENEFITS*, except accrued leave benefits, and *WITH PREJUDICE* to reinstatement or reappointment to any public office, including government-owned or controlled corporations.

SO ORDERED.

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

EN BANC

[G.R. Nos. 156556-57. October 4, 2011]

ENRIQUE U. BETOY, *petitioner, vs.* **THE BOARD OF DIRECTORS, NATIONAL POWER CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; JURISDICTION; POWER TO DECLARE A LAW VALID IS VESTED IN THE COURTS. — Section 5(1) and (2), Article VIII of the 1987 Constitution provides that: "SECTION. 5. The Supreme Court shall have

the following powers: 1. Exercise *original jurisdiction over cases* affecting ambassadors, other public ministers and consuls, and over *petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus*. 2. Review, revise, reverse, modify, or affirm *on appeal or certiorari*, as the law or the rules of court may provide, final judgments and orders of lower courts in: (a) All cases in which the *constitutionality or validity* of any treaty, international or executive agreement, *law*, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. x x x"

2. ID.; ID.; ID.; ID.; ID.; LITIGANTS DO NOT HAVE UNRESTRAINED FREEDOM OF CHOICE OF FORUM FROM WHICH TO SEEK RELIEF VIA *CERTIORARI*. — Based on the foregoing, this Court's jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, while concurrent with that of the Regional Trial Courts and the Court of Appeals, does not give litigants unrestrained freedom of choice of forum from which to seek such relief. The determination of whether the assailed law and its implementing rules and regulations contravene the Constitution is within the jurisdiction of regular courts. The Constitution vests the power of judicial review or the power to declare (valid) a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the Regional Trial Courts.

3. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; JURISDICTION; SUPREME COURT; THE COURT WILL NOT ENTERTAIN DIRECT RESORT TO IT UNLESS THE REDRESS DESIRED CANNOT BE OBTAINED IN THE APPROPRIATE COURTS; IN THE CASE AT BAR, WHILE THE PETITION SHOULD BE DISMISSED AT THE OUTSET, THE COURT SHALL DISREGARD THE PROCEDURAL DEFECT, AS SIMILAR PETITIONS HAVE ALREADY BEEN RESOLVED BY THIS COURT. — It has long been established that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, or where exceptional and compelling circumstances justify availment of a remedy within and call for the exercise of our primary jurisdiction. Thus, herein petition should already be dismissed at the outset; however, since similar petitions have already been resolved by this Court tackling

the validity of NPB Resolutions No. 2002-124 and No. 2002-125, as well as the constitutionality of certain provisions of the EPIRA, this Court shall disregard the procedural defect.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; NATIONAL POWER CORPORATION; REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA); EPIRA WAS ENACTED TO TAP PRIVATE CAPITAL FOR THE EXPANSION AND IMPROVEMENT OF THE ELECTRIC POWER INDUSTRY, AS THE LARGE GOVERNMENT DEBT AND THE HIGHLY CAPITAL-INTENSIVE CHARACTER OF THE INDUSTRY ITSELF HAVE LONG BEEN ACKNOWLEDGED AS THE CRITICAL CONSTRAINTS TO THE PROGRAM. — In *Freedom from Debt Coalition v. Energy Regulatory Commission*, this Court discussed why there was a need for a shift towards the privatization and restructuring of the electric power industry, to wit: "One of the landmark pieces of legislation enacted by Congress in recent years is the EPIRA. It established a new policy, legal structure and regulatory framework for the electric power industry. The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the government power sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings. Thus, the EPIRA provides a framework for the restructuring of the industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to be

privatized and its transmission business spun off and privatized thereafter."

5. ID.; ID.; ID.; ID.; ID.; ID.; THE POLICY TOWARD PRIVATIZATION WOULD INVOLVE FINANCIAL, BUDGETARY AND ENVIRONMENTAL CONCERNS AS WELL AS COORDINATION WITH LOCAL GOVERNMENT UNITS. — Section 2 of the EPIRA clearly shows that the policy toward privatization would involve financial, budgetary and environmental concerns as well as coordination with local government units, to wit: "SECTION 2. *Declaration of Policy.*— It is hereby declared the policy of the State: (a) To ensure and accelerate the total electrification of the country; (b) To ensure the quality, reliability, security and affordability of the supply of electric power; (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market; (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors; (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry; (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; (g) To assure socially and environmentally compatible energy sources and infrastructure; (h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy; (i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC); (j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and (k) To encourage the efficient use of energy and other modalities of demand side management.

6. ID.; ID.; ID.; NATIONAL POWER BOARD; NPB RESOLUTIONS NO. 2002-124 AND NO. 2002-125; IN THE CASE AT BAR, THE RESOLUTION OF THE VALIDITY OF NPB BOARD RESOLUTIONS NO. 2002-124 AND NO. 2002-125 IS, THEREFORE, MOOT AND ACADEMIC IN

VIEW OF THE COURT'S PRONOUNCEMENTS IN *NPC DRIVERS*. — The main issue raised by petitioner deals with the validity of NPB Resolutions No. 2002-124 and No. 2002-125. In *NPC Drivers and Mechanics Association (NPC DAMA) v. National Power Corporation (NPC)*, this Court had already ruled that NPB Resolutions No. 2002-124 and No. 2002-125 are void and of no legal effect. x x x However, a supervening event occurred in *NPC Drivers* when it was brought to this Court's attention that NPB Resolution No. 2007-55 was promulgated on September 14, 2007 confirming and adopting the principles and guidelines enunciated in NPB Resolutions No. 2002-124 and No. 2002-125. On December 2, 2009, this Court promulgated a Resolution clarifying the amount due the individual employees of NPC in view of NPB Resolution No. 2007-55. In said Resolution, this Court clarified the exact date of the legal termination of each class of NPC employees x x x. As to the validity of NPB Resolution No. 2007-55, this Court ruled that the same will have a prospective effect, x x x. … [T]his Court concluded that the computation of the amounts due the employees who were terminated and/or separated as a result of, or pursuant to, the nullified NPB Board Resolutions No. 2002-124 and No. 2002-125 shall be from their date of illegal termination up to September 14, 2007 when NPB Resolution No. 2007-55 was issued. Thus, the resolution of the validity of NPB Board Resolutions No. 2002-124 and No. 2002-125 is, therefore, moot and academic in view of the Court's pronouncements in *NPC Drivers*.

7. ID.; ID.; ID.; REORGANIZATION; A REORGANIZATION INVOLVES THE REDUCTION OF PERSONNEL, CONSOLIDATION OF OFFICES, OR ABOLITION THEREOF BY REASON OF ECONOMY OR REDUNDANCY OF FUNCTIONS. — A reorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. It could result in the loss of one's position through removal or abolition of an office. However, for a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, it must pass the test of good faith; otherwise, it is void *ab initio*.

8. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, AS THE NPC WAS IN FINANCIAL DISTRESS, CONGRESS PRIVATIZED

IT, WHICH RESULTED IN THE RESTRUCTURING OF ITS OPERATIONS, INCLUDING THE TERMINATION OF ITS EMPLOYEES. — It is undisputed that NPC was in financial distress and the solution found by Congress was to pursue a policy towards its privatization. The privatization of NPC necessarily demanded the restructuring of its operations. To carry out the purpose, there was a need to terminate employees and re-hire some depending on the manpower requirements of the privatized companies. The privatization and restructuring of the NPC was, therefore, done in good faith as its primary purpose was for economy and to make the bureaucracy more efficient.

9. ID.; ID.; ID.; ID.; IN REMOVAL OF EMPLOYEES AS A RESULT OF ANY REORGANIZATION, CERTAIN CIRCUMSTANCES SHOW BAD FAITH IN THE REMOVAL OF EMPLOYEES. — Section 2 of R.A. No. 6656 cites certain circumstances showing bad faith in the removal of employees as a result of any reorganization, thus: "Sec. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exist when, pursuant to a *bona fide* reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of the reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party: (a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned; (b) Where an office is abolished and another performing substantially the same functions is created; (c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit; (d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices; and (e) Where the removal violates the order of separation provided in Section 3 hereof."

10. ID.; ID.; ID.; ID.; ID.; BAD FAITH MUST BE DULY PROVED; SUCH IS ABSENT IN THE CASE AT BAR. — Petitioner's

allegation that the reorganization was merely undertaken to accommodate new appointees is at most speculative and bereft of any evidence on record. It is settled that bad faith must be duly proved and not merely presumed. It must be proved by clear and convincing evidence, which is absent in the case at bar.

11. ID.; ID.; ID.; ID.; SECTION 63 OF THE EPIRA ONLY SPEAKS OF PREFERENCE IN THE HIRING OF THE MANPOWER REQUIREMENTS OF THE PRIVATIZED COMPANIES AND BY NO STRETCH OF THE IMAGINATION CAN THE SAME AMOUNT TO A LEGAL RIGHT TO THE POSITION. — x x x Section 63 of the EPIRA as well as Section 5, Rule 33 of the IRR clearly state that the displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies. Clearly, the law only speaks of preference and by no stretch of the imagination can the same amount to a legal right to the position. Undoubtedly, not all the terminated employees will be re-hired by the selection committee as the manpower requirement of the privatized companies will be different. As correctly observed by the Solicitor General, the selection of employees for purposes of re-hiring them necessarily entails the exercise of discretion or judgment. x x x

12. ID.; ID.; ID.; ID.; ID.; DUE TO THIS PREFERENCE, PETITIONER HAS NO LEGAL OR VESTED RIGHT TO BE REINSTATED. — In addition, petitioner has no legal or vested right to be reinstated x x x. Such being the case, petitioner, cannot, by way of *mandamus*, compel the selection committee to include him in the re-hired employees, more so, since there is no evidence showing that said committee acted with grave abuse of discretion or that the re-hired employees were merely accommodated and not qualified.

13. ID.; ID.; PUBLIC OFFICERS; DESIGNATION; IMPOSITION OF ADDITIONAL DUTIES. — Designation connotes an imposition of additional duties, usually by law, upon a person already in the public service by virtue of an earlier appointment. Designation does not entail payment of additional benefits or grant upon the person so designated the right to claim the salary attached to the position. Without an appointment, a designation does not entitle the officer to receive the salary of the position.

The legal basis of an employee's right to claim the salary attached thereto is a duly issued and approved appointment to the position, and not a mere designation.

14. ID.; ID.; ID.; ID.; ID.; MEMBERS OF THE CABINET DESIGNATED AS MEMBERS OF THE NATIONAL POWER BOARD. — Sections 4 and 6 of the EPIRA provides: "**Section 4. TRANSCO Board of Directors.** All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the DOF shall be the *ex-officio* Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the DOE, the Secretary of the DENR, the President of TRANSCO, and three (3) members to be appointed by the President of the Philippines, each representing Luzon, Visayas and Mindanao, one of whom shall be the President of PSALM. x x x **Section 6. PSALM Board of Directors.** PSALM shall be administered, and its powers and functions exercised, by a Board of Directors which shall be composed of the Secretary of the DOF as the Chairman, and the Secretary of the DOE, the Secretary of the DBM, the Director-General of the NEDA, the Secretary of the DOJ, the Secretary of the DTI and the President of the PSALM as *ex-officio* members thereof."

15. ID.; CONSTITUTIONAL LAW; PROHIBITION AGAINST HOLDING DUAL OR MULTIPLE OFFICES OR EMPLOYMENT; PROHIBITION DOES NOT APPLY TO POSTS OCCUPIED BY THE EXECUTIVE OFFICIALS SPECIFIED THEREIN WITHOUT ADDITIONAL COMPENSATION IN AN *EX-OFFICIO* CAPACITY. — Section 13, Article VII of the 1987 Constitution provides: "Sec. 13. The President, Vice-President, the *Members of the Cabinet*, and their deputies or assistants *shall not*, unless otherwise provided in this Constitution, *hold any other office* or employment during their tenure. They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office. x x x. In *Civil Liberties Union*

v. Executive Secretary, this Court explained that the prohibition contained in Section 13, Article VII of the 1987 Constitution does not apply to posts occupied by the Executive officials specified therein without additional compensation in an *ex-officio* capacity as provided by law and as required by the primary function of said official's office, to wit: "x x x The reason is that these posts do not comprise 'any other office' within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials. x x x The term "primary" used to describe "functions" refers to the order of importance and thus means chief or principal function. The term is not restricted to the singular but may refer to the plural. The additional duties must not only be closely related to, but must be required by the official's primary functions. x x x" x x x In *Civil Liberties*, this Court explained that mandating additional duties and functions to Cabinet members which are not inconsistent with those already prescribed by their offices or appointments by virtue of their special knowledge, expertise and skill in their respective executive offices, is a practice long-recognized in many jurisdictions. It is a practice justified by the demands of efficiency, policy direction, continuity and coordination among the different offices in the Executive Branch in the discharge of its multifarious tasks of executing and implementing laws affecting national interest and general welfare and delivering basic services to the people.

16. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE DESIGNATION OF THE MEMBERS OF THE CABINET TO FORM THE NPB DOES NOT VIOLATE THE PROHIBITION, AS THE PRIVATIZATION AND RESTRUCTURING OF THE ELECTRIC POWER INDUSTRY INVOLVES THE CLOSE COORDINATION AND POLICY DETERMINATION OF VARIOUS GOVERNMENT AGENCIES. — The designation of the members of the Cabinet to form the NPB does not violate the prohibition contained in our Constitution as the privatization and restructuring of the electric power industry involves the close coordination and policy determination of various government agencies. x x x As can be gleaned from the foregoing enumeration (in Section 2 of the EPIRA), the restructuring of the electric power industry inherently involves the participation of various government agencies. x x x The production and supply of energy is undoubtedly one of national interest and is a basic

commodity expected by the people. This Court, therefore, finds the designation of the respective members of the Cabinet, as *ex-officio* members of the NPB, valid.

17. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE DESIGNATION, PURSUANT TO SECTION 52 CREATING THE PSALM, DID NOT VIOLATE THE CONSTITUTIONAL PROHIBITION. — This Court is not unmindful, however, that Section 48 of the EPIRA is not categorical in proclaiming that the concerned Cabinet secretaries compose the NPB Board only in an *ex-officio* capacity. It is only in Section 52 creating the Power Sector Assets and Liabilities Management Corporation (PSALM) that they are so designated in an *ex-officio* capacity. x x x Nonetheless, this Court agrees with the contention of the Solicitor General that the constitutional prohibition was not violated, considering that the concerned Cabinet secretaries were merely imposed additional duties and their posts in the NPB do not constitute "any other office" within the contemplation of the constitutional prohibition. The delegation of the said official to the respective Board of Directors . . . (was a) designation by Congress of additional functions and duties to the officials concerned, *i.e.*, they were designated as members of the Board of Directors. x x x Hence, Congress specifically intended that the position of member of the Board of NPB shall be *ex-officio* or automatically attached to the respective offices of the members composing the board. It is clear from the wordings of the law that it was the intention of Congress that the subject posts will be adjunct to the respective offices of the official designated to such posts.

18. ID.; ID.; ID.; ID.; ID.; ID.; THE CONCERNED OFFICIALS SHOULD NOT RECEIVE ANY ADDITIONAL COMPENSATION PURSUANT TO THEIR DESIGNATION. — The foregoing discussion, notwithstanding, the concerned officials should not receive any additional compensation pursuant to their designation as ruled in *Civil Liberties*, thus: "The *ex-officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. It should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an *ex-*

officio member thereof, he is actually and in legal contemplation performing the primary function of his principal office in defining policy in monetary and banking matters, which come under the jurisdiction of his department. For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a per diem or an honorarium or an allowance, or some other such euphemism. By whatever name it is designated, such additional compensation is prohibited by the Constitution."

19. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE DESIGNATED CABINET SECRETARIES ARE LIKEWISE NOT ENTITLED TO PER DIEMS AND SUCH OTHER ALLOWANCES. — In relation thereto, Section 14 of the EPIRA provides: "Sec. 14. *Board Per Diems and Allowances.* —The members of the Board shall receive per diem for each regular or special meeting of the board actually attended by them and, upon approval of the Secretary of the Department of Finance, such other allowances as the Board may prescribe." Section 14 relates to Section 11 which sets the composition of the TRANSCO Board naming the Secretary of the Department of Finance as the *ex-officio* Chairman of the Board. The other members of the TRANSCO Board include the Secretary of the Department of Energy and the Secretary of the Department of Environment and Natural Resources. However, considering the constitutional prohibition, it is clear that such emoluments or additional compensation to be received by the members of the NPB do not apply and should not be received by those covered by the constitutional prohibition, *i.e.*, the Cabinet secretaries. It is to be noted that three of the members of the NPB are to be appointed by the President, who would be representing the interests of those in Luzon, Visayas, and Mindanao, who may be entitled to such honorarium or allowance if they do not fall within the constitutional prohibition. Hence, the said cabinet officials cannot receive any form of additional compensation by way of per diems and allowances. Moreover, any amount received by them in their capacity as members of the Board of Directors should be reimbursed to the government, since they are prohibited from collecting additional compensation by the Constitution.

20. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; A STATUTE IS TO BE READ IN A MANNER

THAT WOULD BREATHE LIFE INTO IT.— These interpretations are consistent with the fundamental rule of statutory construction that a statute is to be read in a manner that would breathe life into it, rather than defeat it, and is supported by the criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute.

21. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; NATIONAL POWER CORPORATION; REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA); STRANDED DEBTS OF THE NPC; UNIVERSAL CHARGE AS PAYMENT FOR STRANDED DEBTS (SECTION 34 OF THE EPIRA); CONSTITUTIONALITY SETTLED IN *GEROCHI V. DEPARTMENT OF ENERGY* (527 SCRA 696). — The Constitutionality of Section 34 of the EPIRA has already been passed upon by this Court in *Gerochi v. Department of Energy*, to wit: "Finally, every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution and not one that is doubtful, speculative, or argumentative. Indubitably, petitioners failed to overcome this presumption in favor of the EPIRA. We find no clear violation of the Constitution which would warrant a pronouncement that Sec. 34 of the EPIRA and Rule 18 of its IRR are unconstitutional and void."

22. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE UNIVERSAL CHARGE IS NOT A TAX BUT AN EXACTION IN THE EXERCISE OF THE STATE'S POLICE POWER. — In *Gerochi*, this Court ruled that the Universal Charge is not a tax but an exaction in the exercise of the State's police power. The Universal Charge is imposed to ensure the viability of the country's electric power industry. x x x It is basic that the determination of whether or not a tax is excessive oppressive or confiscatory is an issue which essentially involves a question of fact and, thus, this Court is precluded from reviewing the same.

23. ID.; ID.; ID.; ID.; ID.; ABOLITION OF THE ERB AND THE CREATION OF THE ERC; SETTLED IN *KAPISANAN NG MGA KAWANI NG ENERGY REGULATORY BOARD V. COMMISSIONER FE BARIN*. — In any case, the constitutionality of the abolition of the ERB and the creation

of the ERC has already been settled in *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Commissioner Fe Barin*, to wit: "All laws enjoy the presumption of constitutionality. To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution. KERB failed to show any breach of the Constitution. A public office is created by the Constitution or by law or by an officer or tribunal to which the power to create the office has been delegated by the legislature. The power to create an office carries with it the power to abolish. President Corazon C. Aquino, then exercising her legislative powers, created the ERB by issuing Executive Order No. 172 on 8 May 1987. The question of whether a law abolishes an office is a question of legislative intent. There should not be any controversy if there is an explicit declaration of abolition in the law itself. Section 38 of RA 9136 explicitly abolished the ERB. x x x" Moreover, in *Kapisanan*, this Court ruled that because of the expansion of the ERC's functions and concerns, there was a valid abolition of the ERB.

24. ID.; ID.; PUBLIC OFFICERS; RETIREMENT BENEFITS; SEPARATION PAY; THE RECEIPT OF RETIREMENT BENEFITS DOES NOT BAR THE RETIREE FROM RECEIVING SEPARATION PAY. — In the case of *Santos v. Servier Philippines, Inc.*, citing *Aquino v. National Labor Relations Commission*, We declared that the receipt of retirement benefits does not bar the retiree from receiving separation pay. *Separation pay* is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment. On the other hand, *retirement benefits* are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support, and are a form of reward for his loyalty and service to the employer. A separation pay is given during one's *employable years*, while retirement benefits are given during one's *unemployable years*. Hence, they are not mutually exclusive.

25. ID.; ID.; ID.; ID.; ID.; ID.; WHEN AN EMPLOYEE HAS COMPLIED WITH THE STATUTORY REQUIREMENTS TO BE ENTITLED TO RECEIVE HIS RETIREMENT BENEFITS, HIS RIGHT TO RETIRE AND RECEIVE WHAT IS DUE HIM BY VIRTUE THEREOF BECOMES VESTED AND MAY NOT THEREAFTER BE REVOKED

OR IMPAIRED. — Thus, where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits that is protected by the due process clause. Retirees enjoy a protected property interest whenever they acquire a right to immediate payment under pre-existing law. Thus, a pensioner acquires a vested right to benefits that have become due as provided under the terms of the public employees' pension statute. No law can deprive such person of his pension rights without due process of law, that is, without notice and opportunity to be heard. Verily, when an employee has complied with the statutory requirements to be entitled to receive his retirement benefits, his right to retire and receive what is due him by virtue thereof becomes vested and may not thereafter be revoked or impaired.

26. ID.; ID.; ID.; ID.; ID.; RECEIPT OF SEPARATION PAY AND RETIREMENT BENEFITS IS NOT PROSCRIBED BY THE 1987 CONSTITUTION. — At any rate, entitlement of qualified employees to receive separation pay *and* retirement benefits is not proscribed by the 1987 Constitution. Section 8 of Article IX (B) of the 1987 Constitution reads: "Sec. 8. No elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. ***Pensions or gratuities shall not be considered as additional, double, or indirect compensation***."

27. ID.; ADMINITRATIVE LAW; PUBLIC CORPORATIONS; NATIONAL POWER CORPORATION; SEPARATED, DISPLACED, RETIRING, AND RETIRED EMPLOYEES OF NPC; THE COURT REITERATES THAT SEPARATED, REHIRED, RETIRING, AND RETIRED EMPLOYEES SHOULD RECEIVE, AND CONTINUE TO RECEIVE, THE RETIREMENT BENEFITS TO WHICH THEY ARE LEGALLY ENTITLED. — Even in the deliberations of Congress during the passage of R.A. No. 9136, it was manifest that it was not the intention of the law to infringe upon the vested rights of NPC personnel to claim benefits under existing laws. To assure the worried and uneasy NPC employees, Congress guaranteed their entitlement to a separation pay to tide them over in the meantime. More importantly, to further

allay the fears of the NPC employees, especially those who were nearing retirement age, Congress repeatedly assured them in several public and congressional hearings that on top of their separation benefits, they would still receive their retirement benefits, as long as they would qualify and meet the requirements for its entitlement. x x x Moreover, Section 63 of the EPIRA law, if misinterpreted as proscribing payment of retirement benefits under the GSIS law, would be unconstitutional as it would be violative of Section 10, Article III of the 1987 Constitution or the provision on non-impairment of contracts. In view of the fact that separation pay and retirement benefits are different entitlements, as they have different *legal bases*, different *sources of funds*, and different *intents*, the "exclusiveness of benefits" rule provided under R.A. No. 8291 is not applicable. Section 55 of R.A. No. 8291 states: "Whenever other laws provide *similar benefits* for the same contingencies covered by this Act, the member who qualifies to the benefits shall have the option to choose which benefits will be paid to him." Accordingly, the Court declares that separated, displaced, retiring, and retired employees of NPC are legally entitled to the retirement benefits pursuant to the intent of Congress and as guaranteed by the GSIS laws. Thus, the Court reiterates: [1] that the dispositive portion in *Herrera* holding that separated and retired employees "are not entitled to receive retirement benefits under Commonwealth Act No. 186," referred only to the gratuity benefits under R.A. No. 1616, which was to be paid by NPC, being the last employer; [2] that it did not proscribe the payment of the retirement benefits to qualified retirees under R.A. No. 660, P.D. No. 1146, R.A. No. 8291, and other GSIS and social security laws; and [3] that separated, rehired, retiring, and retired employees should receive, and continue to receive, the retirement benefits to which they are legally entitled.

28. ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA); WHETHER THE STATE'S POLICY OF PRIVATIZING THE ELECTRIC POWER INDUSTRY IS WISE, JUST, OR EXPEDIENT IS NOT FOR THIS COURT TO DECIDE. — While we commend petitioner's attempt to argue against the privatization of the NPC, it is not the proper subject of herein petition. Petitioner belabored on alleging facts to prove his point which,

> however, go into policy decisions which this Court must not delve into less we violate separation of powers. The wisdom of the privatization of the NPC cannot be looked into by this Court as it would certainly violate this guarded principle. The wisdom and propriety of legislation is not for this Court to pass upon. Every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative. As in *National Power Corporation Employees Consolidated Union (NECU) v. National Power Corporation (NPC*), this Court held: "Whether the State's policy of privatizing the electric power industry is wise, just, or expedient is not for this Court to decide. The formulation of State policy is a legislative concern. Hence, the primary judge of the necessity, adequacy, wisdom, reasonableness and expediency of any law is primarily the function of the legislature."

APPEARANCES OF COUNSEL

Rhandy G. Ilisan for petitioner.

The Solicitor General and *Litigation Division (NAPOCOR)* for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a special civil action for *certiorari*[1] and supplemental petition for *mandamus*,[2] specifically assailing National Power Board Resolutions No. 2002-124 and No. 2002-125, as well as Sections 11, 34, 38, 48, 52 and 63 of Republic Act (R.A.) No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA). Also assailed is Rule 33 of the Implementing Rules and Regulations (IRR) of the EPIRA.

The facts of the case are as follows:

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[1] *Rollo*, pp. 5-171.

[2] *Id.* at 295-333.

On June 8, 2001, the EPIRA was enacted by Congress with the goal of restructuring the electric power industry and privatization of the assets of the National Power Corporation (NPC).

Pursuant to Section 48[3] of the EPIRA, a new National Power Board of Directors (NPB) was created. On February 27, 2002, pursuant to Section 77[4] of the EPIRA, the Secretary of the Department of Energy promulgated the IRR.

On the other hand, Section 63 of the EPIRA provides for separation benefits to officials and employees who would be affected by the restructuring of the electric power industry and the privatization of the assets of the NPC, to wit:

Section 63. *Separation Benefits of Officials and Employees of Affected Agencies.* — **National Government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government**: *Provided, however,* That those who avail of such privileges shall start their

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[3] Sec. 48. *National Power Board of Directors.* — Upon the passage of this Act, Section 6 of Republic Act No. 6395, as amended, and Section 13 of Republic Act No. 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of the Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

[4] Sec. 77. *Implementing Rules and Regulations.* — The DOE shall, in consultation with relevant government agencies, the electric power industry participants, non-government organizations and end-users, promulgate the Implementing Rules and Regulations (IRR) of this Act within six (6) months from the effectivity of this Act, subject to the approval by the Power Commission.

government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies. x x x[5]

Rule 33[6] of the IRR provided for the coverage and the guidelines

[5] Emphasis supplied.

[6] RULE 33. SEPARATION BENEFITS

Sec. 1. *General Statement on Coverage*.

This Rule shall apply to all employees in the National Government service as of 26 June 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the Restructuring of the electricity industry and Privatization of NPC assets: Provided, however, That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested by the Civil Service Commission (CSC).

Sec. 2. *Scope of Application*. This Rule shall apply to affected personnel of DOE, ERB, NEA and NPC.

Sec. 3. *Separation and Other Benefits*.

(a) The separation benefit shall consist of either a separation pay and other benefits granted in accordance with existing laws, rules and regulations or a separation plan equivalent to one and one half (1-½) months' salary for every year of service in the government, whichever is higher: Provided, That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act.

(b) The following shall govern the application of Section 3(a) of this Rule:

(i) With respect to NPC officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when the restructuring plan as approved by the NPC Board shall have been implemented.

(ii) With respect to NEA officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when a restructuring of NEA is implemented pursuant to a law enacted by Congress or pursuant to Section 5(a)(5) of Presidential Decree No. 269.

With respect to the affected Bureaus of the DOE, their officials and employees shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when the re-organizational plan shall have been implemented as a result of the Restructuring of the electric power industry.

(c) The governing board or authority of the entities enumerated in Section 3(b) hereof shall have the sole prerogative to hire the separated employees who start their service anew for such positions and for such compensation as may be determined by such board or authority pursuant to its restructuring program. Those who avail of the foregoing privileges shall start their government service anew if absorbed by any government agency or any government-owned successor company.

(d) In no case shall there be any diminution of benefits under the separation plan until the full implementation of the Restructuring of the electric power industry and the Privatization of NPC assets in accordance with the approved Restructuring and Privatization schedule.

(e) For this purpose, "Salary," as a rule, refers to the basic pay including the thirteenth (13^{th}) month pay received by an employee pursuant to his appointment, excluding per diems, bonuses, overtime pay, honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws.

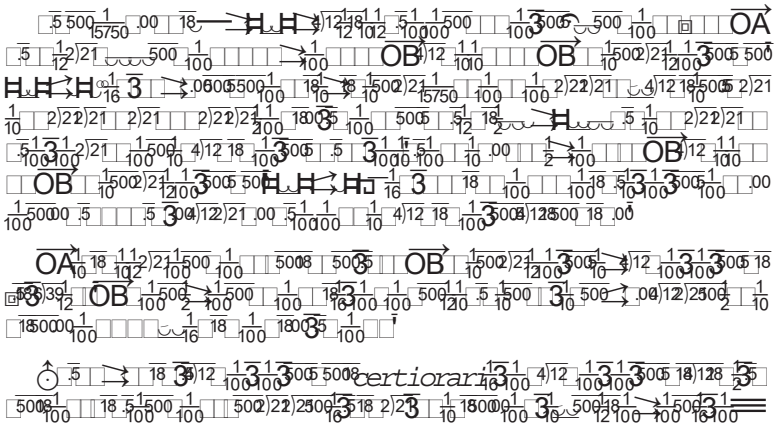
(f) Likewise, "Separation" or "Displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws, as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the Act.

Sec. 4. *Funding*.

Funds necessary to cover the separation pay under this Rule shall be provided either by the Government Service Insurance System (GSIS) or from the corporate funds of the NEA or the NPC, as the case may be; and in the case of the DOE and the ERB, by the GSIS or from the general fund, as the case may be. The Buyer or Concessionaire or the successor company shall not be liable for the payment of the separation pay.

Sec. 5. *Preferential Rights of Employees*.

Displaced or separated personnel as a result of the Restructuring of the electric power industry and Privatization of NPC assets shall be given preference in the hiring of manpower requirements of the newly-created offices or the privatized companies: Provided, That the displaced or separated personnel meet the prescribed qualifications. With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment (DOLE), shall endeavor to implement re-training, job counseling, and job placement programs.



1. Declaring National Power Board Resolution Nos. 2002-124 and 2002-125 and its Annex "B" Null and Void, the fact [that] it was done with extraordinary haste and in secrecy without the able participation of the Napocor Employees Consolidated Union (NECU) to represent all career civil service employees on issues affecting their rights to due process, equity, security of tenure, social benefits accrued to them, and as well as the disclosure of public transaction provisions of the 1987 Constitution because during its proceeding the National Power Board had acted with grave abuse of discretion and disregarding constitutional and statutory injunctions on removal of public servants and non-diminution of social benefits accrued to separated employees, thus, amounting to excess of jurisdiction;

Sec. 6. *Implementation.*

The DOE, NEA, and NPC, shall issue guidelines applicable to their respective employees to implement this Rule within ninety (90) days from effectivity of these Rules: Provided, That in the case of ERC, the independent quasi-judicial body created under the Act, the manner of, and timetable for, implementation of its organization shall be governed by Section 38 and Section 39 of the Act.

[7] See *rollo*, pp. 198-204. Pertinent portion of which reads:

RESOLVED FURTHER, That pursuant to Section 63 of the EPIRA and Rule 33 of the IRR, all NPC Personnel shall be legally terminated on January 31, 2003 and shall be entitled to separation benefits as provided in the Guidelines hereunder adopted.

[8] *Rollo*, pp. 220-223.

2. Striking down Section 11, Section 48 and Section 52 of RA 9136 (EPIRA) for being violative of Section 13, Article VII of the 1987 Constitution and, therefore, unconstitutional;

3. Striking Section 34 of RA 9136 (EPIRA) for being exorbitant display of State Power and was not premised on the welfare of the FILIPINO PEOPLE or principle of ***salus populi est suprema lex***;

4. Striking down Section 38 for RA 9136 (EPIRA) for being a prelude to ***Charter Change*** without a valid referendum for ratification of the entire voter citizens of the Philippine Republic;

5. Striking down all other provisions of RA 9136 (EPIRA) found repugnant to the 1987 Constitution;

6. Striking down all provisions of the Implementing Rules and Regulations (IRR) of the EPIRA found repugnant to the 1987 Constitution;

7. Striking down Section 63 of RA 9136 (EPIRA) for classifying such provisions in the same vein with Proclamation No. 50 used against MWSS employees and its failure to classify which condition comes first whether the restructuring effecting total reorganization of the electric power industry making NPC financially viable or the privatization of NPC assets where manpower reduction or sweeping/ lay-off or termination of career civil service employees follows the disposal of NPC assets. This is a clear case of violation of the *EQUAL PROTECTION CLAUSE*, therefore, unconstitutional;

8. Striking down Rule 33 of the Implementing Rules [and] Regulations (IRR) for disregarding the constitutional and statutory injunction on arbitrary removal of career civil service employees; and

9. For such other reliefs deemed equitable with justice and fairness to more than EIGHT THOUSAND (8,000) EMPLOYEES of the National Power Corporation (NPC) whose fate lies in the sound disposition of the Honorable Supreme Court.[9]

In addition, petitioner also filed a supplemental petition for *mandamus* praying for his reinstatement.

The petition is without merit.

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[9] *Id.* at 170-171. (Emphasis in original.)

Before anything else, this Court shall first tackle whether it was proper for petitioner to directly question the constitutionality of the EPIRA before this Court.

Section 5(1) and (2), Article VIII of the 1987 Constitution provides that:

> SECTION 5. The Supreme Court shall have the following powers:
>
> 1. Exercise *original jurisdiction over cases* affecting ambassadors, other public ministers and consuls, and over *petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus*.
>
> 2. Review, revise, reverse, modify, or affirm *on appeal or certiorari*, as the law or the rules of court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the *constitutionality or validity* of any treaty, international or executive agreement, *law*, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.[10]

Based on the foregoing, this Court's jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, while concurrent with that of the Regional Trial Courts and the Court of Appeals, does not give litigants unrestrained freedom of choice of forum from which to seek such relief.[11] The determination of whether the assailed law and its implementing rules and regulations contravene the Constitution is within the jurisdiction of regular courts. The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the Regional Trial Courts.[12]

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[10] Italics supplied.

[11] *Francisco, Jr. v. Fernando*, G.R. No. 166501, November 16, 2006, 507 SCRA 173, 179, citing *People v. Cuaresma*, G.R. No. 67787, April 18, 1989, 172 SCRA 415, 423-424.

[12] *British American Tobacco v. Camacho*, G.R. No. 163583, August 20, 2008, 562 SCRA 511, 534.

It has long been established that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, or where exceptional and compelling circumstances justify availment of a remedy within and call for the exercise of our primary jurisdiction.[13] Thus, herein petition should already be dismissed at the outset; however, since similar petitions have already been resolved by this Court tackling the validity of NPB Resolutions No. 2002-124 and No. 2002-125, as well as the constitutionality of certain provisions of the EPIRA, this Court shall disregard the procedural defect.

Validity of NPB Resolutions No. 2002-124 and No. 2002-125

The main issue raised by petitioner deals with the validity of NPB Resolutions No. 2002-124 and No. 2002-125.

In *NPC Drivers and Mechanics Association (NPC DAMA) v. National Power Corporation (NPC)*,[14] this Court had already ruled that NPB Resolutions No. 2002-124 and No. 2002-125 are void and of no legal effect.

NPC Drivers involved a special civil action for Injunction seeking to enjoin the implementation of the same assailed NPB Resolutions. Petitioners therein put in issue the fact that the NPB Resolutions were not concluded by a duly constituted Board of Directors since no quorum in accordance with Section 48 of the EPIRA existed. In addition, petitioners therein argued that the assailed NPB Resolutions cannot be given legal effect as it failed to comply with Section 47 of the EPIRA which required the endorsement of the Joint Congressional Power Commission and the President of the Philippines. Ruling in favor of petitioners therein, this Court ruled that NPB Resolutions No. 2002-124 and No. 2002-125 are void and of no legal effect for failure to comply with Section 48 of the EPIRA, to wit:

We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the

[13] *Lacson Hermanas, Inc. v. Heirs of Cenon Ignacio*, G.R. No. 165973, June 29, 2005, 462 SCRA 290, 294 and *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 652.

[14] G.R. No. 156208, September 26, 2006, 503 SCRA 138.

legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Discretion may be defined as "the act or the liberty to decide according to the principles of justice and one's ideas of what is right and proper under the circumstances, without willfulness or favor. Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfilment of such responsibility.

x x x x x x x x x

In the case at bar, it is not difficult to comprehend that in approving NPB Resolutions No. 2002-124 and No. 2002-125, it is the representatives of the secretaries of the different executive departments and not the secretaries themselves who exercised judgment in passing the assailed Resolution, as shown by the fact that it is the signatures of the respective representatives that are affixed to the questioned Resolutions. This, to our mind, violates the duty imposed upon the specifically enumerated department heads to employ their own sound discretion in exercising the corporate powers of the NPC. Evidently, the votes cast by these mere representatives in favor of the adoption of the said Resolutions must not be considered in determining whether or not the necessary number of votes was garnered in order that the assailed Resolutions may be validly enacted. Hence, there being only three valid votes cast out of the nine board members, namely those of DOE Secretary Vincent S. Perez, Jr.; Department of Budget and Management Secretary Emilia T. Boncodin; and NPC OIC-President Rolando S. Quilala, **NPB Resolutions No. 2002-124 and No. 2002-125 are void and are of no legal effect**.[15]

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[15] *Id.* at 148-150. (Emphasis Supplied.)

However, a supervening event occurred in *NPC Drivers* when it was brought to this Court's attention that NPB Resolution No. 2007-55 was promulgated on September 14, 2007 confirming and adopting the principles and guidelines enunciated in NPB Resolutions No. 2002-124 and No. 2002-125.

On December 2, 2009, this Court promulgated a Resolution[16] clarifying the amount due the individual employees of NPC in view of NPB Resolution No. 2007-55. In said Resolution, this Court clarified the exact date of the legal termination of each class of NPC employees, thus:

> From all these, it is clear that our ruling, pursuant to NPB Resolution No. 2002-124, covers all employees of the NPC and not only the 16 employees as contended by the NPC. However, as regards their right to reinstatement, or separation pay in lieu of reinstatement, pursuant to a validly approved Separation Program, plus backwages, wage adjustments, and other benefits, the same shall be computed from the date of legal termination as stated in NPC Circular No. 2003-09, to wit:
>
> a) The legal termination of **key officials**, *i.e.*, the Corporate Secretary, Vice-Presidents and Senior Vice-Presidents who were appointed under NP Board Resolution No. 2003-12, shall be at the close of office hours of **January 31, 2003**.
>
> b) The legal termination of personnel who availed of the **early leavers' scheme** shall be on the **last day of service** in NPC but **not beyond January 15, 2003.**
>
> c) The legal termination of personnel who were **no longer employed in NPC after June 26, 2001** shall be the date of **actual separation** in NPC.
>
> d) For **all other NPC personnel**, their legal termination shall be at the close of office hours/shift schedule of **February 28, 2003**.[17]

As to the validity of NPB Resolution No. 2007-55, this Court ruled that the same will have a prospective effect, to wit:

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[16] *NPC Drivers and Mechanics Association v. National Power Corporation*, G.R. No. 156208, December 2, 2009, 606 SCRA 409.

[17] *Id.* at 432-433. (Emphasis in original.)

What then is the effect of the approval of NPB Resolution No. 2007-55 on 14 September 2007? The approval of NPB Resolution No. 2007-55, supposedly by a majority of the National Power Board as designated by law, that adopted, confirmed and approved the contents of NPB Resolutions No. 2002-124 and No. 2002-125 will have a **prospective effect**, not a retroactive effect. The approval of NPB Resolution No. 2007-55 cannot ratify and validate NPB Resolutions No. 2002-124 and No. 2002-125 as to make the termination of the services of all NPC personnel/employees on 31 January 2003 valid, because said resolutions were void.

The approval of NPB Resolution No. 2007-55 on 14 September 2007 means that the services of all NPC employees have been legally terminated on this date. All separation pay and other benefits to be received by said employees will be deemed cut on this date. The computation thereof shall, therefore, be from the date of their illegal termination pursuant to NPB Resolutions No. 2002-124 and No. 2002-125 as clarified by NPB Resolution No. 2003-11 and NPC Resolution No. 2003-09 up to 14 September 2007. Although the validity of NPB Resolution No. 2007-55 has not yet been passed upon by the Court, same has to be given effect because NPB Resolution No. 2007-55 enjoys the presumption of regularity of official acts. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. **Thus, until and unless there is clear and convincing evidence that rebuts this presumption, we have no option but to rule that said resolution is valid and effective as of 14 September 2007.**[18]

Based on the foregoing, this Court concluded that the computation of the amounts due the employees who were terminated and/or separated as a result of, or pursuant to, the nullified NPB Board Resolutions No. 2002-124 and No. 2002-125 shall be from their date of illegal termination up to September 14, 2007 when NPB Resolution No. 2007-55 was issued.

Thus, the resolution of the validity of NPB Board Resolutions No. 2002-124 and No. 2002-125 is, therefore, moot and academic in view of the Court's pronouncements in *NPC Drivers*.

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[18] *Id.* at 434-435. (Emphasis in Original.)

Anent the question of the constitutionality of Section 63 of RA 9136, as well as Rule 33 of the IRR, this Court finds that the same is without merit.

A reorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions.[19] It could result in the loss of one's position through removal or abolition of an office. However, for a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, it must pass the test of good faith; otherwise, it is void *ab initio*.[20]

It is undisputed that NPC was in financial distress and the solution found by Congress was to pursue a policy towards its privatization. The privatization of NPC necessarily demanded the restructuring of its operations. To carry out the purpose, there was a need to terminate employees and re-hire some depending on the manpower requirements of the privatized companies. The privatization and restructuring of the NPC was, therefore, done in good faith as its primary purpose was for economy and to make the bureaucracy more efficient.

In *Freedom from Debt Coalition v. Energy Regulatory Commission*,[21] this Court discussed why there was a need for a shift towards the privatization and restructuring of the electric power industry, to wit:

> One of the landmark pieces of legislation enacted by Congress in recent years is the EPIRA. It established a new policy, legal structure and regulatory framework for the electric power industry.
>
> The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long

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[19] *Canonizado v. Aguirre*, 380 Phil. 280, 296 (2000).

[20] *Dario v. Mison*, G.R. No. 81954, August 8, 1989, 176 SCRA 84; *Vide: Dytiapco v. Civil Service Commission*, G.R. No. 92136, July 3, 1992, 211 SCRA 88; *Domingo v. Development Bank of the Philippines*, G.R. No. 93355, April 7, 1992, 207 SCRA 766 and *Pari-an v. Civil Service Commission*, G.R. No. 96535, October 15, 1991, 202 SCRA 772.

[21] G.R. No. 161113, June 15, 2004, 432 SCRA 157.

been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the government power sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings.

Thus, the EPIRA provides a framework for the restructuring of the industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to be privatized and its transmission business spun off and privatized thereafter.[22]

Petitioner argues that bad faith is clearly manifested as the reorganization has an eye to replace current favorite less competent appointees. In addition, petitioner contends that qualifications and behavioral aspect were being set aside.[23]

Section 2 of R.A. No. 6656[24] cites certain circumstances showing bad faith in the removal of employees as a result of any reorganization, thus:

Sec. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exist when, pursuant to a *bona fide* reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil

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[22] *Id.* at 171-172.

[23] *Rollo*, p. 307.

[24] AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION.

Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of the reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:

a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
b) Where an office is abolished and another performing substantially the same functions is created;
c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;
d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices; and
e) Where the removal violates the order of separation provided in Section 3 hereof.

The Solicitor General, however, argues that petitioner has not shown any circumstance to prove that the restructuring of NPC was done in bad faith. We agree.

Petitioner's allegation that the reorganization was merely undertaken to accommodate new appointees is at most speculative and bereft of any evidence on record. It is settled that bad faith must be duly proved and not merely presumed. It must be proved by clear and convincing evidence,[25] which is absent in the case at bar.

In addition, petitioner has no legal or vested right to be reinstated as Section 63 of the EPIRA as well as Section 5, Rule 33 of the IRR clearly state that the displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies. Clearly, the law only speaks of preference and by no stretch of the imagination can the same amount to a legal right to the position. Undoubtedly, not all the terminated employees will be re-hired by the selection committee as the manpower requirement of the privatized companies will be different. As correctly observed by the Solicitor General, the selection of employees for purposes of re-hiring them

[25] *Fernando v. Sto. Tomas*, G.R. No. 112309, July 28, 1994, 234 SCRA 546, 552.

necessarily entails the exercise of discretion or judgment.[26] Such being the case, petitioner, cannot, by way of *mandamus*, compel the selection committee to include him in the re-hired employees, more so, since there is no evidence showing that said committee acted with grave abuse of discretion or that the re-hired employees were merely accommodated and not qualified.

Validity of Sections 11, 48, and 52 of RA 9136

Petitioner argues that Sections 11,[27] 48,[28] and 52[29] of the EPIRA are unconstitutional for violating Section 13, Article VII of the 1987 Constitution.

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[26] *Rollo*, p. 521.

[27] Sec. 11. *TRANSCO Board of Directors.* — All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the Department of Finance (DOF) shall be the *ex officio* Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the Department of Energy (DOE), the Secretary of the Department of Environment and Natural Resources (DENR), the President of TRANSCO, and three (3) members to be appointed by the President, each representing Luzon, Visayas and Mindanao.

The members of the Board so appointed by the President of the Philippines shall serve for a term of six (6) years, except that any person appointed to fill-in a vacancy shall serve only the unexpired term of his/her predecessor in office. All members of the Board shall be professionals of recognized competence and expertise in the fields of engineering, finance, economics, law or business management. No member of the Board or any of his relatives within the fourth civil degree of consanguinity or affinity shall have any interest, either as investor, officer or director, in any generation company or distribution utility or other entity engaged in transmitting, generating and supplying electricity specified by ERC.

[28] SEC. 48. *National Power Board of Directors.* — Upon the passage of this Act, Section 6 of R.A. 6395, as amended, and Section 13 of RA 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director- General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

[29] Sec. 52. *Power Sector Assets and Liabilities Management Corporation, Meetings, Quorum and Voting.* — The Corporation shall be administered,

Section 13, Article VII of the 1987 Constitution provides:

Sec. 13. The President, Vice-President, the *Members of the Cabinet*, and their deputies or assistants *shall not*, unless otherwise provided in this Constitution, *hold any other office* or employment during their tenure. They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

x x x x x x x x x.[30]

In *Civil Liberties Union v. Executive Secretary*,[31] this Court explained that the prohibition contained in Section 13, Article VII of the 1987 Constitution does not apply to posts occupied by the Executive officials specified therein without additional compensation in an *ex-officio* capacity as provided by law and as required by the primary function of said official's office, to wit:

The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the Constitution must not, however, be construed as applying to posts occupied by the Executive officials specified therein without additional compensation in an *ex-officio* capacity as provided by law and as *required* by the

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and its powers and functions exercised, by a Board of Directors which shall be composed of the Secretary of Finance as the Chairman, the Secretary of Budget and Management, the Secretary of the Department of Energy, the Director-General of the National Economic and Development Authority, the Secretary of the Department of Justice, the Secretary of the Department of Trade and Industry and the President of the PSALM Corp. as *ex officio* members thereof.

The Board of Directors shall meet regularly and as frequently as may be necessary to enable it to discharge its functions and responsibilities. The presence at a meeting of four (4) members shall constitute a quorum, and the decision of the majority of three (3) members present at a meeting where there is quorum shall be the decision of the Board of Directors.

[30] Italics supplied

[31] G.R. No. 83896, February 22, 1991, 194 SCRA 317.

primary functions of said officials' office. The reason is that these posts do not comprise "any other office" within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials. To characterize these posts otherwise would lead to absurd consequences, among which are: The President of the Philippines cannot chair the National Security Council reorganized under Executive Order No. 115 (December 24, 1986). Neither can the Vice-President, the Executive Secretary, and the Secretaries of National Defence, Justice, Labor and Employment and Local Government sit in this Council, which would then have no reason to exist for lack of a chairperson and members. The respective undersecretaries and assistant secretaries, would also be prohibited.

x x x x x x x x x

The term "primary" used to describe "functions" refers to the order of importance and thus means chief or principal function. The term is not restricted to the singular but may refer to the plural. The additional duties must not only be closely related to, but must be required by the official's primary functions. Examples of designations to positions by virtue of one's primary functions are the Secretaries of Finance and Budget, sitting as members of the Monetary Board, and the Secretary of Transportation and Communications, acting as Chairman of the Maritime Industry Authority and the Civil Aeronautics Board.[32]

The designation of the members of the Cabinet to form the NPB does not violate the prohibition contained in our Constitution as the privatization and restructuring of the electric power industry involves the close coordination and policy determination of various government agencies. Section 2 of the EPIRA clearly shows that the policy toward privatization would involve financial, budgetary and environmental concerns as well as coordination with local government units, to wit:

SECTION 2. *Declaration of Policy.* — It is hereby declared the policy of the State:

(a) To ensure and accelerate the total electrification of the country;

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[32] *Id.* at 331-334.

(b) To ensure the quality, reliability, security and affordability of the supply of electric power;
(c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
(d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
(e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
(f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
(g) To assure socially and environmentally compatible energy sources and infrastructure;
(h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;
(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);
(j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and
(k) To encourage the efficient use of energy and other modalities of demand side management.

As can be gleaned from the foregoing enumeration, the restructuring of the electric power industry inherently involves the participation of various government agencies. In *Civil Liberties,* this Court explained that mandating additional duties and functions to Cabinet members which are not inconsistent with those already prescribed by their offices or appointments by virtue of their special knowledge, expertise and skill in their respective executive offices, is a practice long-recognized in many jurisdictions. It is a practice justified by the demands of efficiency, policy direction, continuity and coordination among the different offices in the Executive Branch in the discharge

of its multifarious tasks of executing and implementing laws affecting national interest and general welfare and delivering basic services to the people.[33]

The production and supply of energy is undoubtedly one of national interest and is a basic commodity expected by the people. This Court, therefore, finds the designation of the respective members of the Cabinet, as *ex-officio* members of the NPB, valid.

This Court is not unmindful, however, that Section 48 of the EPIRA is not categorical in proclaiming that the concerned Cabinet secretaries compose the NPB Board only in an *ex-officio* capacity. It is only in Section 52 creating the Power Sector Assets and Liabilities Management Corporation (PSALM) that they are so designated in an *ex-officio* capacity. Sections 4 and 6 of the EPIRA provides:

Section 4. TRANSCO Board of Directors.

All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the DOF shall be the *ex-officio* Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the DOE, the Secretary of the DENR, the President of TRANSCO, and three (3) members to be appointed by the President of the Philippines, each representing Luzon, Visayas and Mindanao, one of whom shall be the President of PSALM.

x x x x x x x x x.

Section 6. PSALM Board of Directors.

PSALM shall be administered, and its powers and functions exercised, by a Board of Directors which shall be composed of the Secretary of the DOF as the Chairman, and the Secretary of the DOE, the Secretary of the DBM, the Director-General of the NEDA, the Secretary of the DOJ, the Secretary of the DTI and the President of the PSALM as *ex-officio* members thereof.

Nonetheless, this Court agrees with the contention of the Solicitor General that the constitutional prohibition was not violated,

[33] *Id.* at 334-335.

considering that the concerned Cabinet secretaries were merely imposed additional duties and their posts in the NPB do not constitute "any other office" within the contemplation of the constitutional prohibition.

The delegation of the said official to the respective Board of Directors were designation by Congress of additional functions and duties to the officials concerned, *i.e.*, they were designated as members of the Board of Directors. Designation connotes an imposition of additional duties, usually by law, upon a person already in the public service by virtue of an earlier appointment.[34] Designation does not entail payment of additional benefits or grant upon the person so designated the right to claim the salary attached to the position. Without an appointment, a designation does not entitle the officer to receive the salary of the position. The legal basis of an employee's right to claim the salary attached thereto is a duly issued and approved appointment to the position, and not a mere designation.[35]

Hence, Congress specifically intended that the position of member of the Board of NPB shall be *ex-officio* or automatically attached to the respective offices of the members composing the board. It is clear from the wordings of the law that it was the intention of Congress that the subject posts will be adjunct to the respective offices of the official designated to such posts.

The foregoing discussion, notwithstanding, the concerned officials should not receive any additional compensation pursuant to their designation as ruled in *Civil Liberties*, thus:

> The *ex-officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. It should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an *ex-officio* member thereof,

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[34] *National Amnesty Commission v. Commission on Audit*, 481 Phil. 279, 294 (2004).

[35] *Id.* at 294-295.

he is actually and in legal contemplation performing the primary function of his principal office in defining policy in monetary and banking matters, which come under the jurisdiction of his department. For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a per diem or an honorarium or an allowance, or some other such euphemism. By whatever name it is designated, such additional compensation is prohibited by the Constitution.

In relation thereto, Section 14 of the EPIRA provides:

SEC. 14. *Board Per Diems and Allowances.* — The members of the Board shall receive per diem for each regular or special meeting of the board actually attended by them and, upon approval of the Secretary of the Department of Finance, such other allowances as the Board may prescribe.

Section 14 relates to Section 11 which sets the composition of the TRANSCO Board naming the Secretary of the Department of Finance as the *ex-officio* Chairman of the Board. The other members of the TRANSCO Board include the Secretary of the Department of Energy and the Secretary of the Department of Environment and Natural Resources. However, considering the constitutional prohibition, it is clear that such emoluments or additional compensation to be received by the members of the NPB do not apply and should not be received by those covered by the constitutional prohibition, *i.e.*, the Cabinet secretaries. It is to be noted that three of the members of the NPB are to be appointed by the President, who would be representing the interests of those in Luzon, Visayas, and Mindanao, who may be entitled to such honorarium or allowance if they do not fall within the constitutional prohibition.

Hence, the said cabinet officials cannot receive any form of additional compensation by way of per diems and allowances. Moreover, any amount received by them in their capacity as members of the Board of Directors should be reimbursed to the government, since they are prohibited from collecting additional compensation by the Constitution.

These interpretations are consistent with the fundamental rule of statutory construction that a statute is to be read in a manner

that would breathe life into it, rather than defeat it,[36] and is supported by the criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute.[37]

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[36] Thus, in *Briad Agro Development Corporation v. Dela Serna*, (G.R. No. 82805, June 29, 1989, 174 SCRA 524) We upheld the grant of concurrent jurisdiction between the Secretary of Labor or its Regional Directors and the Labor Arbiters to pass upon money claims, among other cases, "the provisions of Article 217 of this Code to the contrary notwithstanding," as enunciated in Executive Order No. 111. Holding that E.O. 111 was a curative law intended to widen worker's access to the Government for redress of grievances, we held, …the Executive Order vests in Regional Directors jurisdiction, '[t]he provisions of Article 217 of this Code to the contrary notwithstanding,' it would have rendered such a proviso — and the amendment itself — useless to say that they (Regional Directors) retained the self-same restricted powers, despite such an amendment. It is fundamental that a statute is to be read in a manner that would breathe life into it, rather than defeat it. (See also *Philtread Workers Union v. Confessor*, G.R. No. 117169, March 12, 1997, 269 SCRA 393.)

[37] In *Heirs of Ardona v. Reyes*, (G.R. No. 60549, October 26, 1983, 125 SCRA 221) We upheld the constitutionality of Presidential Decree No. 564, the Revised Charter of the Philippine Tourism Authority, and Proclamation No. 2052 declaring certain municipalities in the province of Cebu as tourist zones. The law granted the Philippine Tourism authority the right to expropriate 282 hectares of land to establish a resort complex notwithstanding the claim that certificates of land transfer and emancipation patents had already been issued to them thereby making the lands expropriated within the coverage of the land reform area under Presidential Decree No. 2, and that the agrarian reform program occupies a higher level in the order of priorities than other State policies like those relating to the health and physical well-being of the people, and that property already taken for public use may not be taken for another public use. We held that, "(t)he petitioners have failed to overcome the burden of anyone trying to strike down a statute or decree whose avowed purpose is the legislative perception of the public good. A statute has in its favor the presumption of validity. All reasonable doubts should be resolved in favor of the constitutionality of a law. The courts will not set aside a law as violative of the Constitution except in a clear case (*People v. Vera*, 65 Phil. 56). And in the absence of factual findings or evidence to rebut the presumption of validity, the presumption prevails (*Ermita-Malate Hotel, etc. v. Mayor of Manila*, 20 SCRA 849; *Morfe v. Mutuc*, 22 SCRA 424)."

In the same manner, we upheld in *Dumlao v. COMELEC* (G.R. No. L-52245, January 22, 1980, 95 SCRA 392) the first paragraph of Section 4 of Batas Pambansa Bilang 52 providing that any retired elective provincial, city or municipal official, who has received payment of the retirement benefits and

Constitutionality of Section 34[38] of the EPIRA

The Constitutionality of Section 34 of the EPIRA has already been passed upon by this Court in *Gerochi v. Department of Energy*,[39] to wit:

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who shall have been 65 years of age at the commencement of the term of office to which he seeks to be elected is disqualified to run for the same elective local office from which he has retired. Invoking the need for the emergence of younger blood in local politics, we affirmed that the constitutional guarantee is not violated by a reasonable classification based upon substantial distinctions, where the classification is germane to the purpose of the law and applies to all those belonging to the same class. (See also *Tropical Homes, Inc, v. National Housing Authority*, No. L-48672, July 31, 1987, 152 SCRA 540; *Peralta v. COMELEC*, No. L-47791, March 11, 1978, 82 SCRA 55; *People v. Vera*, 65 Phil. 56 [1937].)

[38] Sec. 34. *Universal Charge*. — Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

(a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;

(b) Missionary electrification;

(c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy *vis-à-vis* imported energy fuels;

(d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (₱0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and

(e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

The universal charge shall be a non-bypassable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.

The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amount collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

[39] G.R. No. 159796, July 17, 2007, 527 SCRA 696.

Finally, every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution and not one that is doubtful, speculative, or argumentative. Indubitably, petitioners failed to overcome this presumption in favor of the EPIRA. We find no clear violation of the Constitution which would warrant a pronouncement that Sec. 34 of the EPIRA and Rule 18 of its IRR are unconstitutional and void.[40]

In *Gerochi*, this Court ruled that the Universal Charge is not a tax but an exaction in the exercise of the State's police power. The Universal Charge is imposed to ensure the viability of the country's electric power industry.

Petitioner argues that the imposition of a universal charge to address the stranded debts and contract made by the government through the NCC-IPP contracts or Power Utility-IPP contracts or simply the bilateral agreements or contracts is an added burden to the electricity-consuming public on their monthly power bills. It would mean that the electricity-consuming public will suffer in carrying this burden for the errors committed by those in power who runs the affairs of the State. This is an exorbitant display of State Power at the expense of its people.[41]

It is basic that the determination of whether or not a tax is excessive oppressive or confiscatory is an issue which essentially involves a question of fact and, thus, this Court is precluded from reviewing the same.

Validity of Section 38[42] of the EPIRA

Petitioner argues that the abolishment of the ERB and its replacement of a very powerful quasi-judicial body named the

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[40] *Id.* at 726.

[41] *Rollo*, p. 159.

[42] Sec. 38. Creation of the Energy Regulatory Commission. There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commissions (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.

The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least three (3) years actual and distinguished experience in their respective fields of expertise: Provided, That out of the four (4) members of the Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, and one (1) shall be a certified public accountant with at least ten (10) years experience in active practice.

Within three (3) months from the creation of the ERC, the Chairman shall submit for the approval by the President of the Philippines the new organizational structure and plantilla positions necessary to carry out the powers and functions of the ERC.

The Chairman of the Commission, who shall be a member of the Philippine Bar, shall act as the Chief Executive Officer of the Commission.

All members of the Commission shall have a term of seven (7) years: Provided, That for the first appointees, the Chairman shall hold office for seven (7) years, two (2) members shall hold office for five (5) years and the other two (2) members shall hold office for three (3) years; Provided, further, That appointment to any future vacancy shall only be for the unexpired term of the predecessor: Provided, finally, That there shall be no reappointment and in no case shall any member serve for more than seven (7) years in the Commission.

The Chairman and members of the Commission shall assume office of the beginning of their terms: Provided, That, if upon the effectivity of this Act, the Commission has not been constituted and the new staffing pattern and plantilla positions have not been approved and filled-up, the current Board and existing personnel of ERB shall continue to hold office.

The existing personnel of the ERB, if qualified, shall be given preference in the filling up of plantilla positions created in the ERC, subject to existing civil service rules and regulations. Members of the Commission shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as specified by law.

The Chairman and members of the Commission or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be prohibited from holding any interest whatsoever, either as investor, stockholder, officer or director, in any company or entity engaged in the business of transmitting, generating, supplying or distributing any form of energy and must, therefore, divest through sale or legal disposition of any and all interests in the energy sector upon assumption of office.

The presence of at least three (3) members of the Commission shall constitute a quorum and the majority vote of two (2) members in a meeting where a

Energy Regulatory Commission (ERC), pursuant to Section 38 up to Section 43 of the EPIRA or RA 9136, which is tasked to dictate the day-to-day affairs of the entire electric power industry, seems a prelude to Charter Change. Petitioner submits that under the 1987 Constitution, there are only three constitutionally-recognized Commissions, they are: the Civil Service Commission (CSC), the Commission on Audit (COA) and the Commission on Elections (COMELEC).[43]

Petitioner's argument that the creation of the ERC seems to be a prelude to charter change is flimsy and finds no support in law. This Court cannot subscribe to petitioner's thesis that "in order for the newly-enacted RA 9136 or EPIRA to become a valid law, we should have to call first a referendum to amend or totally change the People's Charter."[44]

In any case, the constitutionality of the abolition of the ERB and the creation of the ERC has already been settled in *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Commissioner Fe Barin*,[45] to wit:

> All laws enjoy the presumption of constitutionality. To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution. KERB failed to show any breach of the Constitution.
>
> A public office is created by the Constitution or by law or by an officer or tribunal to which the power to create the office has been delegated by the legislature. The power to create an office carries with it the power to abolish. President Corazon C. Aquino, then exercising her legislative powers, created the ERB by issuing Executive Order No. 172 on 8 May 1987.

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quorum is present shall be necessary for the adoption of any rule, ruling, order, resolution, decision, or other act of the Commission in the exercise of its quasi-judicial functions: Provided, That in fixing rates and tariffs, an affirmative vote of three (3) members shall be required.

[43] *Rollo*, p. 158.

[44] *Id.* at 159.

[45] G.R. No. 150974, June 29, 2007, 526 SCRA 1.

The question of whether a law abolishes an office is a question of legislative intent. There should not be any controversy if there is an explicit declaration of abolition in the law itself. Section 38 of RA 9136 explicitly abolished the ERB. x x x[46]

Moreover, in *Kapisanan*, this Court ruled that because of the expansion of the ERC's functions and concerns, there was a valid abolition of the ERB.[47]

Validity of Section 63[48]

Contrary to petitioner's argument, Section 63 of the EPIRA and Section 33 of the IRR of the EPIRA did not impair the vested rights of NPC personnel to claim benefits under existing laws. Neither does the EPIRA cut short the years of service of the employees concerned. If an employee availed of the separation pay and other benefits in accordance with existing laws or the superior separation pay under the NPC restructuring plan, it is but logical that those who availed of such privilege will start their government service anew if they will later be employed

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

[47] *Id.* at 25.

[48] Sec. 63. *Separation Benefits of Officials and Employees of Affected Agencies*. — National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: Provided, however, That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization. Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies. The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as "The Salary Standardization Act." With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs.

by any government-owned successor company or government instrumentality.

It is to be noted that this Court ruled in the case of *Herrera v. National Power Corporation*,[49] that Section 63 of the EPIRA precluded the receipt by the terminated employee of both separation and retirement benefits under the Government Service Insurance System (GSIS) organic law, or Commonwealth Act (C.A.) No. 186.[50]

However, it must be clarified that this Court's pronouncements in *Herrera* that separated and retired employees of the NPC "are not entitled to receive retirement benefits under C.A. No. 186," referred only to the gratuity benefits granted by R.A. No. 1616,[51] which was to be paid by NPC as the last employer. It did not proscribe the payment of retirement benefits to qualified retirees under R.A. No. 660,[52] Presidential Decree (P.D.) No. 1146,[53] R.A. No. 8291,[54] and other GSIS and social security laws.

The factual and procedural antecedents of *Herrera* reveal that it arose from a case between NPC and several of its separated

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[49] G.R. No. 166570, December 18, 2009, 608 SCRA 475.

[50] An Act to Create and Establish a "Government Service Insurance System," To Provide for its Administration and To Appropriate the Necessary Funds Therefor.

[51] An Act Further Amending Section Twelve of Commonwealth Act Numbered One Hundred Eighty-Six, As Amended, By Prescribing Two Other Modes of Retirements and for Other Purposes.

[52] An Act To Amend Commonwealth Act Numbered One Hundred and Eighty-Six Entitled "An Act to Create and Establish a Government Service Insurance System, To Provide for its Administration and To Appropriate the Necessary Funds Therefor," and to Provide Retirement Insurance and For Other Purposes.

[53] Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, As Amended, and For Other Purposes.

[54] An Act Amending Presidential Decree No. 1146, As Amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms Therein and For Other Purposes.

employees who were asking additional benefits from NPC under R.A. No. 1616 after receiving from the former separation benefits under Section 63 of R.A. No. 9136.

Unable to resolve the issue with its former employees amicably, NPC filed a petition for declaratory relief, docketed as Civil Case SCA No. Q-03-50681,[55] before the Regional Trial Court of Quezon City, raising the issue of whether or not the employees of NPC are entitled to receive retirement benefits under R.A. No. 1616 over and above the separation benefits granted by R.A. No. 9136.[56]

Under R.A. No. 1616, a gratuity benefit is given to qualified retiring members of the GSIS, which is payable by the last employer. In addition to said gratuity benefits, the qualified employee shall also be entitled to a refund of retirement premiums paid, consisting of personal contributions of the employee plus interest, and government share without interest, payable by the GSIS. It effectively amended Section 12 (c) of C.A. No. 186, as follows:

(c) Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least twenty years of service, the last three years of which are continuous. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums described in subsection (a) of Section five hereof, without interest, be only **a gratuity equivalent to one month's salary for every year of the first twenty years of service, plus one and one-half months' salary for every year of service over twenty but below**

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[55] Entitled as *National Power Corporation v. The Napocor Employees and Workers Union (NEWU), NAPOCOR Employees Consolidated Union (NECU), NPC Executive Officers Association, Inc. (NPC-EXA), Esther Galvez and Efren Herrera, for and on their behalf and on behalf of other separated, unrehired, and retired employees of the National Power Corporation, the Department of Budget and Management (DBM), the Office of the Solicitor General (OSG), the Civil Service Commission (CSC), and the Commission on Audit (COA).*

[56] *Rollo*, (*Herrera v. NPC*, G.R. No. 166570), pp. 40-44.

thirty years and two months' salary for every year of service over thirty years in case of employees based on the highest rate received and in case of elected officials on the rates of pay as provided by law. This gratuity is payable on the rates of pay as provided by law. **This gratuity is payable by the employer or officer concerned which is hereby authorized to provide the necessary appropriation or pay the same from any unexpended items of appropriations or savings in its appropriations**. Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement. x x x[57] (Emphasis supplied.)

After trial, the RTC rendered a Decision ruling against the NPC employees, the decretal portion of which reads:

WHEREFORE, premises considered, Republic Act No. 9136 DID NOT SPECIFICALLY AUTHORIZE the National Power Corporation to grant retirement benefits under ***Republic Act No. 1616*** in addition to separation pay under ***Republic Act No. 9136***.

SO ORDERED.[58]

Petitioners therein then sought recourse directly to this Court on a pure question of law. In the preparatory statement of the Petition for Review on *Certiorari*,[59] it is apparent that the case was limited only to the interpretation of Section 63 of R.A. No. 9136, in relation to R.A. No. 1616, on the matter of retirement benefits, to wit:

This is a case of first impression ***limited*** to the interpretation of Section 63, R.A. 9136 (EPIRA), granting separation pay to terminated NAPOCOR employees, in relation to ***R.A. 1616***, on the matter of retirement benefits. Respondents NAPOCOR and DEPARTMENT OF BUDGET AND MANAGEMENT erroneously contend that the entitlement to the separation pay under R.A. 9136 forfeits the retirement benefit under ***R.A. 1616***. Petitioners most respectfully

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[57] Underscoring ours.

[58] *Rollo*, (*Herrera v. NPC*, G.R. No. 166570), p. 44. (Emphasis supplied.)

[59] *Id.* at 13.

submit that since R.A. 9136 and ***R.A. 1616*** are not inconsistent with each other and they have distinct noble purposes, entitlement to separation pay will not disqualify the separated employee who is qualified to retire from receiving retirement benefits allowed under another law. x x x[60]

However, in the Decision dated December 18, 2009, it was held that petitioners therein were not only entitled to receive retirement benefits under R.A. No. 1616 but also were "not entitled to receive retirement benefits under Commonwealth Act No. 186, as amended," which, in effect, might lead to the conclusion that the declaration encompassed all other benefits granted by C.A. No. 186 to its qualified members.

In relation to R.A. No. 1616, *Herrera* should have affected only the payment of gratuity benefits by NPC, being the last employer, to its separated employees. It was even categorically stated that petitioners therein were "entitled to a refund of their contributions to the retirement fund, and the monetary value of any accumulated vacation and sick leaves,"[61] which is clearly congruous to the mandate of R.A. No. 1616. The matter of availment of retirement benefits of qualified employees under any other law to be paid by the GSIS should not and was not covered by the decision. In the first place, it was never an issue.

In the case of *Santos v. Servier Philippines, Inc.*,[62] citing *Aquino v. National Labor Relations Commission*,[63] We declared that the receipt of retirement benefits does not bar the retiree from receiving separation pay. *Separation pay* is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment. On the other hand, *retirement benefits* are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support, and are a form

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[60] *Id.* (Emphasis supplied.)

[61] *Herrera v. NPC, supra* note 49, at 495.

[62] G.R. No. 166377, November 28, 2008, 572 SCRA 487.

[63] G.R. No. 87653, February 11, 1992, 206 SCRA 118, 122.

of reward for his loyalty and service to the employer. A separation pay is given during one's *employable years*, while retirement benefits are given during one's *unemployable years.* Hence, they are not mutually exclusive.[64]

Even in the deliberations of Congress during the passage of R.A. No. 9136, it was manifest that it was not the intention of the law to infringe upon the vested rights of NPC personnel to claim benefits under existing laws. To assure the worried and uneasy NPC employees, Congress guaranteed their entitlement to a separation pay to tide them over in the meantime.[65] More importantly, to further allay the fears of the NPC employees, especially those who were nearing retirement age, Congress repeatedly assured them in several public and congressional hearings that on top of their separation benefits, they would still receive their retirement benefits, as long as they would qualify and meet the requirements for its entitlement.

The transcripts of the Public Consultative Meeting on the Power Bill held on February 16, 2001, disclose the following:

x x x x x x x x x

THE CHAIRMAN (SEN. J. OSMENA). Well, the other labor representation here is Mr. Anguluan.

MR. ANGULUAN: Yes, Your Honor.

THE CHAIRMAN (SEN. J. OSMENA). Okay. Will you present your paper?

MR. ANGULUAN: We have prepared a paper which we have sent to the honorable members of the Bicam. x x x.

THE CHAIRMAN (SEN. J. OSMENA). **I don't think anyone is going to deprive you of your rights under the law. You will enjoy all your rights. <u>You will receive retirement benefits, separation pay, and all of the rights</u> that are provided to you by law.** What we have objected to in the Senate is retirement benefits

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[64] *Santos v. Servier Philippines, Inc., supra* note 62, at 496.

[65] TSN, Joint Congressional Power Commission, January 23, 2002, 11:31 p.m., p. 1.

higher than what everybody else gets, like 150 percent or subject to the approval of the board which means sky is the limit. So, we have objected to that. **But what you are entitled to under the law, you will get under the law and nobody will deprive you of that.**[66]

A year later, on February 12, 2002, the Joint Congressional Power Commission was held. The transcripts of the hearing bare the following:

x x x x x x x x x

THE CHAIRMAN (REP. BADELLES). They will still be subject to the same conditions. Meaning, NPC has the discretion whether to reabsorb or hire back those that avail of the separation benefits.

SEN. OSMENA (J). No. But they are not being — the plants are not being sold, so they are — but what we are giving them is a special concession of retiring early.
No, okay. You consider . . .

THE CHAIRMAN (REP. BADELLES). We are **not speaking of retirement here, we are speaking of their separation benefits** . . .

SEN. OSMENA (J). Okay, **separation benefits.**

THE CHAIRMAN (REP. BADELLES). Precisely, if they are considered terminated.

SEN. OSMENA (J). All right. Separation . . .

THE CHAIRMAN (REP. BADELLES). A **retirement plan is a different program than separation.**

SEN. OSMENA (J). **Separation benefits,** okay.

THE CHAIRMAN (REP. BADELLES). All right.[67]

Thus, it is clear that a separation pay at the time of the reorganization of the NPC and retirement benefits at the

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[66] TSN, Public Consultative Meeting on the Power Bill, February 16, 2001, pp. 114-117. (Emphasis and underscoring supplied.)

[67] TSN, February 12, 2002, Joint Congressional Power Commission, pp. 1-2. (Emphasis supplied.)

appropriate future time are two separate and distinct entitlements. Stated otherwise, a retirement plan is a different program from a separation package.

There is a whale of a difference between R.A. No. 1616 and C.A. No. 186, together with its amendatory laws. They have different *legal bases*, different *sources of funds* and different *intents*.

In R.A. No. 1616, which is the subject issue in *Herrera*, the retirees are entitled to *gratuity benefits* to be paid by the last employer and *refund of premiums* to be paid by the GSIS. On the other hand, *retirement benefits* under C.A. No. 186, as amended by R.A. No. 8291, are to be paid by the GSIS. Stated otherwise, under R.A. No. 1616, what would be paid by the last employer, NPC, would be *gratuity benefits*, and GSIS would merely refund the retirement premiums consisting of personal contributions of the employee plus interest, and the employer's share without interest. Under C.A. No. 186, as amended, it is the GSIS who would pay the qualified employees their *retirement benefits*.

Indeed, with several amendments to C.A. No. 186,[68] the Court finds it necessary to clarify *Herrera* and categorically declare that it affected only those seeking benefits under R.A. No. 1616.[69] It could not have meant to affect those employees who retired, and who will retire, under the different amendatory laws

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[68] R.A. No. 660, R.A. No. 728, R.A. No. 1123, R.A. No. 1573, R.A. No. 1616, R.A. No. 1820, R.A. No. 3096, R.A. No. 3175, R.A. No. 3544, R.A. No. 3593, R.A. No. 4066, R.A. No. 4781, R.A. No. 4847, R.A. No. 4968, P.D. No. 712, P.D. No. 1146, and R.A. No. 8291.

[69] **Under R.A. 1616,** any official or employee who has rendered at least 20 years of service, the last three (3) years of which are continuous, and has been in the government service before May 31, 1977, is entitled to gratuity benefits. The benefit shall be computed and **paid by the last employer, subject to the availability of funds.** In such a case, the GSIS will refund the retiree's personal contributions with interest and the corresponding government contributions without interest. R.A. No. 1616 was eventually phased out impliedly by the fourth whereas clause of P.D. 1146. (Emphasis supplied.)

of C.A. No. 186 like R.A. No. 660,[70] P.D. No. 1146[71] and R.A. No. 8291.[72]

At any rate, entitlement of qualified employees to receive separation pay *and* retirement benefits is not proscribed by the 1987 Constitution. Section 8 of Article IX (B) of the 1987 Constitution reads:

SEC. 8. No elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically

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[70] **R.A. No. 660** refers to the annuity (pension) retirement benefit under a scheme popularly known as Magic 87. Under said law, a member of the GSIS Retirement Insurance Fund may avail of said benefits when his age and years of service has a combined total of 87, as long as his last three years with the government was continuous. The benefits may vary depending on the age of the retiree but all will receive a monthly pension for life after 5-year period after retirement.

[71] A retiring member under **P.D. No. 1146** is entitled to either old age pension or cash payment, depending on his age and years in service. Retirement under P.D. No. 1146 can only be availed by those who were in service after May 31, 1977 but prior to June 24, 1997. The Basic Monthly Pension (BMP) is available for retirees who are at least 60 years old and have rendered 15 years of service. Those qualified under this option will receive a Basic Monthly Pension (BMP) guaranteed for five (5) years. After the 5-year guaranteed period, he/she will receive a basic monthly pension for life. A retiree may also request to convert his/her five-year guaranteed BMP into a lump sum subject to a six (6) percent discount rate.

[72] **R.A. No. 8291,** which took effect on June 24, 1997, increased the benefits under PD 1146. **Under R.A. No. 8291**, a government employee who has rendered at least 15 years of service and who has reached the age of 60 is entitled to a retirement benefit. Under **Section 13 of R.A. No. 8291**, the "**Retirement benefit** shall be:

(1) the lump sum payment as defined in this Act payable at the time of retirement plus an old-age pension benefit equal to the basic monthly pension payable monthly for life, starting upon expiration of the five-year (5) guaranteed period covered by the lump sum; or "(2) cash payment equivalent to eighteen (18) months of his basic monthly pension plus monthly pension for life payable immediately with no five-year (5) guarantee.

(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age with at least fifteen (15) years of service: Provided, That if he has less than fifteen (15) years of service, he may be allowed to continue in the service in accordance with existing civil service rules and regulations. (Emphasis supplied.)

authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.[73]

Moreover, retirement benefits under C.A. No. 186 are not even considered as compensation. Section 2 (e) of C.A. No. 186 categorically states that —

Benefits granted by this Act by virtue of such life or retirement insurance **shall not be considered as compensation or emolument**.[74]

Under the GSIS law, the retired employees earned their *vested right* under their contract of insurance after they religiously paid premiums to GSIS. Under the contract, GSIS is bound to pay the retirement benefits as it received the premiums from the employees and NPC.

In *Marasigan v. Cruz*,[75] this Court ratiocinated that:

A retirement law such as C.A. 186 and amendatory laws is in the nature of a contract between the government and its employees. When an employee joins the government service, he has a right to expect that after rendering the required length of service and fulfilled the conditions stated in the laws on retirement, he would be able to enjoy the benefits provided in said laws. He regularly pays the dues prescribed therefore. **It would be cruel to deny him the benefits he had been expecting at the end of his service by imposing conditions for his retirement, which are not found in the law. It is believed to be a legal duty as well as a moral obligation on the part of the government to honor its commitments to its employees when as in this case, they have met all the conditions prescribed by law and are therefore entitled to receive their retirement benefits.**[76]

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[73] Emphasis supplied.

[74] Emphasis supplied.

[75] G.R. No. L-40648, May 20, 1987, 150 SCRA 1.

[76] *Id.* at 7; see also *Bengzon v. Drilon*, G.R. No. 103524 and A.M. No. 91-8-225-CA, April 15, 1992, 208 SCRA 133, 152. (Emphasis and underscoring supplied.)

Thus, where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits that is protected by the due process clause. Retirees enjoy a protected property interest whenever they acquire a right to immediate payment under pre-existing law. Thus, a pensioner acquires a vested right to benefits that have become due as provided under the terms of the public employees' pension statute. No law can deprive such person of his pension rights without due process of law, that is, without notice and opportunity to be heard.[77] Verily, when an employee has complied with the statutory requirements to be entitled to receive his retirement benefits, his right to retire and receive what is due him by virtue thereof becomes vested and may not thereafter be revoked or impaired.

Moreover, Section 63 of the EPIRA law, if misinterpreted as proscribing payment of retirement benefits under the GSIS law, would be unconstitutional as it would be violative of Section 10, Article III of the 1987 Constitution[78] or the provision on non-impairment of contracts.

In view of the fact that separation pay and retirement benefits are different entitlements, as they have different *legal bases*, different *sources of funds*, and different *intents*, the "exclusiveness of benefits" rule provided under R.A. No. 8291 is not applicable. Section 55 of R.A. No. 8291 states: "Whenever other laws provide *similar benefits* for the same contingencies covered by this Act, the member who qualifies to the benefits shall have the option to choose which benefits will be paid to him."

Accordingly, the Court declares that separated, displaced, retiring, and retired employees of NPC are legally entitled to the retirement benefits pursuant to the intent of Congress and as guaranteed by the GSIS laws. Thus, the Court reiterates:

1] that the dispositive portion in *Herrera* holding that separated and retired employees "are not entitled to receive retirement benefits under Commonwealth Act No. 186," referred only to

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[77] *GSIS v. Montesclaros*, G.R. No. 146494, July 14, 2004, 434 SCRA 441, 449.

[78] Section 10. No law impairing the obligation of contracts shall be passed.

the gratuity benefits under R.A. No. 1616, which was to be paid by NPC, being the last employer;

2] that it did not proscribe the payment of the retirement benefits to qualified retirees under R.A. No. 660, P.D. No. 1146, R.A. No. 8291, and other GSIS and social security laws; and

3] that separated, rehired, retiring, and retired employees should receive, and continue to receive, the retirement benefits to which they are legally entitled.

Petition for *Mandamus*

As for petitioner's prayer that he be reinstated, suffice it to state that the issue has been rendered moot by the Decision and Resolutions of this Court in the case of *NPC Drivers and Mechanics Association (NPC DAMA) v. National Power Corporation (NPC)*[79] and by the above disquisitions.

In Conclusion

While we commend petitioner's attempt to argue against the privatization of the NPC, it is not the proper subject of herein petition. Petitioner belabored on alleging facts to prove his point which, however, go into policy decisions which this Court must not delve into less we violate separation of powers. The wisdom of the privatization of the NPC cannot be looked into by this Court as it would certainly violate this guarded principle. The wisdom and propriety of legislation is not for this Court to pass upon.[80] Every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative.[81]

As in *National Power Corporation Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*,[82] this Court held:

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[79] *Supra* note 14.

[80] *People v. Vera*, 65 Phil. 56, 135 (1937).

[81] *Lacson v. The Executive Secretary*, 361 Phil. 251, 263 (1999).

[82] G.R. No. 144158, April 24, 2007, 522 SCRA 12.

Whether the State's policy of privatizing the electric power industry is wise, just, or expedient is not for this Court to decide. The formulation of State policy is a legislative concern. Hence, the primary judge of the necessity, adequacy, wisdom, reasonableness and expediency of any law is primarily the function of the legislature.[83]

WHEREFORE, premises considered and subject to the above disquisitions, the Petition for *Certiorari* and the Supplemental Petition for *Mandamus* are *DISMISSED* for lack of merit.

SO ORDERED.

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

EN BANC

[G.R. No. 182606. October 4, 2011]

CESAR S. DUMDUMA, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; APPRECIATION OF THE EVIDENCE, WHICH IS ONE OF FACT, IS BEYOND THE AMBIT OF THIS COURT'S JURISDICTION; CASE AT BAR. — Petitioner Dumduma is now before us questioning the sufficiency of the evidence against him. He is of the impression that he was found guilty of dishonesty on a mere presumption — that the holder of a forged document is the

[83] *Id.* at 21-22.

forger — despite the presence of contrary evidence. His alleged contrary evidence consist of the apparent authenticity of his Certificate of Eligibility (which did not alert him to any irregularity therein) and the absence of evidence that he colluded with CSC personnel to falsify the certificate. The question raised by Dumduma regarding the CA's appreciation of the evidence against him is ineluctably one of fact, which is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not this Court's task to go over the proofs presented below to ascertain if they were appreciated and weighed correctly, most especially when the CA and the CSC speak as one in their findings and conclusions. While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists, or is even alleged as existing, in the instant case.

2. ID.; EVIDENCE; PRESUMPTIONS; ENTRIES MADE IN RECORDS IN THE REGULAR COURSE OF OFFICIAL BUSINESS ARE PRESUMED CORRECT; CIRCUMSTANCES SHOWING HOW DUMDUMA OBTAINED A SPURIOUS CERTIFICATE OF ELIGIBILITY; CASE AT BAR. — The Court agrees with the CSC and the CA that the undisputed facts, as revealed by the evidence, make out a clear case of dishonesty against Dumduma. When Dumduma's claim of eligibility was contradicted by the CSC Register of Eligibles and the List of Passing/Failing Examinees, it became incumbent upon Dumduma to explain why he made the incorrect entry in his PDS. Unlike his PDS entry, the CSC records are presumed correct and made in the regular course of official business. In explaining his action, however, Dumduma dug a deeper hole from which he could not extricate himself. He admitted in his Counter-Affidavit that Dilodilo, a retired CSC official, promised to help him with his CSC examination in exchange for a personal favor. They then proceeded to the CSC Office together and Dilodilo was welcomed by her former colleagues. After Dumduma took the exam, he went home without knowing the result thereof (a procedure that is contrary to CSC practice). Several days later, Dumduma professed that he received his Certificate of Eligibility from a man *sent by Dilodilo*, who is a retiree hence without official ties with the CSC. Instead of exculpating him, Dumduma's explanation completed the evidence against him. He not only failed to explain the discrepancy, he even explained how he obtained a spurious Certificate of Eligibility.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; DISHONESTY; FALSIFICATION OF ELIGIBILITY FOR APPOINTMENT PURPOSES; DISMISSAL, A PROPER PENALTY; CASE AT BAR. — This is not the first time that a government employee had been dismissed from service for falsification of his eligibility for appointment purposes. x x x Guided by the foregoing cited authorities, the Court holds that the CA did not err in affirming the penalty of dismissal and all its accessory penalties imposed by the CSC. Only those who can live up to the constitutional exhortation that public office is a public trust deserve the honor of continuing in public service.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE COURT DEEMS IT PROPER, ON A *PRO HAC VICE* BASIS, TO EXTEND FINANCIAL ASSISTANCE OF ₱50,000.00 TO PETITIONER; CASE AT BAR. — Dumduma makes a final plea for leniency but the law and the prevailing jurisprudence binds the hands of this Court. We cannot change the imposable penalties for a clear case of dishonesty without at the same time, visiting injustice against all the other government employees that were similarly placed but received the full force of the law. Nevertheless, the Court recognizes that petitioner was once an outstanding member of the police force. He risked life and limb serving the citizenry of Region 8 with total dedication and hard work. His service record shows that, since his original appointment in 1979, he patiently rose through the ranks until he was promoted to SPO4 in 1991. While justice exhorts that petitioner suffer the full penalties imposed by law, temperance cries out that he be recognized for whatever good he has done prior to his mistake. Thus, the Court deems proper, on a *pro hac vice* basis, to extend financial assistance of ₱50,000.00 to petitioner, which amount shall be taken from his forfeited retirement benefits. This award in no sense mitigates his offense but is made solely out of equity and humanitarian considerations.

BRION, *J., concurring and dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; DISHONESTY; PUBLIC SERVANT, VALIDLY DISMISSED FOR DISHONESTY, CANNOT BE AWARDED

FINANCIAL ASSISTANCE; REASONS; CASE AT BAR. — I agree with the majority's conclusion that Cesar S. Dumduma is administratively liable for dishonesty and should be dismissed from the service. I disagree, however, with the Court's ruling that he should be awarded financial assistance of ₱50,000.00 on the basis of ***temperance*** or whatever equitable consideration this basis stands for. x x x Aside from the complete lack of basis in the Civil Service Rules as shown in the above analysis, I submit the following reasons for my objection to the imposition of financial assistance: *First*, the policy of the law is clear: dishonesty is an offense that the law cannot and should not tolerate; hence, dismissal is imposed as the penalty even for the first offense. Dismissal also inherently carries the forfeiture of retirement benefits as a disability. To be sure, the Court would be sending the worst possible signal regarding the honesty and integrity that the public service requires by allowing the grant of the financial assistance decreed by the present Decision; the Court thereby unmistakably dilutes the law's policy by imposing the penalty of dismissal and at the same time awarding financial assistance to the offender. In effect, the Court imposes the legal policy expressed in the law *with its right hand*, and, *with the left hand*, partially takes it back through the grant of a benefit to the offender that the law does not even expressly provide for. x x x *Second*, the Court "temperance" as used in the Decision is a moral rather than a legal standard and should be applied only with utmost care in adjudication. It may be far more acceptable to use "justice" or "social justice" as driving motivations, as these are concepts that underlie the task of adjudication. Temperance, on the other hand, as a moral standard is necessarily a subjective one. Judicial prudence, at the very least, requires that the Court avoid identifying itself with the use of subjective standards, as it is guided by the rule of law, not by the peculiar dictates of individual Justices' conscience. Following the analogy used above, the Court, in its Decision, may be said to have administered justice *with its right hand*, and diluted this application of the rule of law *with its left hand* through the use of a highly subjective standard. *Third*, our labor laws and established jurisprudence applicable to the private sector have recognized the grant of financial assistance based on social justice as the guiding force. The Court, however, clearly recognized limitations in invoking social justice when it held: The policy of social justice is not intended to countenance

wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. **Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty**. x x x As further parameters in invoking social justice, the Court likewise rules in the same case: We hold that henceforth separation pay shall be allowed as a measure of social justice **only in those instances where the employee is validly dismissed for cause other than serious misconduct or those reflecting on his moral character.** x x x If these are the parameters in the private sector, the parameters applicable to the public sector cannot and should not be any less; public office is a public trust, not simply an ordinary office where the employment tie is almost purely based on contract. Thus, the private sector parameters, at the very least, should apply if social justice were to be cited as basis for the grant of financial assistance.

2. ID.; ID.; ID.; ID.; ID.; LENGTH OF SERVICE OF THE OFFENDER CAN EITHER BE A MITIGATING OR AN AGGRAVATING CIRCUMSTANCE, DEPENDING ON THE FACTS OF EACH CASE; CASE AT BAR. — In justifying the award of financial assistance, the majority implies that length of service and exemplary performance should be recognized. Length of service, however, cannot be used to automatically mitigate Dumduma's penalty, as it is not a magic word that, once invoked, would cloak the penalty with a mitigating circumstance. Length of service is two-faced; it can either be a mitigating or aggravating circumstance depending on the facts of each case. A review of jurisprudence shows that while in most cases, length of service operates as a mitigating circumstance favoring the offender, the contrary is true when the offense committed is serious or if length of service is a factor that facilitated the commission of the offense. In this case, the severity of the offense cannot be disputed, as the Uniform Rules expressly classify dishonesty as a grave offense punishable by the capital administrative penalty of dismissal even for the first offense. The facts also show that Dumduma's length of time in the police force was a major contributory factor that led him to commit the offense; Dumduma

aspired for a promotional appointment to the position of Police Inspector because his length of service had brought him in line for the higher post; his senior police position undoubtedly worked in his favor and facilitated access to the means to falsify his Civil Service certificate.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

***PER CURIAM*:**

Before the Court is a Petition for Review on *Certiorari*[1] assailing the January 31, 2008 Decision,[2] as well as the April 10, 2008 Resolution,[3] of the Court of Appeals (CA) in CA-G.R. SP No. 98207, which affirmed the order of the respondent Civil Service Commission (CSC) dismissing petitioner Cesar S. Dumduma (Dumduma) from government service.

Factual Antecedents

Dumduma entered public service in 1979 as a patrolman in the then Integrated National Police.[4] He steadfastly rose through the ranks until he was promoted in 1991 as Senior Police Officer 4 (SPO4) of the Philippine National Police (PNP). He was then designated as officer-in-charge of San Miguel Police Station in San Miguel, Leyte.[5] On December 15, 1998, he took the Career Service Professional Examination in Quezon City.[6]

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[1] *Rollo*, pp. 3-24.

[2] *Id.* at 26-35; penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose Catral Mendoza and Jose C. Reyes, Jr.

[3] *Id.* at 37.

[4] *Id.* at 76.

[5] *Id.* at 85.

[6] *Id.* at 149.

On March 7, 1999, Dumduma filled out a Personal Data Sheet (PDS) pursuant to his promotional appointment as Police Inspector. On Item No. 18 of the PDS, Dumduma stated that he passed the Career Service Professional Examination Computer-Assisted Test in Quezon City on December 15, 1998 with a rating of 81%.[7] His appointment was then forwarded to the PNP-CSC Field Office on April 16, 1999 for verification and approval.[8] It was then discovered that Dumduma did not have the proper civil service eligibility, contrary to what he disclosed in his PDS. His name was not included in the CSC-National Capital Region (CSC-NCR) Regional Register of Eligibles for the Career Service Professional Examination conducted on December 15, 1998; instead, his name appeared in the Regional List of Passing/ Failing Examinees with a rating of 25.82%. Accordingly, the director of the CSC-NCR, Adoracion F. Arenas disapproved Dumduma's appointment on the ground of spurious eligibility.[9] On June 6, 2002, the CSC-NCR formally charged Dumduma with Dishonesty.[10]

Dumduma denied the charge.[11] His version of the circumstances surrounding his alleged eligibility is as follows: Prior to the date of the examination, Dumduma met a certain Salome Dilodilo (Dilodilo), who was allegedly a retired CSC director. Dilodilo promised Dumduma her "total support in [Dumduma's] x x x examination [but] (i)n return, she asked [Dumduma] to convince [his] close friend x x x to sell x x x a property x x x [to her]."[12] On the day before the examination,[13] Dumduma and Dilodilo went to the CSC Office located at Kaliraya Street, Quezon City in order to facilitate an early examination schedule[14] for

[7] *Id.* at 51.

[8] *Id.*

[9] *Id.* at 61.

[10] *Id.* at 50.

[11] *Id.* at 72-73.

[12] Dumduma's Counter-Affidavit, *id.* at 73.

[13] *Id.* at 72.

[14] Affidavit of Ester B. Pablico, *id.* at 74.

Dumduma. The following day, December 15, 1998, Dumduma took the Career Service Professional Examination.[15] A week later, he received his Certificate of Eligibility[16] from an unnamed person, who claimed to be Dilodilo's emissary.[17] The Certificate of Eligibility stated that Dumduma passed the examination with a rating of 81%.[18] Dumduma then wrote the said information in his PDS, allegedly in good faith that the Certificate of Eligibility was authentic.

Dumduma waived the formal investigation and submitted the case for resolution based on the available documents.[19]

Decision of Civil Service Commission-National Capital Region[20]

The CSC-NCR held that the Certificate of Eligibility relied upon by Dumduma in making his PDS entry was spurious because it was contrary to the CSC's Regional List of Eligibles. The Regional List prevails over the Certificate of Eligibility because the former is the primary official record of eligibles hence is presumed genuine and accurate, unless proven otherwise. Since Dumduma failed to satisfactorily explain the discrepancy posed by his Certificate of Eligibility, the presumption is that the same was falsified for his benefit.[21] Based on CSC Memorandum Circular No. 15, series of 1991, Dumduma's procurement and use of a spurious Certificate of Eligibility constituted the offense of Dishonesty,[22] which merited dismissal from government service with all the accessory penalties.[23]

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[15] Counter-Affidavit, *id.* at 72.

[16] *Id.*

[17] Affidavit of Bernardita D. Balderian, *id.* at 49.

[18] *Id.* at 71.

[19] Order dated March 19, 2004, *id.* at 53.

[20] Decision in Adm. Case No. 02-06-020, *id.* at 50-57; penned by CSC Director IV Agnes D. Padilla.

[21] *Id.* at 55-56.

[22] *Id.* at 55.

[23] The dispositive portion reads:

Ruling of the Civil Service Commission

Dumduma appealed the adverse CSC-NCR Decision to the CSC. Dumduma maintained his good faith in relying on the Certificate of Eligibility that was delivered to his residence. Any defect in his Certificate of Eligibility must be blamed on some unnamed and unknown CSC personnel, who most probably authored the falsification. Without any proof that he colluded with these CSC personnel, Dumduma contended that he cannot be found guilty of dishonesty.[24]

In its Resolution No. 060098[25] dated January 23, 2006, the CSC found Dumduma's version of how he obtained his certificate of eligibility implausible. The CSC noted that the standard operating procedure for the Career Service Professional Examination Computer-Assisted Test is to hand-over the certificates of eligibility of the passers immediately after the examination. Since Dumduma did not get his certificate in the standard manner, he had the burden of explaining what merited the unorthodox procedure. This he failed to do.[26]

The CSC further held that Dumduma failed to rebut the presumption that he, as possessor of a falsified document, was the author thereof. His bare assertion of good faith could not stand against the presumption.[27] The CSC thus affirmed the CSC-NCR's Decision. The dispositive portion of the CSC's January 23, 2006 Resolution reads as follows:

WHEREFORE, the appeal of Cesar S. Dumduma is hereby **DISMISSED**. Accordingly, the Decision dated March 19, 2004 of

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WHEREFORE, this Office hereby finds CESAR S. DUMDUMA guilty of DISHONESTY. Accordingly, he is meted out the penalty of dismissal from the service with all its accessory penalties of perpetual disqualification from holding public office and from taking civil service examination in the future. (*Id.* at 57.)

[24] *Id.* at 59.

[25] *Id.* at 58-64; decided by CSC Chairman Karina Constantino-David and Commissioners J. Waldemar V. Valmores and Cesar D. Buenaflor.

[26] *Id*. at 63.

[27] *Id.*

the CSC-NCR, finding him guilty of Dishonesty and imposing on him the penalty of dismissal from the service, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service is hereby **AFFIRMED**. Further, since this involves disbursements of funds for the salaries and benefits of Dumduma after his appointment was disapproved, let a copy of this decision be furnished the Commission on Audit for its appropriate action. The CSC-NCR is hereby ordered to monitor the implementation of this Resolution.

Quezon City, January 23, 2006.[28]

Dumduma filed a Motion for Reconsideration but the same was denied in CSC Resolution No. 070306[29] dated February 19, 2007.

Ruling of the Court of Appeals

Dumduma reiterated his defense of good faith in his appeal to the CA,[30] but the appellate court was unconvinced. The CA found substantial evidence supporting the conclusion that Dumduma's Certificate of Eligibility was spurious. It was contrary to the entries in the Regional List of Passing/Failing Examinees and those in the Regional Register of Eligibles. Moreover, it was delivered to Dumduma contrary to the standard operating procedures of CSC.[31]

The CA held that Dumduma's possession and use of the falsified certificate for his own benefit created the presumption that he was the author of such falsification. It was incumbent upon Dumduma to overcome the said presumption with controverting evidence. His bare assertion of good faith did not suffice as a rebuttal.[32]

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[28] *Id.* at 64.

[29] *Id.* at 65-70.

[30] CA Decision, pp. 6-7; *id*. at 31-32.

[31] *Id.* at 7-8; *id.* at 32-33.

[32] *Id.* at 8; *id.* at 33.

The CA disposed in this wise:

WHEREFORE, premises considered, the instant petition is **DISMISSED**. The assailed CSC Resolutions **STAND**.

SO ORDERED.[33]

Dumduma moved for a reconsideration but the CA denied the same in its Resolution dated April 10, 2008.[34]

Our Ruling

Petitioner Dumduma is now before us questioning the sufficiency of the evidence against him. He is of the impression that he was found guilty of dishonesty on a mere presumption — that the holder of a forged document is the forger — despite the presence of contrary evidence.[35] His alleged contrary evidence consist of the apparent authenticity of his Certificate of Eligibility (which did not alert him to any irregularity therein)[36] and the absence of evidence that he colluded with CSC personnel to falsify the certificate.[37]

The question raised by Dumduma regarding the CA's appreciation of the evidence against him is ineluctably one of fact, which is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not this Court's task to go over the proofs presented below to ascertain if they were appreciated and weighed correctly, most especially when the CA and the CSC speak as one in their findings and conclusions.[38] While it is widely held that this rule of limited jurisdiction admits of exceptions, none exists, or is even alleged as existing, in the instant case.

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[33] *Id.* at 9; *id.* at 34.

[34] *Id.* at 37.

[35] Petitioner's Memorandum, *id.* at 151.

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

[37] *Id.* at 152.

[38] *Bacsasar v. Civil Service Commission*, G.R. No. 180853, January 20, 2009, 576 SCRA 787, 794.

The Court agrees with the CSC and the CA that the undisputed facts, as revealed by the evidence, make out a clear case of dishonesty against Dumduma. When Dumduma's claim of eligibility was contradicted by the CSC Register of Eligibles and the List of Passing/Failing Examinees, it became incumbent upon Dumduma to explain why he made the incorrect entry in his PDS. Unlike his PDS entry, the CSC records are presumed correct and made in the regular course of official business.[39] In explaining his action, however, Dumduma dug a deeper hole from which he could not extricate himself.

He admitted in his Counter-Affidavit that Dilodilo, a retired CSC official, promised to help him with his CSC examination in exchange for a personal favor. They then proceeded to the CSC Office together and Dilodilo was welcomed by her former colleagues. After Dumduma took the exam, he went home without knowing the result thereof (a procedure that is contrary to CSC practice). Several days later, Dumduma professed that he received his Certificate of Eligibility from a man *sent by Dilodilo*, who is a retiree hence without official ties with the CSC. Instead of exculpating him, Dumduma's explanation completed the evidence against him. He not only failed to explain the discrepancy, he even explained how he obtained a spurious Certificate of Eligibility.

Dumduma asserts that, despite the questionable circumstances, he is in good faith and that the blame is with the CSC personnel who gave him a Certificate of Eligibility. Their actions should not be attributable to him, unless there is evidence that he colluded with them.

Dumduma's contention is in stark contrast to his admissions and does not merit belief. The concept of good faith in administrative cases such as this one is explained in a recent case in this wise:

> Good faith is ordinarily used to describe that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to

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[39] *Civil Service Commission v. Cayobit*, 457 Phil. 452, 459 (2003).

abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render [a] transaction unconscientious. In short, good faith is actually a question of intention. Although this is something internal, we can ascertain a person's intention not from his own protestation of good faith, which is self-serving, but from evidence of his conduct and outward acts.[40]

In the instant case, the facts and circumstances surrounding Dumduma's acquisition of the Certificate of Eligibility cast serious doubts on his good faith. He made a deal with a retired CSC official and accepted the Certificate of Eligibility from her representative. These circumstances reveal Dumduma's knowledge that Dilodilo could have pulled strings in order to obtain his Certificate of Eligibility and have it delivered to his residence. How else would a retired employee obtain the said certificate? Dumduma cannot feign innocence given his unquestioning cooperation with Dilodilo.

Besides, whether some CSC personnel should be held administratively liable for falsifying Dumduma's Certificate of Eligibility is beside the point. The fact that someone else falsified the certificate will not excuse Dumduma for knowingly using the same for his career advancement.

Dumduma maintains that it is entirely possible that his Certificate of Eligibility is correct and that the CSC's Register of Eligibles and the List of Passing/Failing Examinees are the ones with incorrect entries. In light of the circumstances, the Court cannot accept this theory. As Dumduma himself admitted, he did not obtain the Certificate of Eligibility from the CSC but from a representative of his facilitator, Dilodilo. The official records kept by the CSC deserve credence compared to a certificate that admittedly originated from a dubious source.

This is not the first time that a government employee had been dismissed from service for falsification of his eligibility for appointment purposes.

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[40] *Bacsasar v. Civil Service Commission, supra* note 38 at 795, citing *Civil Service Commission v. Maala,* 504 Phil. 646 (2005).

Maniebo v. Court of Appeals[41] is analogous to the instant case. Maniebo denied any participation in the preparation of her spurious Certificate of Eligibility. She maintained that she only received the same through the mails and was in good faith in submitting the same for her appointment. The Court held that the presumption of good faith does not apply when the employee's Certificate of Eligibility conflicts with the CSC's Masterlist of Eligibles. Moreover, the Court did not accept Maniebo's long and satisfactory government service in order to mitigate the penalty of dismissal. The Court noted that Maniebo was undeserving of the mitigation given her refusal to own up to, and her lack of remorse for, her dishonesty.

In *Bacsasar v. Civil Service Commission*,[42] Bacsasar obtained her Certificate of Eligibility from a private individual and not from the CSC. The CSC verified the spurious nature of her eligibility because Bacsasar was not included in the CSC Masterlist of Passing/Failing Examinees. The Court rejected Bacsasar's defense of good faith given that she did not even take the civil service exam.

In *Civil Service Commission v. Cayobit*,[43] Cayobit received her Certificate of Eligibility through mail and maintained that she believed the same to be genuine. The Court found her guilty of dishonesty given that she failed to explain the discrepancy in her passing grade in the certificate and the failing grade reflected in the CSC masterlist.

Like Dumduma, the dismissed employee in *Re: Tessie G. Quires*[44] also maintained that she was merely a victim of fixers operating within the CSC Office. The Court did not accede to her pleas and meted the prescribed penalty for dishonesty.

Disapproved Appointment of Limgas[45] also involved an employee who maintained that she acted in complete reliance

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[41] G.R. No. 158708, August 10, 2010, 627 SCRA 569.

[42] *Supra* note 38.

[43] *Supra* note 39.

[44] A.M. No. 05-5-268-RTC, May 4, 2006, 489 SCRA 349.

[45] 491 Phil. 160 (2005).

that the Certificate of Eligibility she received after taking the CSC examination was authentic. Limgas claimed that "she was a victim of an injustice perpetrated by fixers, insiders and syndicates operating in the Regional Offices of the CSC."[46] In rejecting her plea, the Court expressed its disbelief that a fixer would act for Limgas' benefit, without the latter having any knowledge of the anomalous transaction.

Guided by the foregoing cited authorities, the Court holds that the CA did not err in affirming the penalty of dismissal and all its accessory penalties imposed by the CSC. Only those who can live up to the constitutional exhortation that public office is a public trust deserve the honor of continuing in public service.

Dumduma makes a final plea for leniency but the law and the prevailing jurisprudence binds the hands of this Court. We cannot change the imposable penalties for a clear case of dishonesty without at the same time, visiting injustice against all the other government employees that were similarly placed but received the full force of the law.

Nevertheless, the Court recognizes that petitioner was once an outstanding member of the police force. He risked life and limb serving the citizenry of Region 8 with total dedication and hard work. His service record shows that, since his original appointment in 1979, he patiently rose through the ranks until he was promoted to SPO4 in 1991. While justice exhorts that petitioner suffer the full penalties imposed by law, temperance cries out that he be recognized for whatever good he has done prior to his mistake. Thus, the Court deems proper, on a *pro hac vice* basis, to extend financial assistance of ₱50,000.00 to petitioner, which amount shall be taken from his forfeited retirement benefits. This award in no sense mitigates his offense but is made solely out of equity and humanitarian considerations.

WHEREFORE, the petition is *DENIED*. The assailed January 31, 2008 Decision and April 10, 2008 Resolution of the Court

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[46] *Id.* at 167.

of Appeals in CA-G.R. SP No. 98207 are *AFFIRMED* with *MODIFICATION*. Petitioner is extended a *FINANCIAL ASSISTANCE* of *₱50,000.00*, to be taken from his forfeited retirement benefits on a *pro hac vice* basis.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio and *Bersamin, JJ.,* join *J.* Brion in his concurring and dissenting opinion.

Brion, J., see concurring and dissenting opinion.

Mendoza, J., no part.

Sereno, J., joins the dissent of *J.* Brion.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

I agree with the majority's conclusion that Cesar S. Dumduma is administratively liable for dishonesty and should be dismissed from the service. I disagree, however, with the Court's ruling that he should be awarded financial assistance of ₱50,000.00 on the basis of ***temperance*** or whatever equitable consideration this basis stands for. The majority opined on this point that:

> Nevertheless, the Court recognizes that petitioner was once an outstanding member of the police force. He risked life and limb serving the citizenry of Region 8 with total dedication and hard work. His service record shows that, since his original appointment in 1979, he patiently rose through the ranks until he was promoted to SPO4 in 1991. While justice exhorts that petitioner suffer the full penalties imposed by law, ***temperance cries out that he be recognized for whatever good he has done prior to his mistake***. Thus, the Court deems proper, on a *pro hac vice* basis, to extend financial assistance of ₱50,000.00 to petitioner, which amount shall be taken from his forfeited retirement benefits. This award in no

sense mitigates his offense but is made solely out of equity and humanitarian considerations.[1] (emphasis ours)

It is unfortunate that so short a paragraph in an 11-page Decision may *unwittingly open the door to a new practice as yet unknown in Philippine jurisprudence* on the grant of financial assistance to employees validly dismissed from the public service. For this reason and for the award's *lack of basis in fact, in law and in reason*, I strongly object to the grant of this award.

Financial assistance in the context of termination of employment is the award given to a *validly dismissed employee*, based on the principles of social justice.[2] *In the **private sector***, jurisprudence is fairly well developed on the social justice roots of the award and the conditions for its grant.[3] *In the **public sector*** where every item of expenditure is required to be based on a specific provision of law, justification for financial assistance to employees *dismissed without their fault* may be found in specific laws covering their termination of employment (such as laws providing for reorganization or for retrenchment or redundancy),[4] but no such specific laws exist providing for financial assistance *for employees dismissed due to their own fault or misdeeds.*

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[1] Decision, p. 10.

[2] *Philippine Long Distance Telephone Co. v. NLRC*, 247 Phil. 641 (1988).

[3] *Toyota Motor Phils. Corp. Workers Association v. NLRC*, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171; *Aromin v. NLRC*, G.R. No. 164824, April 30, 2008, 553 SCRA 273; *Reno Foods, Inc. v. NLM*, G.R. No. 164016, March 15, 2010, 615 SCRA 240; *Bank of the Philippine Islands v. NLRC*, G.R. No. 179801, June 18, 2010, 621 SCRA 283; and *Juliet G. Apacible v. Multimed Industries Incorporated, et al.*, G.R. No. 178903, May 30, 2011.

[4] Examples of these laws include: Presidential Decree No. 4, as amended by Presidential Decree Nos. 699 and 1485, Proclaiming the Creation of the National Grains Authority and Providing Funds Therefor (1972); Republic Act No. 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization); Republic Act No. 8041 (National Water Crisis Act of 1995), in relation to Executive Order No. 286; and Republic Act No. 9136, Electric Power Industry Reform Act (EPIRA).

Conceivably, legal basis may be found for a grant to *validly dismissed* public sector employees in the social justice provisions of the Constitution as has been done in the private sector. While "compassion,"[5] "humanitarian considerations"[6] and "equity"[7] have been used and cited as reasons in Civil Service and administrative cases involving court employees, their use has been for the purpose of mitigating the *imposable* penalty,[8] not for the award of financial assistance. Thus, even jurisprudence has so far been silent on whether a public servant, *validly dismissed for dishonesty,* can be awarded financial assistance.

Dumduma was dismissed from the service for dishonesty for falsifying his Personal Data Sheet to justify his promotion. Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (*Uniform Rules*) classifies **dishonesty as a grave offense punishable with dismissal from the service *even for the first offense***. A companion provision — Section 58, Rule IV — provides for the *"administrative disabilities"*

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[5] *Re: Employees Incurring Habitual Tardiness In The Second Semester Of 2009,* A.M. No. 2010-11-SC, March 15, 2011; *Re: Irregularity in the Use of Bundy Clock by Sophia M. Castro and Babylin V. Tayag, Social Welfare Officers II, RTC, Office of the Clerk of Court, Angeles City,* A.M. No. P-10-2763, February 10, 2010, 612 SCRA 124; and *Re: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine,* A.M. No. 2005-21-SC, September 28, 2010, 631 SCRA 396.

[6] *Re: Employees Incurring Habitual Tardiness in the 1st Semester of 2007,* A.M. No. 2007-15-SC, January 19, 2009, 576 SCRA 121; *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,* A.M. Nos. 2001-7-SC and 2001-8-SC, July 22, 2005, 464 SCRA 1; and *Concerned Taxpayer v. Doblada, Jr.*, A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218.

[7] *Hallasgo v. Commission on Audit Regional Office No. X,* G.R. No. 171340, September 11, 2009, 599 SCRA 514; *Tan v. Sermonia,* A.M. No. P-08-2436, August 4, 2009, 595 SCRA 1; and *Arganosa-Maniego v. Salinas,* A.M. No. P-07-2400, June 23, 2009, 590 SCRA 531.

[8] See notes 5, 6 and 7; the imposable administrative penalties are those expressly provided under Section 52, Rule IV of the Uniform Civil Service Rules.

that a dismissal from the service *inherently* carries. These are "cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision." Section 53, Rule IV of these same rules provides for the "Extenuating, Mitigating, Aggravating, or Alternative Circumstances" that may be considered "[i]n the determination of the penalties to be imposed[.]" Among these circumstances are "[l]ength of service in the government" and "[o]ther analogous circumstances" which the Civil Service Commission may consider even if not pleaded "in the interest of substantial justice[.]"[9]

Significantly, the Uniform Rules does not provide for specific norms or standards in imposing penalties, except for the recognition that the minimum, medium, or maximum of the penalty may be imposed depending on the mitigating or aggravating circumstances present (Section 53, Rule IV). By analogy with criminal law, no graduation *within the range* of a penalty is

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[9] Section 53 provides: In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a. Physical illness
b. Good faith
c. Taking undue advantage of official position
d. Taking undue advantage of subordinate
e. Undue disclosure of confidential information
f. Use of government property in the commission of the offense
g. Habituality
h. Offense is committed during office hours and within the premises of the office or
i. building
j. Employment of fraudulent means to commit or conceal the offense
k. Length of service in the government
l. Education, or
m. Other analogous circumstances

Nevertheless, in the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances shall not be considered in the imposition of the proper penalty The Commission, however, in the interest of substantial justice may take and consider these circumstances. [emphasis ours]

however possible where a single indivisible penalty, like dismissal, is imposed.[10] The order of presentation of the provisions of Rule IV of the Uniform Rules (with ***Section 52*** providing for the classification of offenses and their penalties; ***Section 53*** providing for the recognition and application of mitigating and aggravating circumstances; ***Section 54*** providing for the manner of imposition of penalties; and ***Section 58*** providing for administrative disabilities inherent in certain penalties) strongly suggests — by considering their logical presentation of the different sections and the relationship of these sections with one another — that the qualifying circumstances under Section 53 apply to the imposable penalties under Section 52, not to the *"disabilities"* under Section 58 that the administrative penalties carry.

This conclusion is strengthened by the terms of ***Sections 55 and 56, Rule IV*** of the Uniform Rules which all refer to the administrative penalties, not to the Section 58 accessory disabilities, and to the separate treatment of Sections 57 (entitled "Administrative Disabilities/Accessories to Administrative Penalties") and 58 ("Administrative Disabilities Inherent in Certain Penalties") from the preceding Sections 52 to 56. In fact, the title itself of Section 58, Rule IV (specifically using the terms "Administrative Disabilities") also strongly suggests that the forfeiture of retirement benefits that a dismissal carries is not in fact a penalty (although usually referred to as accessory penalties in the decided cases), but a *"disability"* that must necessarily be carried when a dismissal from the service is imposed. Even as an accessory penalty, however, the Section 53 qualifying circumstances cannot apply as they refer and apply to administrative penalties, not to the accessory penalties that are separately treated under Section 58, Rule IV. Understood as a "disability" in the way Section 58, Rule IV expressly provides, the legal significance is of course enormous as a disability is conceptually different from a penalty, whether main or accessory; specifically, the Section 53 qualifying circumstances apply to administrative penalties, not to disabilities.

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[10] Article 61 of the Revised Penal Code (*Rules of graduating penalties*).

Likewise, the Uniform Rules does not provide for any standard for classifying dishonesty, although acts that may generally be classified as dishonest may be more specifically punished as another offense with the same[11] or lower[12] penal consequence. Unless, therefore, another specific offense is defined and a corresponding penalty provided, any act attended by the *"disposition to lie, cheat, steal or defraud"*[13] falls under the rubric of "dishonesty" that is classified as a grave offense.

The Uniform Rules does not also contain any saving proviso that allows the grant of financial assistance as an alternative or substitute that may be decreed when forfeiture of retirement benefits takes place, or *as a benefit* that can be awarded in place of forfeiture of retirement benefits. A proviso on the grant of a benefit takes on special significance in the public sector as no money may be paid out from the Treasury unless the payment is based on a specific authorizing provision of law.[14]

From the jurisprudential end, the Court has consistently ruled that a finding of dishonesty carries the indivisible penalty of dismissal. In *Remolona v. Civil Service Commission*,[15] we said:

> It cannot be denied that dishonesty is considered a grave offense punishable by dismissal for the first offense under Section 23, Rule XIV of the Rules Implementing Book V of Executive Order No. 292. And the rule is that dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty by the person charged. The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with

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[11] *Duque v. Aspiras*, A.M. No. P-05-2036, July 15, 2005, 463 SCRA 447.

[12] *Office of the Court Administrator v. Isip*, A.M. No. P-07-2390, August 19, 2009, 596 SCRA 407.

[13] Black's *Law Dictionary*, 6th ed., 1990, p. 468.

[14] Section 29(1), Rule VI of the Constitution provides that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

[15] 414 Phil. 590 (2001).

his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service.

In *Civil Service Commission v. Macud*,[16] we imposed the penalty of dismissal with accessory penalties against the respondent for her false declaration in her Personal Data Sheet that she successfully passed the Professional Board Examination for Teachers. We arrived at the same conclusion in *Civil Service Commission v. Perocho, Jr.*[17] and *Bacsasar v. Civil Service Commission*[18] — involving dishonesty for using spurious certificates of eligibility.

In *Bacsasar,* we even reiterated that dishonesty alone, because it is a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government. We did the same in the more recent case of *Retired Employee, Municipal Trial Court, Sibonga, Cebu v. Merlyn G. Manubag*,[19] where we held:

> Indeed, being in the nature of a grave offense, dishonesty carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits and perpetual disqualification for re-employment in the government service.

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[16] G.R. No. 177531, September 10, 2009, 599 SCRA 52.

[17] A.M. No. P-05-1985, July 26, 2007, 528 SCRA 171.

[18] G.R. No. 180853, January 20, 2009, 576 SCRA 787.

[19] A.M. No. P-10-2833, December 14, 2010.

The Court has been explicit. In the case of *Ramos v. Mayor*:

> Under Section 52 (A)(1) and (A)(6), Rule IV of the "Uniform Rules on Administrative Cases in the Civil Service" (Resolution No. 99-1936 dated August 31, 1999), respondent's act of making untruthful declarations in his PDS renders him administratively liable for falsification of public document and dishonesty which are classified as grave offenses and, thus, warrant the corresponding penalty of dismissal from the service even if either of them is respondent's first offense. Section 58 of Rule IV thereof states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

What appears clear from all the above is that the applicable Civil Service Rules themselves do not provide for the award of financial assistance either as an administrative penalty, as an accessory disability, or as an independent benefit that can be granted when retirement pay is declared or deemed to be forfeited. To its credit, the majority recognizes the existing legal reality as the Decision in fact states:

> Dumduma makes a final plea for leniency but the law and the prevailing jurisprudence binds *[sic]* the hands of this Court. We cannot change the imposable penalties for a clear case of dishonesty without at the same time, visiting injustice against all the other government employees that were similarly placed but received the full force of the law.[20]

Yet, incongruously, the majority came to the conclusion (now objected to and which is first quoted in this Opinion) justifying and awarding on a *pro hac vice* basis the grant of financial assistance of ₱50,000.00 to Dumduma. Uniquely, the majority does not do this by citing "justice" as justification; instead, it vaguely invokes "temperance . . . for what whatever good he (Dumduma) has done prior to his mistake" to support the grant. This justification, in my view, is an unacceptable position that should not be allowed to pass without objection or comment,

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[20] *Supra* note 1.

as the resulting conclusion may henceforth be cited as basis for the grant of financial assistance in valid dismissal situations. Labeling the Court's conclusion as *pro hac vice* will not make it any less legally unpalatable.

Aside from the complete lack of basis in the Civil Service Rules as shown in the above analysis, I submit the following reasons for my objection to the imposition of financial assistance:

First, the policy of the law is clear: dishonesty is an offense that the law cannot and should not tolerate; hence, dismissal is imposed as the penalty even for the first offense. Dismissal also inherently carries the forfeiture of retirement benefits as a disability.

To be sure, the Court would be sending the worst possible signal regarding the honesty and integrity that the public service requires by allowing the grant of the financial assistance decreed by the present Decision; the Court thereby unmistakably dilutes the law's policy by imposing the penalty of dismissal and at the same time awarding financial assistance to the offender. In effect, the Court imposes the legal policy expressed in the law *with its right hand*, and, *with the left hand*, partially takes it back through the grant of a benefit to the offender that the law does not even expressly provide for. The Court shall in fact be treading on dangerous constitutional waters with this kind of conclusion, as it can be accused of judicial legislation that violates the constitutional rule on separation of powers. Quite possibly, the Court may even be accused of disregarding the law by ordering the payment of money out of the public treasury without any specific legal basis.

Second, the Court "temperance" as used in the Decision is a moral rather than a legal standard and should be applied only with utmost care in adjudication. It may be far more acceptable to use "justice" or "social justice" as driving motivations, as these are concepts that underlie the task of adjudication. Temperance, on the other hand, as a moral standard is necessarily a subjective one. Judicial prudence, at the very least, requires that the Court avoid identifying itself with the use of subjective standards, as it is guided by the rule of law, not by the peculiar

dictates of individual Justices' conscience. Following the analogy used above, the Court, in its Decision, may be said to have administered justice *with its right hand*, and diluted this application of the rule of law *with its left hand* through the use of a highly subjective standard.

Third, our labor laws and established jurisprudence applicable to the private sector have recognized the grant of financial assistance based on social justice as the guiding force.[21] The Court, however, clearly recognized limitations in invoking social justice when it held:

> The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. **Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor**. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[22] [emphasis supplied]

As further parameters in invoking social justice, the Court likewise ruled in the same case:

> We hold that henceforth separation pay shall be allowed as a measure of social justice **only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.** Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

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[21] *Philippine Long Distance Telephone Co. v. NLRC, supra* note 2.

[22] *Id.* at 650.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.[23] [emphasis supplied]

If these are the parameters in the private sector, the parameters applicable to the public sector cannot and should not be any less; public office is a public trust, not simply an ordinary office where the employment tie is almost purely based on contract. Thus, the private sector parameters, at the very least, should apply if social justice were to be cited as basis for the grant of financial assistance.

To belabor the obvious, Dumduma's dishonesty is an offense that transgresses even the private sector parameters on the application of social justice. He was a Senior Police Officer (SPO4) and was the officer-in-charge of the San Miguel Police Station in San Miguel, Leyte; he was thus not a poor or underprivileged laborer but a public official occupying a highly visible position entrusted by law with the maintenance of peace and order. He was dismissed from office for dishonesty — an offense that cannot but be classified as a serious misconduct and one that, by its nature, reflects the degraded moral character of the offender. These circumstances certainly do not characterize Dumduma as a public official entitled to receive a treatment different from what other dishonest public servants receive from the law and from this Court.

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[23] *Id.* at 649. The Court has consistently adhered to these rulings in the cases that followed; see note 3.

In justifying the award of financial assistance, the majority implies that length of service and exemplary performance should be recognized. Length of service, however, cannot be used to automatically mitigate Dumduma's penalty, as it is not a magic word that, once invoked, would cloak the penalty with a mitigating circumstance.[24] Length of service is two-faced; it can either be a mitigating or aggravating circumstance depending on the facts of each case.[25]

A review of jurisprudence shows that while in most cases, length of service operates as a mitigating circumstance favoring the offender, the contrary is true when the offense committed is serious[26] or if length of service is a factor that facilitated the commission of the offense.[27]

In this case, the severity of the offense cannot be disputed, as the Uniform Rules expressly classify dishonesty as a grave offense punishable by the capital administrative penalty of dismissal even for the first offense. The facts also show that Dumduma's length of time in the police force was a major contributory factor that led him to commit the offense; Dumduma aspired for a promotional appointment to the position of Police Inspector because his length of service had brought him in line for the higher post; his senior police position undoubtedly worked in his favor and facilitated access to the means to falsify his Civil Service certificate.

Considered from these perspectives, the conclusion that length of service can be invoked as a mitigating circumstance can be very alarming. Mindlessly invoked in the future, our ruling may

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[24] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593.

[25] *Id.* at 604.

[26] *Id.* at 605, citing *University of the Philippines v. CSC,* G.R. No. 89454, April 20, 1992, 208 SCRA 174; *Yuson v. Noel,* A.M. No. RTJ-91-762, October 23, 1993, 227 SCRA 1; *Concerned Employee v. Nuestro*, A.M. No. P-02-1629, September 11, 2002, 388 SCRA 568.

[27] *Civil Service Commission v. Cortez, supra* note 24 at 605-606.

give length of service a dominance in dismissal cases whose practical effect is to insulate long-staying employees from the penalty of dismissal; in blunter terms, at some point in a public servant's long term, his length of service alone can ensure that he can no longer be dismissed from the service. This consequence, to be sure, is far from the intent of the Civil Service Rules and farther still from the intent of the framers of the Constitution when they provided for security of tenure in the civil service.

I also strongly believe that any recognition, based on the facts of the case, of Dumduma's alleged "outstanding" performance and the life he risks daily in serving the citizenry is misplaced, and can only result in a bad legal precedent if it prevails. Police work, as well as military service, necessary entails daily risks to life and limb, and cannot be cited by the police or by the military as a mitigating circumstance except in the truly exceptional circumstances *where risks are taken above and beyond the call of duty*. Dedication to work to the level of exemplary service, too, should not be considered as a mitigating circumstance as this is the level of service that should be expected from every public servant. Public service is a public trust;[28] to do justice to this trust, exemplary service, at the very least, should be delivered.

From all indications, exemplary service was what Dumduma's awards and commendations represented. *These are not recognitions that place him way above the rest* to the point that his service would be labeled as outstanding or exemplary. A spotless service record, free of any administrative charges, is expected of all public servants and is not a distinction that should merit special mention, however lengthy a public servant's spotless term has been. The majority opinion, by disregarding this basic character of public service, may be setting a new, but lower, standard of integrity and performance.

It should not also be lost on us that the offense Dumduma committed carries not only the supreme administrative penalty

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[28] *Narvasa v. Sanchez, Jr.*, G.R. No. 169449, March 26, 2010, 616 SCRA 586.

of dismissal, but criminal consequences (*i.e.*, falsification of an official document punishable under the Revised Penal Code) as well. As a veteran police officer who has been given awards and commendations for services rendered, Dumduma should serve as an example to be followed in uplifting the morale and the standard of service of his fellow policemen. To be sure, he cannot serve this purpose given the nature of the offense he committed and its potential penal consequences. Thus, to accord him mitigation for his kind of public service cannot but be a bad precedent in highlighting disciplinary cases as warnings to public employees minded to follow the same path.

Lastly, I do not believe that the characterization of the Court's Decision as a *pro hac vice* ruling will ever suffice as an excuse for a ruling that obviously lacks legal and factual basis and one that runs against a declared government policy on dishonesty. The case carries *no known and meritorious distinguishing feature* to justify the special and selective treatment accorded it by this Court. The characterization only reveals what it truly is — a ruling with shaky foundations that should not be followed as a precedent because it was only meant for a specific individual. I can only hope that the Court's ruling today, because it is *pro hac vice*, shall not open the door leading away from the settled rulings and standards on how to treat dishonesty in the government service. Misplaced compassion is the worst signal that the Court can give in a situation where the law itself, that the Court applies, has given clear, express and categorical signs that the public service cannot, and should not, tolerate dishonesty.[29]

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[29] *Philippine Long Distance Telephone Co. v. NLRC, supra* note 2.

EN BANC

[G.R. No. 191224. October 4, 2011]

MONICO K. IMPERIAL, JR., *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL; BILL OF RIGHTS; DUE PROCESS; ESSENCE THEREOF IS IN THE OPPORTUNITY TO BE HEARD; FILING OF SUBSEQUENT MOTION FOR RECONSIDERATION NEGATES ANY DUE PROCESS INFIRMITY; CASE AT BAR. — Procedural due process is the constitutional standard demanding that notice and an opportunity to be heard be given before judgment is rendered. As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain; the essence of due process is in the opportunity to be heard. A formal or trial-type hearing is not always necessary. In this case, while the petitioner did not participate in the August 17, 2006 pre-hearing conference (despite receipt on August 14, 2006 of a fax copy of the August 11, 2006 order), Garcia's decision of February 21, 2007 duly considered and discussed the defenses raised in Atty. Molina's pleadings, although the answer was ordered expunged from the records because it was unverified and because Atty. Molina failed to submit a letter of authority to represent the petitioner. What negates any due process infirmity is the petitioner's subsequent motion for reconsideration which cured whatever defect the Hearing Officer might have committed in the course of hearing the petitioner's case. Again, Garcia duly considered the arguments presented in the petitioner's motion for reconsideration when he rendered the June 6, 2007 resolution. Thus, the petitioner was actually heard through his pleadings.

2. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SIMPLE AND GRAVE MISCONDUCT; DISTINGUISHED; CASE AT BAR. — Misconduct has a legal and uniform definition. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government

official. A misconduct is grave where the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are present. Otherwise, a misconduct is only simple. No doubt exists in our mind that the petitioner committed misconduct in this case. The records clearly show that the petitioner committed the acts complained of, *i.e.*, he approved the requests for salary loans of eight GSIS Naga Field Office employees who lacked the necessary contribution requirements under PPG No. 153-99.

3. REMEDIAL LAW; CIVIL PROCEDURE; FINDINGS OF FACTS OF ADMINISTRATIVE BODIES ACCORDED FINALITY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; CASE AT BAR. — After a careful review of the records, however, we disagree with the findings of the GSIS, the CSC and the CA that the petitioner's acts constituted grave misconduct. While we accord great respect to the factual findings of administrative agencies that misconduct was committed, we cannot characterize the offense committed as grave. No substantial evidence was adduced to support the elements of "corruption," "clear intent to violate the law" or "flagrant disregard of established rule" that must be present to characterize the misconduct as grave.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT; DEMONSTRATED BY FLAGRANT DISREGARD OF ESTABLISHED RULES OR EMPLOYEE'S PROPENSITY TO IGNORE THE RULES; CASE AT BAR. — We are aware that to the CSC, the mere act of approving the loan applications on several occasions proves the element of flagrant disregard of established rules to constitute grave misconduct. x x x Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. **The common denominator in these cases was the employee's**

propensity to ignore the rules as clearly manifested by his or her actions.

5. ID.; ID.; ID.; SIMPLE MISCONDUCT; APPROVING LOAN APPLICATIONS OF GSIS EMPLOYEES WHO DID NOT FULLY MEET THE REQUIRED QUALIFICATIONS, A CASE OF; CASE AT BAR. — Under the circumstances of the present case, we do not see the type of open defiance and disregard of GSIS rules that the CSC observed. In fact, the CSC's findings on the petitioner's actions prior to the approval of the loans negate the presence of any intent on the petitioner's part to deliberately defy the policy of the GSIS. First, GSIS branch managers have been granted in the past the authority to approve loan applications beyond the prescribed requirements of GSIS; second, there was a customary lenient practice in the approval of loans exercised by some branch managers notwithstanding the existing GSIS policy; and third, the petitioner first sought the approval of his immediate supervisor before acting on the loan applications. These circumstances run counter to the characteristic flagrant disregard of the rules that grave misconduct requires. Thus, the petitioner's liability under the given facts only involves simple misconduct. As Branch Manager of the GSIS Naga Field Office, he is presumed to know all existing policies, guidelines and procedures in carrying out the agency's mandate in the area. By approving the loan applications of eight GSIS Naga Field Office employees who did not fully meet the required qualifications, he committed a serious lapse of judgment sufficient to hold him liable for simple misconduct.

6. ID.; ID.; ID.; ID.; PROPER PENALTY IN CASE AT BAR. — The Revised Uniform Rules of the Civil Service (*Civil Service Rules*) classifies simple misconduct as a less grave offense. Under Section 52(B) (2), Rule IV of the Civil Service Rules, the commission of simple misconduct is penalized by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. While records show that this is not the petitioner's first offense as he was previously suspended for one (1) year for neglect of duty, we believe that his dismissal would be disproportionate to the nature and effect of the transgression he committed as the GSIS did not suffer any prejudice through the loans he extended; these loans were for GSIS employees

and were duly paid for. Thus, for his second simple misconduct, we impose on the petitioner the penalty of suspension from the lapse of his preventive suspension by GSIS up to the finality of this Decision.

CORONA, *C.J.*, *concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; GOVERNMENT SERVICE INSURANCE SYSTEM; GRANT OF SALARY LOANS; NON-COMPLIANCE WITH GSIS PPG NO. 153-99 CONSTITUTES MISCONDUCT. — There is no question that GSIS PPG No. 153-99 lays down the guidelines governing the grant of salary loans, including contribution requirements. Thus, there is also no argument that non-compliance with GSIS PPG No. 153-99 constitutes misconduct, a "transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."

2. ID.; ID.; PUBLIC OFFICERS; SIMPLE MISCONDUCT; UNLESS THERE IS SUBSTANTIAL EVIDENCE OF CORRUPTION, THE TRANSGRESSION OF AN ESTABLISHED RULE IS PROPERLY CHARACTERIZED AS SIMPLE MISCONDUCT ONLY. — While misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose, **it does not necessarily imply corruption**, the element which qualifies misconduct as grave misconduct. Thus, unless there is substantial evidence of corruption, the transgression of an established rule is properly characterized as simple misconduct only.

3. ID.; ID.; ID.; GRAVE MISCONDUCT; ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW OR FLAGRANT DISREGARD OF ESTABLISHED RULE, MUST BE MANIFEST. — Indeed, simple misconduct is distinct and separate from grave misconduct. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest. A public officer shall be liable for grave misconduct only when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest.

4. ID.; ID.; ID.; ID.; QUALIFYING ELEMENTS; ESTABLISHED BY SUBSTANTIAL EVIDENCE SEPARATE FROM THE SHOWING OF THE MISCONDUCT ITSELF; CASE AT BAR. — These qualifying elements must also be established by substantial evidence, **separate from the showing of the misconduct itself**. Here, as already explained earlier, the administrative agencies considered the act constituting the misconduct, that is, the non-observance of GSIS PPG No. 153-99, as the **very same proof** of the qualifying element of flagrant disregard of an established rule.

5. ID.; ID.; ID.; ID.; ID.; CIRCUMSTANCES NEGATING THE ELEMENTS THAT WOULD HAVE QUALIFIED PETITIONER'S MISCONDUCT AS A GRAVE MISCONDUCT; CASE AT BAR. — Petitioner may not successfully evade liability by invoking an alleged practice, based on previous policy and procedural guidelines, among branch managers to approve applications for salary loan (though lacking in contribution requirement). That practice, assuming it existed, cannot override the clear provisions of GSIS PPG No. 153-99. Neither may petitioner successfully rely on the clearance given by then GSIS Vice President Romeo Quilatan for him to approve the subject salary loans. Quilatan had no authority to overrule the requirements of GSIS PPG No. 153-99. Nevertheless, while these two circumstances did not exculpate him from any administrative liability, they tended to show that petitioner **did not willfully violate** GSIS PPG No. 153-99 and that he **did not flagrantly disregard** existing rules. On the contrary, they evinced good faith on the part of petitioner and negated the elements that would have qualified his misconduct as a grave misconduct. In fact, they support the view that there exists no such relevant evidence as a reasonable mind might accept as adequate to support the conclusion that petitioner had the clear intent to violate GSIS PPG No. 153-99 or to flagrantly disregard it.

APPEARANCES OF COUNSEL

Tabayoyong and Partners for petitioner.

Violeta C.F. Quintos and *Corazon DLP. Tanglao-Dacanay* for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] filed by petitioner Monico K. Imperial, Jr., from the December 10, 2009 decision[2] and the February 5, 2010 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 101297.

The Factual Antecedents

On October 19, 2005, the Government Service Insurance System (*GSIS*) administratively charged the petitioner, then Branch Manager of the GSIS Naga Field Office, with *Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service*[4] for approving the requests for salary loans of eight GSIS Naga Field Office employees who lacked the contribution requirements under GSIS Policy and Procedural Guidelines (*PPG*) No. 153-99,[5] giving them unwarranted benefits through his evident bad faith, manifest partiality or gross negligence, and causing injury to the pension fund.[6] He was required to answer and was preventively suspended for ninety (90) days.

On July 21, 2006, Atty. Manuel T. Molina, the petitioner's purported counsel, filed an *unverified* answer in behalf of the petitioner, who was then in the United States of America. Atty. Molina explained that the petitioner granted the loan applications under an existing board resolution, with the approval of then

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[1] Filed pursuant to Rule 45 of the Rules of Court; *rollo*, pp. 3-35.

[2] Penned by Associate Justice Mario L. Guariña III, and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Jane Aurora C. Lantion; *id.* at 39-50.

[3] *Id.* at 52.

[4] Pursuant to the *Amended Rules of Procedure in the Administrative Investigation of GSIS Employees and Officials in relation to the Uniform Rules of Procedure on Administrative Cases in the Civil Service*.

[5] Dated July 1, 1999.

[6] *Rollo*, pp. 53-55.

GSIS Vice President Romeo Quilatan; the loans were fully paid, without causing any prejudice to the service.

In a July 26, 2006 order,[7] Hearing Officer Violeta C.F. Quintos set the pre-hearing conference on August 17, 2006 at the GSIS Legazpi Field Office. A week later, in an August 2, 2006 order,[8] the Hearing Officer modified her previous order and set the venue at the GSIS Naga Field Office.

Atty. Molina filed a motion for reconsideration, pointing out that the GSIS Rules of Procedure set the venue of pre-hearing conferences at the GSIS Main Office in Pasay City. The Hearing Officer denied the motion for reconsideration in her August 11, 2006 order,[9] stating that the prosecution requested the change of venue. Copies of the order were duly sent via fax and regular mail. *Atty. Molina received the faxed copy on August 14, 2006, while he received the registered mail on August 18, 2006.*

At the scheduled August 17, 2006 pre-hearing conference, the petitioner and Atty. Molina failed to appear. Atty. Molina likewise failed to submit the petitioner's verification of the answer and to submit a letter of authority to represent the petitioner in the case. On the prosecution's motion, the Hearing Officer declared the petitioner to have waived his right to file his answer and to have a formal investigation of his case, and expunged the unverified answer and other pleadings filed by Atty. Molina from the records. The case was then submitted for resolution based on the prosecution's submitted documents.[10]

GSIS President and General Manager Winston F. Garcia found the petitioner guilty of grave misconduct and conduct prejudicial to the best interest of the service.[11] He noted that the evidence presented by the prosecution clearly showed that the petitioner's

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[7] *Id.* at 56-57.

[8] *Id.* at 58-59.

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

[10] *Id.* at 93-94.

[11] Decision dated February 21, 2007; *id.* at 95-105.

approval of the requests for salary loans of eight GSIS Naga Field Office employees was improper because they lacked the contribution requirements under PPG No. 153-99. He also noted that the pleadings filed by Atty. Molina, as the petitioner's purported counsel, were expunged from the records, but he, nonetheless, discussed the defenses raised in these pleadings and found them unmeritorious.

Noting that this was the petitioner's second administrative offense (he had previously been suspended for one [1] year for gross neglect of duty for failing to implement the recommendations of the Internal Audit Services Group pertaining to the handling of returned-to-sender checks, resulting in a GSIS Naga Field Office Cashier defrauding the GSIS of checks), Garcia imposed the penalty of dismissal with the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility and perpetual disqualification from re-employment in the government. On the same date, the GSIS Board of Trustees approved the decision.[12]

In a June 6, 2007 resolution,[13] Garcia denied the petitioner's motion for reconsideration, noting that Atty. Molina had no authority to appear for and in behalf of the petitioner, having failed to submit any formal written authority; that the petitioner's answer was unverified; and that, in any event, the petitioner had no evidence sufficient to overturn the evidence presented by the prosecution.

The petitioner appealed to the Civil Service Commission (*CSC*), reiterating his arguments of denial of due process and the lack of evidence against him.

The CSC rejected the petitioner's claim of due process violation, finding that the petitioner's filing of a motion for reconsideration cured whatever procedural due process defect there might have been.[14] It noted that the records of the case showed that the petitioner approved the loan applications despite

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[12] *Id.* at 106-107.

[13] *Id.* at 108-115.

[14] Resolution dated October 8, 2007; *id.* at 117-125.

the patent ineligibility of the loan applicants. The CSC thus affirmed the petitioner's dismissal for grave misconduct, but added as an accessory penalty the prohibition from taking any civil service examination.

The petitioner elevated his case to the CA through a petition for review under Rule 43 of the Rules of Court.

In its December 10, 2009 decision,[15] the CA dismissed the petition, and denied the subsequent motion for reconsideration,[16] finding no reversible error in the challenged CSC Resolution.

The Petition

In the petition before us, the petitioner argues that he was denied due process when the August 17, 2006 pre-hearing conference was conducted in his absence without prior notice of the August 11, 2006 order denying the motion for reconsideration of the order of change of venue, since Atty. Molina received by registered mail a copy of the August 11, 2006 order only on August 18, 2006, or a day after the August 17, 2006 pre-hearing conference. The petitioner pleads good faith in approving the loans based on an existing GSIS Board Resolution which authorizes branch managers to approve loans for meritorious and special reasons; the loans were cleared by the Commission on Audit and settled by the borrowers. He contends that the penalty of dismissal is too severe in the absence of any wrongful intent and given his 40 years of government service.

The Case for Respondent GSIS

The GSIS submits that the petitioner was not denied due process because Atty. Molina received on August 14, 2006 a fax copy of the August 11, 2006 order. On the merits of the case, the GSIS maintains that the evidence on record duly established the petitioner's administrative culpability for acts inimical to the interest of the public, warranting his dismissal from the service; the penalty of dismissal was warranted since this was the petitioner's second administrative offense.

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[15] *Supra* note 2.

[16] *Supra* note 3.

The Issues

The issues are: (1) whether the petitioner was denied due process, and (2) whether there was substantial evidence to support petitioner's dismissal from the service.

The Court's Ruling

We PARTIALLY GRANT the petition and modify the findings of the CA pertaining to the petitioner's administrative liability.

The Procedural Due Process Issue

Procedural due process is the constitutional standard demanding that notice and an opportunity to be heard be given before judgment is rendered. As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain; the essence of due process is in the opportunity to be heard.[17] A formal or trial-type hearing is not always necessary.

In this case, while the petitioner did not participate in the August 17, 2006 pre-hearing conference (despite receipt on August 14, 2006 of a fax copy of the August 11, 2006 order), Garcia's decision of February 21, 2007 duly considered and discussed the defenses raised in Atty. Molina's pleadings, although the answer was ordered expunged from the records because it was unverified and because Atty. Molina failed to submit a letter of authority to represent the petitioner.

What negates any due process infirmity is the petitioner's subsequent motion for reconsideration which cured whatever defect the Hearing Officer might have committed in the course of hearing the petitioner's case.[18] Again, Garcia duly considered the arguments presented in the petitioner's motion for

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[17] *Catmon Sales International Corporation v. Yngson, Jr.*, G.R. No. 179761, January 15, 2010, 610 SCRA 236, 244; and *Cuenca v. Atas*, G.R. No. 146214, October 5, 2007, 535 SCRA 48, 72.

[18] *Autencio v. City Administrator Mañara*, 489 Phil. 752, 760-761 (2005); *Cordenillo v. Hon. Exec. Secretary*, 342 Phil. 618, 643 (1997); and *Rubenecia v. CSC*, 314 Phil. 612, 631 (1995).

reconsideration when he rendered the June 6, 2007 resolution.[19] Thus, the petitioner was actually heard through his pleadings.

Findings of facts of administrative bodies accorded finality when supported by substantial evidence

Misconduct has a legal and uniform definition. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official.[20] A misconduct is grave where the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are present.[21] Otherwise, a misconduct is only simple.

No doubt exists in our mind that the petitioner committed misconduct in this case. The records clearly show that the petitioner committed the acts complained of, *i.e.*, he approved the requests for salary loans of eight GSIS Naga Field Office employees who lacked the necessary contribution requirements under PPG No. 153-99. After a careful review of the records, however, we disagree with the findings of the GSIS, the CSC and the CA that the petitioner's acts constituted grave misconduct. While we accord great respect to the factual findings of administrative agencies that misconduct was committed, we cannot characterize the offense committed as grave. No substantial evidence was adduced to support the elements of "corruption," "clear intent to violate the law" or "flagrant disregard of established rule" that must be present to characterize the misconduct as grave.

We are aware that to the CSC, the mere act of approving the loan applications on several occasions proves the element of flagrant disregard of established rules to constitute grave misconduct. Thus, it said:

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[19] *Supra* note 13.

[20] *Vertudes v. Buenaflor*, G.R. No. 153166, December 16, 2005, 478 SCRA 210, 233.

[21] *Id.* at 233-234.

The act of the appellant in approving salary loan applications of his subordinates over and above the prescribed rates under the GSIS policy, not only once but several times, indicates his flagrant and wanton transgression of the said policy. He, in fact, abused his authority in doing so.[22]

Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule;[23] in the repeated voluntary disregard of established rules in the procurement of supplies;[24] in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages;[25] when several violations or disregard of regulations governing the collection of government funds were committed;[26] and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties.[27] **The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.**

Under the circumstances of the present case, we do not see the type of open defiance and disregard of GSIS rules that the CSC observed. In fact, the CSC's findings on the petitioner's actions prior to the approval of the loans negate the presence of any intent on the petitioner's part to deliberately defy the policy of the GSIS. First, GSIS branch managers have been granted in the past the authority to approve loan applications

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[22] *Rollo,* p. 125.

[23] *Narvasa v. Sanchez, Jr.*, G.R. No. 169449, March 26, 2010, 616 SCRA 586, 592.

[24] *Roque v. Court of Appeals*, G.R. No. 179245, July 23, 2008, 559 SCRA 660, 674.

[25] *Bulalat v. Adil,* A.M. No. SCC-05-10-P, October 19, 2007, 537 SCRA 44, 49.

[26] *Valera v. Office of the Ombudsman,* G.R. No. 167278, February 27, 2008, 547 SCRA 42, 64.

[27] Re: *Letter of Judge Lorenza Bordios Paculdo, MTC, Branch 1, San Pedro, Laguna,* A.M. No. P-07-2346, February 18, 2008, 546 SCRA 13, 21.

beyond the prescribed requirements of GSIS; second, there was a customary lenient practice in the approval of loans exercised by some branch managers notwithstanding the existing GSIS policy; and third, the petitioner first sought the approval of his immediate supervisor before acting on the loan applications. These circumstances run counter to the characteristic flagrant disregard of the rules that grave misconduct requires.

Thus, the petitioner's liability under the given facts only involves simple misconduct. As Branch Manager of the GSIS Naga Field Office, he is presumed to know all existing policies, guidelines and procedures in carrying out the agency's mandate in the area. By approving the loan applications of eight GSIS Naga Field Office employees who did not fully meet the required qualifications, he committed a serious lapse of judgment sufficient to hold him liable for simple misconduct.

The Revised Uniform Rules of the Civil Service (*Civil Service Rules*) classifies simple misconduct as a less grave offense. Under Section 52(B) (2), Rule IV of the Civil Service Rules, the commission of simple misconduct is penalized by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. While records show that this is not the petitioner's first offense as he was previously suspended for one (1) year for neglect of duty, we believe that his dismissal would be disproportionate to the nature and effect of the transgression he committed as the GSIS did not suffer any prejudice through the loans he extended; these loans were for GSIS employees and were duly paid for. Thus, for his second simple misconduct, we impose on the petitioner the penalty of suspension from the lapse of his preventive suspension by GSIS up to the finality of this Decision.[28]

WHEREFORE, premises considered, we *PARTIALLY GRANT* the petition for review *on certiorari* and *MODIFY* the assailed decision and resolution of the Court of Appeals. Petitioner Monico K. Imperial, Jr. is found GUILTY of *SIMPLE*

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[28] *Fact-Finding and Intelligence Bureau, Office of the Ombudsman v. Campaña*, G.R. No. 173865, August 20, 2008, 562 SCRA 680, 694.

MISCONDUCT and is hereby *SUSPENDED* from the time the preventive suspension that GSIS imposed lapsed, up to the finality of this Decision.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Corona, C.J., with concurring opinion.

CONCURRING OPINION

CORONA, *C.J.*:

Petitioner Monico K. Imperial, Jr. was charged with dishonesty, grave misconduct and conduct prejudicial to the best interest of the service. The case against him was based on his approval as branch manager of the Naga Field Office of respondent Government Service Insurance System (GSIS) of the requests for salary loan of eight GSIS Naga Field Office employees who lacked the contribution requirements under GSIS Policy and Procedural Guidelines (PPG) No. 153-99. In so doing, he allegedly gave unwarranted benefits through evident bad faith, manifest partiality or gross negligence, and caused injury to the pension fund. He was subsequently found guilty of grave misconduct. He was ordered dismissed from the service with the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, perpetual disqualification from re-employment in the government service and prohibition from taking any civil service examination.

Petitioner cries injustice and denial of due process as the venue was transferred to Legazpi City when GSIS rules clearly provided that the hearings should have been in the GSIS main office. He also denies administrative liability. He claims that he acted in good faith because his action on the subject loans was made relying on the common practice of branch managers and with clearance from a ranking officer of the GSIS. He further points out that there was no damage whatsoever to the GSIS as

the subject loans were not only cleared by the Commission on Audit (COA) but were also repaid in full together with interest.

The *ponencia* partially grants the present petition, modifies the decision of the Court of Appeals, finds petitioner guilty of simple misconduct and orders his suspension.

I agree with the *ponencia* that there is no merit to petitioner's claim of denial of due process. He was duly notified of the charges against him and he was heard as to his defenses. I also join the *ponencia* in finding that, based on the evidence presented in this case, petitioner should be held liable for simple misconduct only.

The *ponencia* ably discussed the factual and legal basis of the Court's action in this case. Nonetheless, I submit this concurrence to express my views on the matter.

The GSIS and CSC anchored their finding of petitioner's alleged grave misconduct on petitioner's act of approving the applications for salary loans of eight GSIS Naga Field Office employees who lacked the contribution requirements under GSIS PPG No. 153-99. This, to my view, is insufficient to hold petitioner liable for the serious administrative offense of grave misconduct.

There is no question that GSIS PPG No. 153-99 lays down the guidelines governing the grant of salary loans, including contribution requirements. Thus, there is also no argument that non-compliance with GSIS PPG No. 153-99 constitutes misconduct, a "transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment."[1]

While misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose, **it does not necessarily imply corruption**,[2]

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[1] *Office of the Ombudsman v. Magno*, G.R. No. 178923, 27 November 2008.

[2] *Id.*

the element which qualifies misconduct as grave misconduct. Thus, unless there is substantial evidence of corruption, the transgression of an established rule is properly characterized as simple misconduct only.

Indeed, simple misconduct is distinct and separate from grave misconduct.[3] In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest.[4] A public officer shall be liable for grave misconduct only when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest.[5] These qualifying elements must also be established by substantial evidence,[6] **separate from the showing of the misconduct itself**. Here, as already explained earlier, the administrative agencies considered the act constituting the misconduct, that is, the non-observance of GSIS PPG No. 153-99, as the **very same proof** of the qualifying element of flagrant disregard of an established rule.

Petitioner may not successfully evade liability by invoking an alleged practice, based on previous policy and procedural guidelines, among branch managers to approve applications for salary loan (though lacking in contribution requirement). That practice, assuming it existed, cannot override the clear provisions of GSIS PPG No. 153-99. Neither may petitioner successfully rely on the clearance given by then GSIS Vice President Romeo Quilatan for him to approve the subject salary loans. Quilatan had no authority to overrule the requirements of GSIS PPG No. 153-99.

Nevertheless, while these two circumstances did not exculpate him from any administrative liability, they tended to show that

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[3] *Id.*

[4] *Landrito v. Civil Service Commission*, G.R. Nos. 104304-05, 22 June 1993, 223 SCRA 564.

[5] *Id.*

[6] *Roque v. Court of Appeals*, G.R. No. 179245, 23 July 2008.

petitioner **did not willfully violate** GSIS PPG No. 153-99 and that he **did not flagrantly disregard** existing rules. On the contrary, they evinced good faith on the part of petitioner and negated the elements that would have qualified his misconduct as a grave misconduct. In fact, they support the view that there exists no such relevant evidence as a reasonable mind might accept as adequate to support the conclusion that petitioner had the clear intent to violate GSIS PPG No. 153-99 or to flagrantly disregard it.

In fact, the GSIS decision itself indicates that the GSIS doubted whether it properly characterized petitioner's offense as grave misconduct. In imposing the penalty of dismissal for grave misconduct on petitioner, the GSIS raised the matter of petitioner's previous administrative liability for gross neglect of duty and used this circumstance to justify the imposition of the penalty of dismissal "as maximum penalty" for grave misconduct.[7] However, **the GSIS did not need to invoke this circumstance if it was indeed sure of its finding that petitioner committed grave misconduct**. Under the Revised Uniform Rules on Administrative Cases in the Civil Service,[8] grave misconduct is a grave offense which merits the supreme penalty of dismissal even if committed for the first time.

The way I see it, the GSIS was in doubt of its own finding of grave misconduct on the part of petitioner. This doubt should be resolved in favor of petitioner.

In *Bureau of Internal Revenue (BIR) v. Organo*,[9] respondent Lilia B. Organo, a revenue collection officer of the BIR Revenue Region 7, Quezon City, was **charged with grave misconduct** for receiving without proper authority withholding tax returns with corresponding check payments from several taxpayers. She subsequently delivered them to a BIR revenue clerk who was

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[7] GSIS decision dated February 21, 2007 in ADM Case No. 05-075 (*GSIS v. Monico K. Imperial, Jr.*), *rollo*, pp. 164, 173-174.

[8] Section 52(A)(3), Rule IV, Revised Uniform Rules on Administrative Cases in the Civil Service.

[9] G.R. No. 149549, 26 February 2004.

also not authorized to receive the same. The check payments were subsequently deposited in an authorized BIR account with the Land Bank of the Philippines.

Thereafter, checks were issued to different payees in various amounts drawn against the funds of the said unauthorized BIR account and were subsequently encashed to the damage and prejudice of the government.[10] While the Office of the Ombudsman found Organo liable for grave misconduct as her acts violated Revenue Regulations No. 4-93, the Court held that she **only committed simple misconduct as the qualifying element of flagrancy was not established**.[11]

Following *BIR v. Organo* therefore, absent any substantial evidence of corruption or flagrancy **independent of** the substantial evidence of petitioner's misconduct of non-compliance with GSIS PPG No. 153-99, petitioner should be held liable for simple misconduct only.

While the penalty provided by the Civil Service Rules for the first offense of simple misconduct is suspension for one month and one day to six months,[12] the records of the case show that this is not his first administrative offense. He was suspended for one year in Administrative Case No. 04-06 for gross neglect of duty. And while dismissal is the penalty for the commission of simple misconduct for the second time,[13] still petitioner cannot be meted that extreme penalty because **his first offense was not for simple misconduct**. Dismissal is imposed where both the second and first offenses are for simple misconduct.

Moreover, it is significant to note here that the loans subject of this case, including the interest thereon, were all fully settled.

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[10] *Id.*

[11] *Id.*

[12] Section 52(B)(2), Rule IV, Revised Uniform Rules on Administrative Cases in the Civil Service.

[13] *Id.*

The said loans were also cleared by the COA. Thus, any damage to the GSIS would have been completely negligible at best. Coupled with petitioner's reliance in good faith on the then existing common practice of GSIS branch managers and the prior clearance given by his superior, the totality of the circumstances merit a more lenient treatment of petitioner's misconduct. In addition, his 40 years in government service should not be simply ignored but should be taken in his favor as a mitigating factor, given that there was never any hint or accusation of corruption or flagrancy against him.

Finally, petitioner was one of the prominent leaders of the almost daily protest rallies and demonstrations against the GSIS management at that time. There was clearly a deep-seated resentment against him because of that. That triggered the filing of administrative charges against petitioner, including those which led to this case. The Court must not allow itself to be used as an instrument of personal vendetta.

In view of the above considerations, as well as for considerations of justice and equity, petitioner should just be deemed suspended for the entire duration of the pendency of this case, reckoned from his receipt of the GSIS resolution dated June 6, 2007 which denied his motion for reconsideration. In other words, his suspension for more than four years ought to be more than sufficient penalty for his administrative transgression.

ACCORDINGLY, I vote that the petition be **GRANTED in PART.** The decision and resolution of the Court of Appeals, which affirmed the respective resolution and decision of the Civil Service Commission and the Government Service Insurance System finding petitioner Monico K. Imperial, Jr. guilty of grave misconduct and dismissing him from the service with all the accessory penalties, should be **MODIFIED** insofar as petitioner should be found guilty of simple misconduct only and considered as **SUSPENDED** for the duration speified in the *en banc* decision.

EN BANC

[G.R. No. 194143. October 4, 2011]

SALVADOR D. VIOLAGO, SR., *petitioner, vs.* **COMMISSION ON ELECTIONS and JOAN V. ALARILLA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; ELECTION CONTEST; PURPOSE; TO ASCERTAIN WHETHER THE CANDIDATE PROCLAIMED BY THE BOARD OF CANVASSERS IS THE LAWFUL CHOICE OF THE PEOPLE. — In *Pacanan v. Commission on Elections*, this Court . . . held thus: "x x x An election contest, unlike an ordinary civil action, is clothed with a public interest. The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. What is sought is the correction of the canvass of votes, which was the basis of proclamation of the winning candidate. An election contest therefore involves not only the adjudication of private and pecuniary interests of rival candidates but paramount to their claims is the deep public concern involved and the need of dispelling the uncertainty over the real choice of the electorate. And the court has the corresponding duty to ascertain, by all means within its command, who is the real candidate elected by the people. x x x"

2. ID.; ELECTION LAWS; COMELEC RULES OF PROCEDURE; MANDATED LIBERAL CONSTRUCTION; TO ACHIEVE A JUST, EXPEDITIOUS AND INEXPENSIVE DETERMINATION AND DISPOSITION OF EVERY ACTION AND PROCEEDING BROUGHT BEFORE THE COMELEC. — In *Pacanan v. Commission on Election*, this Court, in clarifying the mandated liberal construction of election laws, held thus: "x x x Moreover, the Comelec Rules of Procedure are subject to a liberal construction. This liberality is for the purpose of promoting the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and for achieving just, expeditious and inexpensive determination and

disposition of every action and proceeding brought before the Comelec. Thus, we have declared: It has been frequently decided, and it may be stated as a general rule recognized by all courts, that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. An election contest, unlike an ordinary action, is imbued with public interest since it involves not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift. Moreover, it is neither fair nor just to keep in office for an uncertain period one who's right to it is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action."

3. **ID.; ID.; ID.; ID.; IN THE CASE AT BAR, FAIRNESS AND PRUDENCE DICTATED THAT THE COMELEC 2ND DIVISION SHOULD HAVE FIRST WAITED FOR THE REQUESTED CERTIFICATION BEFORE DECIDING WHETHER OR NOT TO DISMISS PETITIONER'S PROTEST ON TECHNICAL GROUNDS. —** However, a perusal of the records of the instant case would show that petitioner was able to present a copy of the Certification issued by the Postmaster of Meycauayan City, Bulacan, attesting to the fact that the Order sent by the COMELEC to petitioner's counsel informing the latter of the scheduled hearing set on August 12, 2010 and directing him to file his Preliminary Conference Brief was received only on August 16, 2010. Petitioner likewise submitted an advisory issued by the Chief of the Operations Division of the TELECOM Office in Meycauayan that the telegraph service in the said City, through which the COMELEC also supposedly sent petitioner a notice through telegram, has been terminated and the office permanently closed and transferred to Sta. Maria, Bulacan as of April 1, 2009. Respondent did not question the authenticity of these documents. On the basis of the abovementioned documents, the Court finds no justifiable reason why the COMELEC 2nd Division hastily dismissed petitioner's election

protest. There is no indication that the COMELEC 2nd Division made prior verification from the proper or concerned COMELEC department or official of petitioner's allegation that he did not receive a copy of the subject Order. In fact, it was only on the day following such dismissal that the Electoral Contests Adjudication Department, through the 2nd Division Clerk, sent a letter to the Postmaster of Meycauayan City, Bulacan requesting for a certification as to the date of receipt of the said Order stating therein that the "certification is urgently needed for the proper and appropriate disposition" of petitioner's election protest. Fairness and prudence dictate that the COMELEC 2nd Division should have first waited for the requested certification before deciding whether or not to dismiss petitioner's protest on technical grounds.

4. ID.; ID.; ID.; THE PREVAILING PRINCIPLE IS THAT THE COMELEC'S RULES OF PROCEDURE FOR THE VERIFICATION OF PROTESTS AND CERTIFICATIONS OF NON-FORUM SHOPPING SHOULD BE LIBERALLY CONSTRUED. — However, the settled rule is that the COMELEC Rules of Procedure are subject to liberal construction. In *Quintos v. Commission on Elections*, this Court held that "the alleged lack of verification of private respondent's Manifestation and Motion for Partial Reconsideration is merely a technicality that should not defeat the will of the electorate. The COMELEC may liberally construe or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before the COMELEC." In the same manner, this Court, in the case of *Panlilio v. Commission on Elections*, restated the prevailing principle that the COMELEC's rules of procedure for the verification of protests and certifications of non-forum shopping should be liberally construed. x x x This principle was reiterated in the more recent consolidated cases of *Tolentino v. Commission on Elections*, and *De Castro v. Commission on Elections*, where the Court held that in exercising its powers and jurisdiction, as defined by its mandate to protect the integrity of elections, the COMELEC "must not be straitjacketed by procedural rules in resolving election disputes."

5. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, NOTWITHSTANDING THE FACT THAT PETITIONER'S MOTION FOR

RECONSIDERATION WAS NOT VERIFIED, THE COMELEC *EN BANC* SHOULD HAVE CONSIDERED THE MERITS OF SAID MOTION. — In the present case, notwithstanding the fact that petitioner's motion for reconsideration was not verified, the COMELEC *en banc* should have considered the merits of the said motion in light of petitioner's meritorious claim that he was not given timely notice of the date set for the preliminary conference.

6. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; VIOLATION OF DUE PROCESS OF LAW. — The essence of due process is to be afforded a reasonable opportunity to be heard and to submit any evidence in support of one's claim or defense. It is the denial of this opportunity that constitutes violation of due process of law. More particularly, procedural due process demands prior notice and hearing.

7. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, IT CANNOT BE DENIED THAT PETITIONER WAS NOT AFFORDED REASONABLE NOTICE AND TIME TO ADEQUATELY PREPARE FOR AND SUBMIT HIS BRIEF. — As discussed above, the fact that petitioner somehow acquired knowledge or information of the date set for the preliminary conference by means other than the official notice sent by the COMELEC is not an excuse to dismiss his protest, because it cannot be denied that he was not afforded reasonable notice and time to adequately prepare for and submit his brief. This is precisely the reason why petitioner was only able to file his Preliminary Conference Brief on the day of the conference itself. Petitioner's counsel may not likewise be blamed for failing to appear during the scheduled conference because of prior commitments and for, instead, filing an Urgent Motion to Reset Preliminary Conference.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; IN THE CASE AT BAR, THE COMELEC 2ND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING PETITIONER'S PROTEST. — Petitioner should not be penalized for belatedly filing his Preliminary Conference Brief. While it may be argued that petitioner acquired actual knowledge of the scheduled conference a day prior to the date set through

means other than the official notice sent by the COMELEC, the fact remains that, unlike his opponent, he was not given sufficient time to thoroughly prepare for the said conference. A one-day delay, as in this case, does not justify the outright dismissal of the protest based on technical grounds where there is no indication of intent to violate the rules on the part of petitioner and the reason for the violation is justifiable. Thus, the COMELEC 2nd Division committed grave abuse of discretion in dismissing petitioner's protest.

9. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE COMELEC *EN BANC* IS ALSO GUILTY OF GRAVE ABUSE OF DISCRETION. — Hence, by denying petitioner's motion for reconsideration, without taking into consideration the violation of his right to procedural due process, the COMELEC *en banc* is also guilty of grave abuse of discretion.

APPEARANCES OF COUNSEL

Llauder Law Office for petitioner.
The Solicitor General for public respondent.
Romulo B. Macalintal for private respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to set aside the August 12, 2010 Order of the 2nd Division of the Commission on Elections (COMELEC) and the Order of the COMELEC *en banc* dated September 21, 2010 in EPC No. 2010-23. The August 12, 2010 Order dismissed the election protest filed by herein petitioner against herein private respondent, while the September 21, 2010 Order denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

Herein petitioner and private respondent were candidates for the mayoralty race during the May 10, 2010 elections in the

City of Meycauayan, Bulacan. Private respondent was proclaimed the winner.

On May 21, 2010, petitioner filed a Petition[1] with the COMELEC questioning the proclamation of private respondent on the following grounds: (1) massive vote-buying; (2) intimidation and harassment; (3) election fraud; (4) non-appreciation by the Precinct Count Optical Scan (PCOS) machines of valid votes cast during the said election; and, (5) irregularities due to non-observance of the guidelines set by the COMELEC.

On June 15, 2010, private respondent filed her Answer with Motion to Set for Hearing Affirmative Defenses in the Nature of a Motion to Dismiss for Being Insufficient in Form and Substance.[2]

Thereafter, on July 16, 2010, the COMELEC 2nd Division issued an Order[3] setting the preliminary conference on August 12, 2010 and directing the parties to file their Preliminary Conference Briefs at least one (1) day before the scheduled conference.

On August 11, 2010, private respondent filed her Preliminary Conference Brief.[4]

Petitioner, on the other hand, filed his Brief[5] on the day of the scheduled preliminary conference. He, likewise, filed an Urgent Motion to Reset Preliminary Conference on the ground that he did not receive any notice and only came to know of it when he inquired with the COMELEC a day before the scheduled conference. Petitioner also claimed that on the date set for the preliminary conference, his counsel and his associate were scheduled to appear before different tribunals in connection with other cases they were handling.[6] Subsequently, petitioner and

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[1] Annex "D" to Petition, *rollo*, pp. 22-36.

[2] Annex "E" to Petition, *id.* at 59-67.

[3] Annex "F" to Petition, *id.* at 77.

[4] Annex "H" to Petition, *id.* at 79-84.

[5] Annex "J" to Petition, *id.* at 88-91.

[6] Annex "I" to Petition, *id.* at 85.

his counsel failed to appear during the actual conference on August 12, 2010. On even date, private respondent's counsel moved for the dismissal of the case.

In its assailed Order[7] dated August 12, 2010, the COMELEC 2nd Division dismissed petitioner's protest on the ground that the latter belatedly filed his Brief in violation of the COMELEC rule on the filing of briefs.

On August 19, 2010, petitioner filed a Motion for Reconsideration[8] with the COMELEC *en banc* contending that it was only on August 16, 2010 that he received a copy of the Order of the COMELEC which set the preliminary conference on August 12, 2010.

In its second assailed Order[9] dated September 21, 2010, the COMELEC *en banc* denied petitioner's Motion for Reconsideration on the ground that petitioner failed to file a verified motion in violation of Section 3, Rule 19 of the COMELEC Rules of Procedure.

Hence, the present petition based on the following grounds:

1. No notice of preliminary conference hearing was sent to petitioner before the August 12, 2010 hearing.

2. The COMELEC did not exercise sound judicial discretion when it denied the Motion for Reconsideration.

3. Petitioner is totally blameless and the COMELEC committed undue haste and speed in disposing the case.

4. The denial of the MR, although within the discretion of the COMELEC, was not based on sound judicial discretion.[10]

Petitioner's basic contention is that the COMELEC 2nd Division and the COMELEC *en banc* committed grave abuse of discretion

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[7] Annex "A" to Petition, *id.* at 18.

[8] Annex "M" to Petition, *id.* 94-98.

[9] Annex "B" to Petition, *id.* at 19-20.

[10] *Rollo*, pp. 9-12.

in dismissing his electoral protest and in denying his motion for reconsideration, respectively.

The Court finds the petition meritorious.

The COMELEC 2nd Division's reason for dismissing petitioner's election protest is the latter's failure to timely file his Preliminary Conference Brief.

However, a perusal of the records of the instant case would show that petitioner was able to present a copy of the Certification[11] issued by the Postmaster of Meycauayan City, Bulacan, attesting to the fact that the Order sent by the COMELEC to petitioner's counsel informing the latter of the scheduled hearing set on August 12, 2010 and directing him to file his Preliminary Conference Brief was received only on August 16, 2010. Petitioner likewise submitted an advisory issued by the Chief of the Operations Division of the TELECOM Office in Meycauayan that the telegraph service in the said City, through which the COMELEC also supposedly sent petitioner a notice through telegram, has been terminated and the office permanently closed and transferred to Sta. Maria, Bulacan as of April 1, 2009.[12] Respondent did not question the authenticity of these documents.

On the basis of the abovementioned documents, the Court finds no justifiable reason why the COMELEC 2nd Division hastily dismissed petitioner's election protest. There is no indication that the COMELEC 2nd Division made prior verification from the proper or concerned COMELEC department or official of petitioner's allegation that he did not receive a copy of the subject Order. In fact, it was only on the day following such dismissal that the Electoral Contests Adjudication Department, through the 2nd Division Clerk, sent a letter to the Postmaster of Meycauayan City, Bulacan requesting for a certification as to the date of receipt of the said Order stating therein that the "certification is urgently needed for the proper and appropriate

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[11] Records, p. 87.

[12] *Id*. at 88.

disposition"[13] of petitioner's election protest. Fairness and prudence dictate that the COMELEC 2nd Division should have first waited for the requested certification before deciding whether or not to dismiss petitioner's protest on technical grounds.

Petitioner should not be penalized for belatedly filing his Preliminary Conference Brief. While it may be argued that petitioner acquired actual knowledge of the scheduled conference a day prior to the date set through means other than the official notice sent by the COMELEC, the fact remains that, unlike his opponent, he was not given sufficient time to thoroughly prepare for the said conference. A one-day delay, as in this case, does not justify the outright dismissal of the protest based on technical grounds where there is no indication of intent to violate the rules on the part of petitioner and the reason for the violation is justifiable. Thus, the COMELEC 2nd Division committed grave abuse of discretion in dismissing petitioner's protest.

With respect to the COMELEC *en banc's* denial of petitioner's Motion for Reconsideration, it is true that Section 3, Rule 20 of the COMELEC Rules of Procedure on Disputes in an Automated Election System,[14] as well as Section 3, Rule 19 of the COMELEC Rules of Procedure, clearly require that a motion for reconsideration should be verified. However, the settled rule is that the COMELEC Rules of Procedure are subject to liberal construction.

In *Quintos v. Commission on Elections*,[15] this Court held that "the alleged lack of verification of private respondent's Manifestation and Motion for Partial Reconsideration is merely a technicality that should not defeat the will of the electorate. The COMELEC may liberally construe or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before the COMELEC."[16]

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[13] See Letter from Electoral Contests Adjudication Department dated August 13, 2010, *id.* at 80.

[14] Resolution No. 8804 approved by the COMELEC *en banc* on March 22, 2010.

[15] 440 Phil. 1045 (2002).

[16] *Id.* at 1062-1063.

In the same manner, this Court, in the case of *Panlilio v. Commission on Elections*,[17] restated the prevailing principle that the COMELEC's rules of procedure for the verification of protests and certifications of non-forum shopping should be liberally construed.

In *Pacanan v. Commission on Elections*,[18] this Court, in clarifying the mandated liberal construction of election laws, held thus:

> x x x An election contest, unlike an ordinary civil action, is clothed with a public interest. The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. What is sought is the correction of the canvass of votes, which was the basis of proclamation of the winning candidate. An election contest therefore involves not only the adjudication of private and pecuniary interests of rival candidates but paramount to their claims is the deep public concern involved and the need of dispelling the uncertainty over the real choice of the electorate. And the court has the corresponding duty to ascertain, by all means within its command, who is the real candidate elected by the people.
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> Moreover, the Comelec Rules of Procedure are subject to a liberal construction. This liberality is for the purpose of promoting the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and for achieving just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Comelec. Thus, we have declared:
>
> > It has been frequently decided, and it may be stated as a general rule recognized by all courts, that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. An election contest, unlike an ordinary action, is imbued with public interest since it involves not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the

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[17] G.R. No. 181478, July 15, 2009, 593 SCRA 139, 150.

[18] G.R. No. 186224, August 25, 2009, 597 SCRA 189.

> uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift. Moreover, it is neither fair nor just to keep in office for an uncertain period one who's right to it is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action.[19]

This principle was reiterated in the more recent consolidated cases of *Tolentino v. Commission on Elections*,[20] and *De Castro v. Commission on Elections*,[21] where the Court held that in exercising its powers and jurisdiction, as defined by its mandate to protect the integrity of elections, the COMELEC "must not be straitjacketed by procedural rules in resolving election disputes."

In the present case, notwithstanding the fact that petitioner's motion for reconsideration was not verified, the COMELEC *en banc* should have considered the merits of the said motion in light of petitioner's meritorious claim that he was not given timely notice of the date set for the preliminary conference. The essence of due process is to be afforded a reasonable opportunity to be heard and to submit any evidence in support of one's claim or defense.[22] It is the denial of this opportunity that constitutes violation of due process of law.[23] More particularly, procedural due process demands prior notice and hearing.[24] As discussed above, the fact that petitioner somehow acquired

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[19] *Id.* at 203-204, citing *Barroso v. Ampig*, G.R. No. 138218, March 17, 2000, 328 SCRA 530, 541-542.

[20] G.R. Nos. 187958, 187961, and 187962, April 7, 2010, 617 SCRA 575, 598.

[21] G.R. Nos. 187966-68, April 7, 2010, 617 SCRA 575, 598.

[22] *Octava v. Commission on Elections*, G.R. No. 166105, March 22, 2007, 518 SCRA 759, 763; *Gomez v. Alcantara*, G.R. No. 179556, February 13, 2009, 579 SCRA 472, 488.

[23] *Octava v. Commission on Elections, supra*, at 764.

[24] *Namil v. Commission on Elections*, 460 Phil. 751, 760 (2003), citing *Sandoval v. Commission on Elections*, 380 Phil. 375, 392 (2000).

knowledge or information of the date set for the preliminary conference by means other than the official notice sent by the COMELEC is not an excuse to dismiss his protest, because it cannot be denied that he was not afforded reasonable notice and time to adequately prepare for and submit his brief. This is precisely the reason why petitioner was only able to file his Preliminary Conference Brief on the day of the conference itself. Petitioner's counsel may not likewise be blamed for failing to appear during the scheduled conference because of prior commitments and for, instead, filing an Urgent Motion to Reset Preliminary Conference.

Hence, by denying petitioner's motion for reconsideration, without taking into consideration the violation of his right to procedural due process, the COMELEC *en banc* is also guilty of grave abuse of discretion.

WHEREFORE, the petition for *certiorari* is *GRANTED*. The Order of the COMELEC 2nd Division dated August 12, 2010, as well as the Order of the COMELEC *en banc* dated September 21, 2010, in EPC No. 2010-23 are *REVERSED* and *SET ASIDE*. Petitioner's election protest is *REINSTATED*. The COMELEC 2nd Division is hereby *DIRECTED* to continue with the proceedings in EPC No. 2010-23 and to resolve the same with dispatch.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 9000. October 5, 2011]

TOMAS P. TAN, JR., *complainant, vs.* **ATTY. HAIDE V. GUMBA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS; DUTY OF A LAWYER NOT TO ENGAGE IN UNLAWFUL, DISHONEST AND IMMORAL OR DECEITFUL CONDUCT. — Well entrenched in this jurisdiction is the rule that a lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court. Verily, Canon 7 of the Code of Professional Responsibility mandates all lawyers to uphold at all times the dignity and integrity of the legal profession. Lawyers are similarly required, under Rule 1.01, Canon 1 of the same Code, not to engage in any unlawful, dishonest and immoral or deceitful conduct.

2. ID.; ID.; ID.; ID.; LAWYER LIABLE FOR GROSS MISCONDUCT FOR DECEIVING COMPLAINANT INTO LENDING MONEY; CASE AT BAR. — Here, respondent's actions clearly show that she deceived complainant into lending money to her through the use of documents and false representations and taking advantage of her education and complainant's ignorance in legal matters. As manifested by complainant, he would have never granted the loan to respondent were it not for respondent's misrepresentation that she was authorized to sell the property and if respondent had not led him to believe that he could register the "open" deed of sale if she fails to pay the loan. By her misdeed, respondent has eroded not only complainant's perception of the legal profession but the public's perception as well. Her actions constitute gross misconduct for which she may be disciplined, following Section 27, Rule 138 of the Revised Rules of Court, as amended.

3. ID.; ID.; ID.; ID.; ID.; LAWFUL ORDERS OF IBP, WANTONLY DISREGARDED; APPROPRIATE PENALTY IN CASE AT BAR. — We further note that after filing a Motion for Extension of Time to File a Responsive Pleading, respondent wantonly disregarded the lawful orders of the IBP-CBD to file her answer and to appear for the mandatory conferences despite due notice. Respondent should bear in mind that she must acknowledge the orders of the IBP-CBD in deference to its authority over her as a member of the IBP. Complainant now asks that respondent be disbarred. We find, however, that suspension from the practice of law is sufficient to discipline respondent. It is worth stressing that the power to disbar must be exercised with great caution. Disbarment will be imposed as a penalty only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the court and a member of the bar. Where any lesser penalty can accomplish the end desired, disbarment should not be decreed. In this case, the Court finds the penalty of suspension more appropriate but finds the recommended penalty of suspension for one year too severe. Considering the circumstances of this case, the Court believes that a suspension of six months is sufficient. After all, suspension is not primarily intended as a punishment, but as a means to protect the public and the legal profession.

APPEARANCES OF COUNSEL

Smith & Smith Law Office for complainant.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before us is an administrative complaint for disbarment filed by complainant Tomas P. Tan, Jr. against respondent Atty. Haide B. Vista-Gumba for gross unethical conduct.

The facts are as follows.

Complainant, a self-made businessman with a tailoring shop in Naga City, filed a verified Complaint[1] against respondent, also a resident of Naga City, before the Integrated Bar of the Philippines (IBP)-Camarines Sur Chapter. Pursuant to Section 1, Paragraph 3,[2] Rule 139-B of the Revised Rules of Court, as amended, the said Chapter forwarded the complaint to the IBP Board of Governors for proper disposition.

Complainant narrated that sometime in August 2000, respondent asked to be lent ₱350,000.00. Respondent assured him that she would pay the principal plus 12% interest per *annum* after one year. She likewise offered by way of security a 105-square-meter parcel of land located in Naga City, covered by Transfer Certificate of Title (TCT) No. 2055[3] and registered in her father's name. Respondent showed complainant a Special Power of Attorney[4] (SPA) executed by respondent's parents, and verbally

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[1] *Rollo*, pp. 3-4.

[2] Section 1, Rule 139-B of the Rules of Court, as amended, provides:

SECTION 1. *How Instituted.* — Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP Board of Governors may, *motu proprio*, or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against any erring attorneys including those in the government service: *Provided, however*, That all charges against Justices of the Court of Appeals and the *Sandiganbayan*, and Judges of the Court of Tax Appeals and lower courts, even if lawyers are jointly charged with them, shall be filed with the Supreme Court: *Provided, further*, That charges filed against Justices and Judges before the IBP, including those filed prior to their appointment in the Judiciary, shall immediately be forwarded to the Supreme Court for disposition and adjudication. (*As amended by Bar Matter No. 1960, May 1, 2000.*)

Six (6) copies of the verified complaint shall be filed with the Secretary of the IBP or the Secretary of any of its chapters who shall forthwith transmit the same to the IBP Board of Governors for assignment to an investigator.

[3] *Rollo*, pp. 20-22.

[4] *Id.* at 7.

assured complainant that she was authorized to sell or encumber the entire property. Complainant consulted one Atty. Raquel Payte and was assured that the documents provided by respondent were valid. Thus, complainant agreed to lend money to respondent. With the help of Atty. Payte, respondent executed in complainant's favor an "open" Deed of Absolute Sale over the said parcel of land, attaching thereto the SPA. Complainant was made to believe that if respondent fails to pay the full amount of the loan with interest on due date, the deed of sale may be registered. Accordingly, he gave the amount of ₱350,000.00 to respondent.

Respondent, however, defaulted on her loan obligation and failed to pay the same despite complainant's repeated demands. Left with no recourse, complainant went to the Register of Deeds to register the sale, only to find out that respondent deceived him since the SPA did not give respondent the power to sell the property but only empowered respondent to mortgage the property solely to banks. Complainant manifested that he had lent money before to other people albeit for insignificant amounts, but this was the first time that he extended a loan to a lawyer and it bore disastrous results. He submitted that respondent committed fraud and deceit or conduct unbecoming of a lawyer.

Upon being ordered by the IBP to answer the above allegations, respondent filed a Motion for Extension of Time to File a Responsive Pleading[5] but no answer or comment was ever filed by her before the IBP-Commission on Bar Discipline (CBD). Likewise, the IBP-CBD allowed respondent to answer the Amended Complaint subsequently filed by complainant but she did not file any answer thereto.[6] She also chose not to attend the mandatory conference hearings set on July 18, 2006, June 13, 2007 and January 25, 2008 despite due notice. Thus, she was deemed to have waived her right to participate in the proceedings.

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

[6] *Id.* at 29-30 and 32.

On February 9, 2009, IBP Commissioner Jose I. De La Rama, Jr. rendered his report[7] finding respondent guilty of violating Canon 1,[8] Rule 1.01[9] and Canon 7[10] of the Code of Professional Responsibility and recommending that she be suspended from the practice of law for one year. Commissioner De La Rama opined that while respondent appears to be a co-owner of the property as evidenced by an annotation on the back of TCT No. 2055 showing that half of the property has been sold to her, it was evident that she employed deceit and dishonest means to make complainant believe, by virtue of the SPA, that she was duly authorized to sell the entire property.

On August 28, 2010, the IBP Board of Governors adopted and approved the report and recommendation of Commissioner De La Rama, Jr. in its Resolution No. XIX-2010-446:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Canon 1, Rule 1.01 and Canon 7 of the Code of Professional Responsibility and for her failure to submit verified Answer and did not even participate in the mandatory conference, Atty. Haide V. Gumba is **SUSPENDED** from the practice of law for one (1) year. [11]

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[7] *Id.* at 72-77.

[8] Canon 1 of the Code of Professional Responsibility provides:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

[9] Canon 1, Rule 1.01 of the Code of Professional Responsibility provides:

Rule 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[10] Canon 7 of the Code of Professional Responsibility provides:

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

[11] *Rollo,* p. 71.

We agree with the findings and conclusion of the IBP, but find that a reduction of the recommended penalty is called for, pursuant to the principle that the appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[12]

Well entrenched in this jurisdiction is the rule that a lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court.[13] Verily, Canon 7 of the Code of Professional Responsibility mandates all lawyers to uphold at all times the dignity and integrity of the legal profession. Lawyers are similarly required, under Rule 1.01, Canon 1 of the same Code, not to engage in any unlawful, dishonest and immoral or deceitful conduct.

Here, respondent's actions clearly show that she deceived complainant into lending money to her through the use of documents and false representations and taking advantage of her education and complainant's ignorance in legal matters. As manifested by complainant, he would have never granted the loan to respondent were it not for respondent's misrepresentation that she was authorized to sell the property and if respondent had not led him to believe that he could register the "open" deed of sale if she fails to pay the loan.[14] By her misdeed, respondent has eroded not only complainant's perception of the legal profession but the public's perception as well. Her actions constitute gross misconduct for which she may be disciplined, following Section 27, Rule 138 of the Revised Rules of Court, as amended, which provides:

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[12] *De Chaves-Blanco v. Lumasag, Jr.*, A.C. No. 5195, April 16, 2009, 585 SCRA 56, 62.

[13] *Roa v. Moreno*, A.C. No. 8382, April 21, 2010, 618 SCRA 693, 699, citing *Ronquillo v. Cezar*, A.C. No. 6288, June 16, 2006, 491 SCRA 1, 5-6.

[14] *Rollo*, p. 17.

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

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We further note that after filing a Motion for Extension of Time to File a Responsive Pleading, respondent wantonly disregarded the lawful orders of the IBP-CBD to file her answer and to appear for the mandatory conferences despite due notice. Respondent should bear in mind that she must acknowledge the orders of the IBP-CBD in deference to its authority over her as a member of the IBP.[15]

Complainant now asks that respondent be disbarred. We find, however, that suspension from the practice of law is sufficient to discipline respondent. It is worth stressing that the power to disbar must be exercised with great caution. Disbarment will be imposed as a penalty only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the court and a member of the bar. Where any lesser penalty can accomplish the end desired, disbarment should not be decreed.[16] In this case, the Court finds the penalty of suspension more appropriate but finds the recommended penalty of suspension for one year too severe. Considering the circumstances of this case, the Court believes that a suspension of six months is sufficient. After all, suspension is not primarily intended as a punishment, but as a means to protect the public and the legal profession.[17]

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[15] *Toledo v. Abalos*, A.C. No. 5141, September 29, 1999, 315 SCRA 419, 422.

[16] *Santiago v. Rafanan*, A.C. No. 6252, October 5, 2004, 440 SCRA 91, 101.

[17] *Saburnido v. Madroño*, A.C. No. 4497, September 26, 2001, 366 SCRA 1, 7.

WHEREFORE, respondent Atty. Haide B. Vista-Gumba is found administratively liable for grave misconduct. She is *SUSPENDED* from the practice of law for *SIX (6) MONTHS,* effective immediately, with a warning that a repetition of the same or a similar act will be dealt with more severely.

Let notice of this Resolution be spread in respondent's record as an attorney in this Court, and notice thereof be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all the courts concerned.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *del Castillo, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-04-1845. October 5, 2011]
(Formerly A.M. No. IPI No. 03-1831-RTJ)

ATTY. FRANKLIN G. GACAL, *complainant, vs.* **JUDGE JAIME I. INFANTE, REGIONAL TRIAL COURT, BRANCH 38, IN ALABEL, SARANGANI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; REQUIREMENT OF HEARING MANDATORY BEFORE THE GRANT OF BAIL; CASE AT BAR. — Judge Infante apparently acted as if the requirement for the bail hearing was a merely minor rule to be dispensed with. Although, in theory, the only function of bail is to ensure the appearance of the accused at the time set for the arraignment and trial; and, in practice, bail serves the further purpose of preventing the release of an accused who may be dangerous to society or

whom the judge may not want to release, a hearing upon notice is mandatory before the grant of bail, whether bail is a matter of right or discretion. With more reason is this true in criminal prosecutions of a capital offense, or of an offense punishable by *reclusion perpetua* or life imprisonment. Rule 114, Section 7 of the *Rules of Court*, as amended, states that: "No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment when the evidence of guilt is strong, shall be admitted to bail regardless of the stage of criminal action."

2. ID.; ID.; ID.; ID.; A HEARING SHOULD STILL BE HELD EVEN IF THERE IS NO PETITION FOR BAIL; CASE AT BAR. — In *Cortes v. Catral*, therefore, the Court has outlined the following duties of the judge once an application for bail is filed, to wit: "**1. In all cases whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation** (Section 18, Rule 114 of the Revised Rules of Court, as amended); **2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless or whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion** (Sections 7 and 8, *id*.); **3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution**; 4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, *id*.); otherwise, the petition should be denied." x x x Judge Infante contends that a bail hearing in Criminal Case No. 1138-03 was not necessary because the accused did not file an application for bail; and because the public prosecutor had recommended bail. Judge Infante's contention is unwarranted. Even where there is no petition for bail in a case x x x, a hearing should still be held. This hearing is separate and distinct from the initial hearing to determine the existence of probable cause, in which the trial judge ascertains whether or not there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty of the crime. The Prosecution must be given a chance to show the strength of its evidence; otherwise, a violation of due process occurs.

3. ID.; ID.; ID.; ID.; ID.; PUBLIC PROSECUTOR'S RECOMMENDATION OF BAIL DID NOT WARRANT DISPENSING WITH THE HEARING; CASE AT BAR. — The fact that the public prosecutor recommended bail for Ancheta did not warrant dispensing with the hearing. The public prosecutor's recommendation of bail was not material in deciding whether to conduct the mandatory hearing or not. For one, the public prosecutor's recommendation, albeit persuasive, did not necessarily bind the trial judge, in whom alone the discretion to determine whether to grant bail or not was vested. Whatever the public prosecutor recommended, including the amount of bail, was non-binding. Nor did such recommendation constitute a showing that the evidence of guilt was not strong. If it was otherwise, the trial judge could become unavoidably controlled by the Prosecution.

4. JUDICIAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; GROSS IGNORANCE OF THE LAW; GRANTING OF BAIL WITHOUT A HEARING, CENSURABLE THEREFOR; CASE AT BAR. — Every judge should be faithful to the law and should maintain professional competence. His role in the administration of justice requires a continuous study of the law and jurisprudence, lest public confidence in the Judiciary be eroded by incompetence and irresponsible conduct. In that light, the failure of Judge Infante to conduct a hearing prior to the grant of bail in capital offenses was inexcusable and reflected gross ignorance of the law and the rules as well as a cavalier disregard of its requirement. He well knew that the determination of whether or not the evidence of guilt is strong was a matter of judicial discretion, and that the discretion lay not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the Prosecution's evidence of guilt against the accused. His fault was made worse by his granting bail despite the absence of a petition for bail from the accused. Consequently, any order he issued in the absence of the requisite evidence was not a product of sound judicial discretion but of whim and caprice and outright arbitrariness.

5. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY; CASE AT BAR. — The Court imposed a fine of ₱20,000.00 on the respondent judge in *Docena-Caspe v. Bugtas*. In that case, the respondent judge granted bail to the two accused who had been charged

with murder without first conducting a hearing. Likewise, in *Loyola v. Gabo*, the Court fined the respondent judge in the similar amount of ₱20,000.00 for granting bail to the accused in a murder case without the requisite bail hearing. To accord with such precedents, the Court prescribes a fine of ₱20,000.00 on Judge Infante, with a stern warning that a repetition of the offense or the commission of another serious offense will be more severely dealt with.

D E C I S I O N

BERSAMIN, *J.*:

It is axiomatic that bail cannot be allowed to a person charged with a capital offense, or an offense punishable with *reclusion perpetua* or life imprisonment, without a hearing upon notice to the Prosecution. Any judge who so allows bail is guilty of gross ignorance of the law and the rules, and is subject to appropriate administrative sanctions.

Atty. Franklin Gacal, the private prosecutor in Criminal Case No. 1136-03 of the Regional Trial Court (RTC) in Alabel, Sarangani entitled *People v. Faustino Ancheta*, a prosecution for murder arising from the killing of Felomino O. Occasion, charges Judge Jaime I. Infante, Presiding Judge of Branch 38 of the RTC to whose Branch Criminal Case No. 1136-03 was raffled for arraignment and trial, with gross ignorance of the law, gross incompetence, and evident partiality, for the latter's failure to set a hearing before granting bail to the accused and for releasing him immediately after allowing bail.

Antecedents

On March 18, 2003, Judge Gregorio R. Balanag, Jr. of the Municipal Circuit Trial Court of Kiamba-Maitum, Sarangani issued a warrant for the arrest of Faustino Ancheta in connection with a murder case. Judge Balanag did not recommend bail. Ancheta, who had meanwhile gone into hiding, was not arrested. Upon review, the Office of the Provincial Prosecutor, acting through Assistant Provincial Prosecutor Alfredo Barcelona, Jr., affirmed the findings and recommendation of Judge Balanag

on the offense to be charged, and accordingly filed in the RTC an information for murder on April 21, 2003 (Criminal Case No. 1136-03), but with a recommendation for bail in the amount of ₱400,000.00. Criminal Case No. 1136-03 was raffled to Judge Infante's Branch.

On April 23, 2003, Judge Infante issued twin orders, one granting bail to Ancheta, and another releasing Ancheta from custody.

On April 25, 2003, Atty. Gacal, upon learning of the twin orders issued by Judge Infante, filed a so-called *Very Urgent Motion For Reconsideration And/Or To Cancel Bailbond With Prayer To Enforce Warrant Of Arrest Or Issue Warrant Of Arrest Anew Or In The Alternative Very Urgent Motion For This Court To Motu Prop[r]io Correct An Apparent And Patent Error* (very urgent motion).

In the hearing of the very urgent motion on April 29, 2003, only Atty. Gacal and his collaborating counsel appeared in court. Judge Infante directed the public prosecutor to comment on the very urgent motion within five days from notice, after which the motion would be submitted for resolution with or without the comment. Ancheta, through counsel, opposed, stating that the motion did not bear the conformity of the public prosecutor.

At the arraignment of Ancheta set on May 15, 2003, the parties and their counsel appeared, but Assistant Provincial Prosecutor Barcelona, Jr., the assigned public prosecutor, did not appear because he was then following up his regular appointment as the Provincial Prosecutor of Sarangani Province. Accordingly, the arraignment was reset to May 29, 2003.

On May 21, 2003, Judge Infante denied Atty. Gacal's very urgent motion on the ground that the motion was *pro forma* for not bearing the conformity of the public prosecutor, and on the further ground that the private prosecutor had not been authorized to act as such pursuant to Section 5, Rule 110, of the *Rules of Court*. Judge Infante directed that the consideration of the bail issue be held in abeyance until after the public prosecutor had submitted a comment, because he wanted to know the position

of the public prosecutor on Atty. Gacal's very urgent motion having been filed without the approval of the public prosecutor.[1]

On May 29, 2003, the public prosecutor appeared, but did not file any comment. Thereupon, Atty. Gacal sought authority to appear as a private prosecutor. The public prosecutor did not oppose Atty. Gacal's request. With that, Atty. Gacal moved for the reconsideration of the grant of bail to Ancheta. In response, Judge Infante required the public prosecutor to file his comment on Atty. Gacal's motion for reconsideration, and again reset the arraignment of the accused to June 20, 2003.[2]

On June 4, 2003, the public prosecutor filed a comment, stating that he had recommended bail as a matter of course; that the orders dated April 23, 2003 approving bail upon his recommendation and releasing the accused were proper; and that his recommendation of bail was in effect a waiver of the public prosecutor's right to a bail hearing.

By June 20, 2003, when no order regarding the matter of bail was issued, Atty. Gacal sought the inhibition of Judge Infante on the ground of his gross incompetence manifested by his failure to exercise judicial power to resolve the issue of bail.

In his motion for inhibition,[3] Atty. Gacal insisted that the issue of bail urgently required a resolution that involved a judicial determination and was, for that reason, a judicial function; that Judge Infante failed to resolve the issue of bail, although he should have acted upon it with dispatch, because it was unusual that several persons charged with murder were being detained while Ancheta was let free on bail even without his filing a petition for bail; that such event also put the integrity of Judge Infante's court in peril; and that although his motion for reconsideration included the alternative relief for Judge Infante to *motu proprio* correct his apparent error, his refusal to resolve the matter in due time constituted gross ignorance of law.

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

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

[3] *Id.*, pp. 121-123.

Atty. Gacal contended that Judge Infante was not worthy of his position as a judge either because he unjustifiably failed to exercise his judicial power or because he did not at all know how to exercise his judicial power; that his lack of judicial will rendered him utterly incompetent to perform the functions of a judge; that at one time, he ordered the bail issue to be submitted for resolution, with or without the comment of the public prosecutor, but at another time, he directed that the bail issue be submitted for resolution, with his later order denoting that he would resolve the issue only after receiving the comment from the public prosecutor; that he should not be too dependent on the public prosecutor's comment considering that the resolution of the matter of bail was entirely within his discretion as the judge;[4] and that the granting of bail without a petition for bail being filed by the accused or a hearing being held for that purpose constituted gross ignorance of the law and the rules.[5]

Finally, Atty. Gacal stated that Judge Infante and the public prosecutor were both guilty of violating the *Anti-Graft and Corrupt Practices Act*[6] for giving undue advantage to Ancheta by allowing him bail without his filing a petition for bail and without a hearing being first conducted.[7]

On July 9, 2003, Judge Infante definitively denied Atty. Gacal's very urgent motion.

On August 5, 2003, the Office of the Court Administrator (OCAd) received from the Office of the Ombudsman the indorsement of the administrative complaint Atty. Gacal had filed against Judge Infante (CPL-M-03-0581 entitled *Gacal v. Infante, et al.*), forwarding the records of the administrative case for appropriate action to the Supreme Court as the exclusive administrative authority over all courts, their judges and their personnel.[8]

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[4] *Rollo*, pp 1-8, 6.

[5] *Id.*, pp. 67-70, 70.

[6] *Id.*, p. 70.

[7] *Id.*

[8] *Id.*, p. 67.

On August 21, 2003, then Court Administrator Presbitero J. Velasco, Jr. (now a Member of the Court) required Judge Infante to comment on the administrative complaint against him, and to show cause within 10 days from receipt why he should not be suspended, disbarred, or otherwise disciplinarily sanctioned as a member of the Bar for violation of Canon 10, Rule 10.03 of the *Code of Professional Responsibility* pursuant to the resolution of the Court *En Banc* in A.M. No. 02-9-02-SC dated September 17, 2002.[9]

On October 6, 2003, the OCAd received Judge Infante's comment dated September 22, 2003, by which he denied any transgression in the granting of bail to Ancheta, stating the following:

> 2. At the outset, as a clarificatory note, accused Faustino Ancheta is out on bail, not because he applied for bail duly granted by the court but because he posted the required bail since in the first place the Fiscal recommended bail, duly approved by the Undersigned, in the amount of ₱400,000.00. Underscoring is made to stress the fact that accused Ancheta had actually never filed an application for bail. Perforce, the court had nothing to hear, grant or deny an application/motion/petition for bail since none was filed by the accused.
>
> 3. Thus, the twin Orders dated April 23, 2003 are exactly meant as an approval of the bailbond (property) posted by accused Ancheta, it being found to be complete and sufficient. They are not orders granting an application for bail, as misconstrued by private prosecutor. (Certified true machine copy of the twin Orders dated April 23 marked as Annex-2 and 2-a are hereto attached)
>
> 4. On April 25, 2003, private complainant in the cited criminal case, thru counsel (the Gacal, Gacal and Gacal Law Office), filed a "Very Urgent Motion for Reconsideration or in the alternative Very Urgent Motion for this Court to *Motu Proprio* Correct an Apparent Error," praying that the twin Orders dated April 23, 2003 be reconsidered. (Certified machine copy of the said urgent motion marked as Annex 3 is hereto attached)
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> 5. On April 29, 2003, during the hearing on motion, the private complainant and his counsel (private prosecutor) appeared. The Fiscal

[9] *Id.,* p. 90.

was not present. The court nonetheless ordered the Fiscal to file his comment/s on the said motion. The accused thru private counsel in an open court hearing opposed the subject motion inasmuch as the same bears no conformity of the Fiscal. In that hearing, the court advised the private prosecutor to coordinate and secure the conformity of the Fiscal in filing his motion. (Certified machine copy of the Order dated April 29, 2003, marked as Annex 4 is hereto attached)

6. On May 15, 2003, the scheduled date for the arraignment of accused Ancheta, the parties and private prosecutor appeared. Again, the 1st Asst. Provincial Fiscal, Alfredo Barcelona, Jr., failed to appear who, being the next highest in rank in their Office, was processing his application for regular appointment as Provincial Fiscal of Sarangani Province. He was then the Acting Provincial Fiscal — Designate in view of the appointment of former Provincial Fiscal Laureano T. Alzate as RTC Judge in Koronadal City. Due to the absence of the Fiscal and the motion for reconsideration then pending for resolution, the scheduled arraignment was reset to May 29, 2003, per Order dated May 15, 2003, (certified machine copy of which marked as Annex 5 is hereto attached)

7. On May 21, 2003, the Undersigned resolved to deny for being pro forma the pending motion for reconsideration. As held in the Order of denial, it was found that the private prosecutor was not duly authorized in writing by the provincial prosecutor to prosecute the said criminal case, nor was he judicially approved to act as such in violation of Section 5, Rule 110 of the Revised Rules on Criminal Procedure. The bail issue, however, was held in abeyance until submission of the comment thereon by the Fiscal as this Presiding Judge would like then to know the position of the Fiscal anent to the cited motion without his approval. The arraignment was reset to June 20, 2003. Again, the private prosecutor was orally advised to coordinate and secure the approval of the Fiscal in filing his motions/pleadings. (Certified machine copy of the Order dated May 21, 2003 marked as Annex 6 hereto attached)

8. On June 4, 2003, the Fiscal finally filed his "Comment on the Very Urgent Motion for Reconsideration filed by private complainant thru counsel (private prosecutor). Consistently, the Fiscal in his comment recommended bail as a matter of course and that he claimed that Orders dated April 23, 2003 approving bail upon his recommendation are proper, waiving in effect his right for a bail

hearing. (Certified true machine copy of the Fiscal's comment marked as Annex-7 is hereto attached).[10]

Under date of February 16, 2004, the OCAd recommended after investigation that the case be re-docketed as a regular administrative matter, and that Judge Infante be fined in the amount of ₱20,000.00,[11] *viz*:

EVALUATION: The 1987 Constitution provides that, all persons, except those charged with offenses punishable by *reclusion perpetua* when the evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties or be released on recognizance as may be provided by law (Sec. 13, Art. III).

The Revised Rules of Criminal Procedure provides that, no person charged with a capital offense or offense punishable by *reclusion perpetua* or life imprisonment shall be admitted to bail when the evidence is strong, regardless of the stage of the criminal prosecution (Sec. 7, Rule 114).

With the aforequoted provisions of the Constitution and the Rules of Criminal Procedure as a backdrop, the question is: Can respondent judge in granting bail to the accused dispense with the hearing of Application for Bail?

The preliminary investigation of Criminal Case No. 03-61, entitled *Benito M. Occasion vs. Faustino Ancheta* for Murder was conducted by Judge Gregorio R. Balanag, Jr., of MCTC, Kiamba-Maitum, Sarangani. Finding the existence of probable cause that an offense of Murder was committed and the accused is probably guilty thereof, he transmitted his resolution to the Office of the Provincial Prosecutor, together with the records of the case, with No Bail Recommended. Upon review of the resolution of the investigating judge by the OIC of the Office of the Provincial Prosecutor of Sarangani, he filed the information for Murder against accused Faustino Ancheta but a bail of ₱400,000.00 for the provisional liberty of the latter was recommended. Relying on the recommendation of the Fiscal, respondent judge granted the Application for Bail of the accused.

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[10] *Id.*, pp. 94-103 (bold emphasis is in the original text).

[11] *Id.*, pp. 205-212.

The offense of Murder is punishable by *reclusion temporal* in its maximum period to death (Art. 248, RPC). By reason of the penalty prescribed by law, Murder is considered a capital offense and, grant of bail is a matter of discretion which can be exercised only by respondent judge after the evidence is submitted in a hearing. Hearing of the application for bail is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is weak or strong (*People vs. Dacudao*, 170 SCRA 489). It becomes, therefore, a ministerial duty of a judge to conduct hearing the moment an application for bail is filed if the accused is charged with capital offense or an offense punishable by *reclusion perpetua* or life imprisonment. If doubt can be entertained, it follows that the evidence of guilt is weak and bail shall be recommended. On the other hand, if the evidence is clear and strong, no bail shall be granted.

Verily, respondent judge erred when he issued an order granting the application for bail filed by the accused (Annex "C") based merely on the order issued by the Fiscal (Annex "A") recommending bail of ₱400,000.00 for the provisional liberty of the accused without even bothering to read the affidavits of the witnesses for the prosecution. Respondent judge cannot abdicate his right and authority to determine whether the evidence against the accused who is charged with capital offense is strong or not.

After the respondent judge has approved the property bond posted by the accused, the complainant, as private prosecutor filed a Motion for Reconsideration and/or Cancel Bailbond or in the alternative, Very Urgent Motion to *Motu Proprio* correct an Apparent Error. On the hearing of the Motion on 29 April 2003, the Fiscal was absent but he (the Fiscal) was given five (5) days from receipt of the order within which to file his comment and, with or without comment the incident is deemed submitted for resolution and, hearing of the Motion was reset to May 15, 2003. But the Fiscal again failed to appear on said date and, the arraignment of the accused was set on 29 May 2003. On 21 May 2003, respondent judge resolved to deny the Motion on the ground that the private prosecutor was not authorized in writing by the Chief of the Prosecution's Office or the Regional State Prosecutor to prosecute the case, subject to the approval of the court, pursuant to Sect. 5, Rule 110 Revised Rules of Criminal Procedure.

The need for an authority in writing from the Chief of the Prosecution's Office or Regional State Prosecutor to the Private Prosecutor to prosecute the case, subject to the approval of the court,

contemplates of a situation wherein there is no regular prosecutor assigned the court, or the prosecutor assigned, due to heavy work schedule, cannot attend to the prosecution of pending criminal cases to expedite disposition of the case. This provision of the Rules of Criminal Procedure does not prevent the offended party who did not reserve, waive nor institute separate civil action, from intervening in the case through a private prosecutor.

> Intervention of the offended party in Criminal Action — Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 11, the offended party may intervene by counsel in the prosecution of the offense (Sec. 16, Rule 110 [*Supra*]).
>
> When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action (Sec. 1 (a), Rule 111 [*Supra*]).

The offended party in Criminal Case No. 1136-03 did not reserve his right to institute separate civil action, he did not waive such right and did not file civil action prior to the criminal action, so the offended party may under the law intervene as a matter of right.

The authority to intervene includes actual conduct of trial under the control of the Fiscal which includes the right to file pleadings. According to respondent judge, he advised the private prosecutor to coordinate with the fiscal and secure his approval in accord with the mandate of Section 5, Rule 110 of the Revised Rule of Criminal Procedure: On this point, respondent judge again erred. The right of the offended party to intervene is conferred by law and the approval of the Fiscal or even the court is not all necessary (Sec. 1 (a), Rule 111, [*Supra*]). Respondent Judge, however, is correct when he stated that the motions filed by the private prosecutor should be with the conformity of the Fiscal.

Respondent judge's errors are basic such that his acts constitutes gross ignorance of the law.

RECOMMENDATION: Respectfully recommended for the consideration of the Honorable Court is the recommendation that the instant I.P.I. be re-docketed as a regular administrative matter and respondent Judge be held ordered to pay a fine of ₱20,000.00.

On March 31, 2004,[12] the Court directed that the administrative case be docketed as a regular administrative matter.

On December 01, 2004,[13] the Court denied Atty. Gacal's ancillary prayer to disqualify Judge Infante from trying Criminal Case No. 1138-03 pending resolution of this administrative matter.

Ruling

We approve and adopt the findings and recommendation of the OCAd, considering that they are well substantiated by the records. We note that Judge Infante did not deny that he granted bail for the provisional release of Ancheta in Criminal Case No. 1138-03 without conducting the requisite bail hearing.

I
Bail hearing was mandatory in Criminal Case No. 1138-03

Judge Infante would excuse himself from blame and responsibility by insisting that the hearing was no longer necessary considering that the accused had not filed a petition for bail; that inasmuch as no application for bail had been filed by the accused, his twin orders of April 23, 2003 were not orders granting an application for bail, but were instead his approval of the bail bond posted; and that Atty. Gacal's very urgent motion and other motions and written submissions lacked the requisite written conformity of the public prosecutor, rendering them null and void.

We cannot relieve Judge Infante from blame and responsibility.

The willingness of Judge Infante to rely on the mere representation of the public prosecutor that his grant of bail upon the public prosecutor's recommendation had been proper, and that his (public prosecutor) recommendation of bail had in effect waived the need for a bail hearing perplexes the Court. He thereby betrayed an uncommon readiness to trust more in

[12] *Id.*, p. 213.

[13] *Id.*, p. 224.

the public prosecutor's judgment than in his own judicious discretion as a trial judge. He should not do so.

Judge Infante made the situation worse by brushing aside the valid remonstrations expressed in Atty. Gacal's very urgent motion thusly:

> This Court is not unaware that the charge of murder being a capital offense is not bailable x x x
>
> x x x x x x x x x
>
> The phrase "x x x application for admission to bail x x x" is not an irrelevant but a significant infusion in the cited rule (section 8), the plain import of which is that bail hearing is preceded by a motion/petition for admission to bail filed by a detained accused himself or thru counsel.
>
> **The peculiar feature of the instant case, however, is the absence of a petition/motion for admission to bail filed by the herein accused. On the contrary, it is the consistent position of the fiscal to recommend bail since the prosecution evidence being merely circumstantial, is not strong for the purpose of granting bail. x x x. This court believes that bail hearing, albeit necessary in the grant of bail involving capital offense, is not at all times and in all instances essential to afford the party the right to due process especially so, when the fiscal in this case was given reasonable opportunity to explain his side, and yet he maintained the propriety of grant of bail without need of hearing since the prosecution evidence is not strong for the purpose of granting bail.**
>
> Further, while it is preponderant of judicial experience to adopt the fiscal's recommendation in bail fixing, this court, however, had in addition and in accord with Section 6(a) of the Revised Rules on Criminal Procedure, evaluated the record of the case, and only upon being convinced and satisfied that the prosecution evidence as contained in the affidavits of all the prosecution witnesses, no one being an eye-witness are merely circumstantial evidence, that this court in the exercise of sound discretion allowed the accused to post bail.
>
> x x x x x x x x x

The convergence of the foregoing factors — absence of motion for admission to bail filed by the accused, the recommendation of the fiscal to grant bail, the pro forma motion of the private prosecutor for lack of prior approval from the fiscal and this court's evaluation of the records — sufficiently warrants the grant of bail to herein accused.[14]

Judge Infante specifically cited judicial experience as sanctioning his adoption and approval of the public prosecutor's recommendation on the fixing of bail. Yet, it was not concealed from him that the public prosecutor's recommendation had been mainly based on the documentary evidence adduced,[15] and on the public prosecutor's misguided position that the evidence of guilt was weak because only circumstantial evidence had been presented. As such, Judge Infante's unquestioning echoing of the public prosecutor's conclusion about the evidence of guilt not being sufficient to deny bail did not justify his dispensing with the bail hearing.

Judge Infante apparently acted as if the requirement for the bail hearing was a merely minor rule to be dispensed with. Although, in theory, the only function of bail is to ensure the appearance of the accused at the time set for the arraignment and trial; and, in practice, bail serves the further purpose of preventing the release of an accused who may be dangerous to society or whom the judge may not want to release,[16] a hearing upon notice is mandatory before the grant of bail, whether bail is a matter of right or discretion.[17] With more reason is this true in criminal prosecutions of a capital offense, or of an offense punishable by *reclusion perpetua* or life imprisonment. Rule 114, Section 7 of the *Rules of Court*, as amended, states that:

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[14] *Id.*, pp. 22-23 (bold emphasis supplied).

[15] *Id.*, pp. 101-102.

[16] *Basco v. Rapatalo*, A.M. No. RTJ-96-1335, March 5, 1997, 269 SCRA 220.

[17] *Te v. Perez*, A.M. No. MTJ-00-1286, January 21, 2002, 374 SCRA 130; *Bangayan v. Butacan*, A.M. No. MTJ-00-1320, November 22, 2000, 345 SCRA 301, 306.

"No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment when the evidence of guilt is strong, shall be admitted to bail regardless of the stage of criminal action."

In *Cortes v. Catral*,[18] therefore, the Court has outlined the following duties of the judge once an application for bail is filed, to wit:

1. **In all cases whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation** (Section 18, Rule 114 of the Revised Rules of Court, as amended);

2. **Where bail is a matter of discretion, conduct a hearing of the application for bail regardless or whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion** (Sections 7 and 8, *id.*);

3. **Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;**

4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, *id.*); otherwise, the petition should be denied. [emphasis supplied]

II
Judge Infante disregarded rules and guidelines in Criminal Case No. 1138-03

Ostensibly, Judge Infante disregarded basic but well-known rules and guidelines on the matter of bail.

1.
In case no application for bail is filed, bail hearing was not dispensable

Judge Infante contends that a bail hearing in Criminal Case No. 1138-03 was not necessary because the accused did not

[18] A.M. No. RTJ-97-138, September 10, 1997, 279 SCRA 1, 18.

file an application for bail; and because the public prosecutor had recommended bail.

Judge Infante's contention is unwarranted.

Even where there is no petition for bail in a case like Criminal Case No. 1138-03, a hearing should still be held. This hearing is separate and distinct from the initial hearing to determine the existence of probable cause, in which the trial judge ascertains whether or not there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty of the crime. The Prosecution must be given a chance to show the strength of its evidence; otherwise, a violation of due process occurs.[19]

The fact that the public prosecutor recommended bail for Ancheta did not warrant dispensing with the hearing. The public prosecutor's recommendation of bail was not material in deciding whether to conduct the mandatory hearing or not. For one, the public prosecutor's recommendation, albeit persuasive, did not necessarily bind the trial judge,[20] in whom alone the discretion to determine whether to grant bail or not was vested. Whatever the public prosecutor recommended, including the amount of bail, was non-binding. Nor did such recommendation constitute a showing that the evidence of guilt was not strong. If it was otherwise, the trial judge could become unavoidably controlled by the Prosecution.

Being the trial judge, Judge Infante had to be aware of the precedents laid down by the Supreme Court regarding the bail hearing being mandatory and indispensable. He ought to have remembered, then, that it was only through such hearing that he could be put in a position to determine whether the evidence for the Prosecution was weak or strong.[21] Hence, his dispensing

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[19] *Directo v. Bautista*, A.M. No. MTJ-99-1205, November 29, 2000, 346 SCRA 223.

[20] *Marzan-Gelacio v. Flores*, A.M. No. RTJ-99-1488, June 20, 2000, 334 SCRA 1, 9.

[21] *Marzan-Gelacio v. Flores, supra.*

with the hearing manifested a gross ignorance of the law and the rules.

2.
Public prosecutor's failure to oppose application for bail or to adduce evidence did not dispense with hearing

That the Prosecution did not oppose the grant of bail to Ancheta, as in fact it recommended bail, and that the Prosecution did not want to adduce evidence were irrelevant, and did not dispense with the bail hearing. The gravity of the charge in Criminal Case No. 1138-03 made it still mandatory for Judge Infante to conduct a bail hearing in which he could have made on his own searching and clarificatory questions from which to infer the strength or weakness of the evidence of guilt. He should not have readily and easily gone along with the public prosecutor's opinion that the evidence of guilt, being circumstantial, was not strong enough to deny bail; else, he might be regarded as having abdicated from a responsibility that was his alone as the trial judge.

Judge Infante's holding that circumstantial evidence of guilt was of a lesser weight than direct evidence in the establishment of guilt was also surprising. His training and experience should have cautioned him enough on the point that the lack or absence of direct evidence did not necessarily mean that the guilt of the accused could not anymore be proved, because circumstantial evidence, if sufficient, could supplant the absence of direct evidence.[22] In short, evidence of guilt was not necessarily weak because it was circumstantial.

Instead, Judge Infante should have assiduously determined why the Prosecution refused to satisfy its burden of proof in the admission of the accused to bail. Should he have found that the public prosecutor's refusal was not justified, he could have then himself inquired on the nature and extent of the evidence of guilt for the purpose of enabling himself to ascertain whether or not such evidence was strong. He could not have ignored the

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[22] *Gan v. People*, G.R. No. 165884, April 23, 2007, 521 SCRA 550.

possibility that the public prosecutor might have erred in assessing the evidence of guilt as weak.[23] At any rate, if he found the Prosecution to be uncooperative, he could still have endeavored to determine on his own the existence of such evidence,[24] with the assistance of the private prosecutor.

3.

Judge Infante's granting of bail without a hearing was censurable for gross ignorance of the law and the rules

Every judge should be faithful to the law and should maintain professional competence.[25] His role in the administration of justice requires a continuous study of the law and jurisprudence, lest public confidence in the Judiciary be eroded by incompetence and irresponsible conduct.[26]

In that light, the failure of Judge Infante to conduct a hearing prior to the grant of bail in capital offenses was inexcusable and reflected gross ignorance of the law and the rules as well as a cavalier disregard of its requirement.[27] He well knew that the determination of whether or not the evidence of guilt is strong was a matter of judicial discretion,[28] and that the discretion lay not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the Prosecution's evidence of guilt against the accused.[29] His fault was made worse by his granting bail despite the absence of a petition for bail from the accused.[30] Consequently, any order

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[23] *Marzan-Gelacio v. Flores*, *supra* note 20.

[24] *Te v. Perez,* A.M. No. MTJ-00-1286, January 21, 2002, 374 SCRA 130.

[25] Rule 3.01, *Code of Judicial Conduct.*

[26] *Taborite v. Sollesta,* A.M. No. MTJ-02-1388, August 12, 2003, 408 SCRA 602.

[27] *Bantuas v. Pangadapun,* RTJ-98-1407, July 20, 1998, 292 SCRA 622.

[28] *Aleria, Jr. v. Velez,* G.R. No. 127400, November 16, 1998, 298 SCRA 611.

[29] *Gimeno v. Arcueno, Sr.*, A.M. No. MTJ-94-981, November 29, 1995, 250 SCRA 376.

[30] *Delos Santos-Reyes v. Montesa, Jr.*, A.M. No. RTJ-93-983, August 7, 1995, 247 SCRA 85.

he issued in the absence of the requisite evidence was not a product of sound judicial discretion but of whim and caprice and outright arbitrariness.[31]

III
Imposable Penalty

We next determine the penalty imposable on Judge Infante for his gross ignorance of the law and the rules.

The Court imposed a fine of ₱20,000.00 on the respondent judge in *Docena-Caspe v. Bugtas*.[32] In that case, the respondent judge granted bail to the two accused who had been charged with murder without first conducting a hearing. Likewise, in *Loyola v. Gabo*,[33] the Court fined the respondent judge in the similar amount of ₱20,000.00 for granting bail to the accused in a murder case without the requisite bail hearing. To accord with such precedents, the Court prescribes a fine of ₱20,000.00 on Judge Infante, with a stern warning that a repetition of the offense or the commission of another serious offense will be more severely dealt with.

WHEREFORE, we *FIND AND DECLARE* Judge Jaime I. Infante guilty of gross ignorance of the law and the rules; and, accordingly, *FINE* him in the amount of ₱20,000.00, with a stern warning that a repetition of the offense or the commission of another serious offense will be more severely dealt with.

Let a copy of this Decision be furnished to the Office of the Court Administrator for proper dissemination to all trial judges.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Villarama, Jr., JJ.,* concur.

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[31] *Baylon v. Sison*, A.M. No. 92-7-360-0, April 6, 1995, 243 SCRA 284.

[32] AM RTJ-03-1767, March 28, 2003, 400 SCRA 37.

[33] A.M. No. RTJ-00-1524, January 26, 2000, 323 SCRA 348.

FIRST DIVISION

[G.R. No. 154559. October 5, 2011]

THE LAW FIRM OF RAYMUNDO A. ARMOVIT, *petitioner, vs.* **COURT OF APPEALS and BENGSON COMMERCIAL BUILDING, INC.,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IN CASE OF CONFLICT BETWEEN THE DISPOSITIVE PORTION OR *FALLO* OF THE DECISION AND THE OPINION OF THE COURT CONTAINED IN THE TEXT OR BODY OF THE JUDGMENT, THE FORMER SHALL PREVAIL; APPLICATION IN CASE AT BAR. — [O]ur ruling in *Grageda v. Gomez* is enlightening: It is basic that when there is a conflict between the dispositive portion or *fallo* of a Decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. An order of execution is based on the disposition, not on the body, of the Decision. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing. Indeed, the foregoing rule is not without an exception. We have held that where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail. x x x Applying this ruling to the case at bar, it is clear that the statement in the body of our 1991 Decision (that "we do not find Atty. Armovit's claim for 'twenty percent of all recoveries' to be unreasonable") is not an order which can be the subject of execution. Neither can we ascertain from the body of the Decision an inevitable conclusion clearly showing a mistake in the dispositive portion. x x x The confusion created in the case at bar shows yet another reason why mere pronouncements in bodies of Decisions may not be the subject of execution: random statements can easily be taken out of context and are susceptible to different interpretations. When not enshrined in a clear and definite order, random statements in bodies of Decisions can still be the subject of another legal debate, which is inappropriate and should not be allowed in the execution stage of litigation.

APPEARANCES OF COUNSEL

Pacifico C. Yadao for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Petitioner Law Firm of Raymundo A. Armovit (Armovit Law Firm) captioned the present action as a "Petition and/or Motion for Execution." As a Petition for *Certiorari*, petitioner assails the Resolutions of the Court of Appeals in CA-G.R. CV No. 43099 dated November 28, 1996,[1] August 27, 2001[2] and June 11, 2002,[3] as well as the Orders of the Regional Trial Court (RTC) of San Fernando, La Union in Civil Case No. 2794 dated February 24 and June 7, 1993. As a Motion for Execution, petitioner seeks the execution of the 1991 Decision of this Court in G.R. No. 90983, entitled *Law Firm of Raymundo A. Armovit v. Court of Appeals*.[4]

On August 20, 1965 and November 23, 1971, Bengson Commercial Building, Inc. (BCBI) obtained loans from the Government Service Insurance System (GSIS) in the total amount of ₱4,250,000.00, secured by real estate and chattel mortgages. When BCBI defaulted in the payment of the amortizations, GSIS extrajudicially foreclosed the mortgaged properties and sold them at public auction where it emerged as the highest bidder.[5]

With the Armovit Law Firm as its counsel, BCBI filed an action to annul the extrajudicial foreclosure on June 23, 1977

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[1] *Rollo* (G.R. No. 154559), p. 73.

[2] *Id.* at 46-49; penned by Associate Justice Conchita Carpio Morales with Associate Justices Candido V. Rivera and Rebecca de Guia-Salvador, concurring.

[3] *Id.* at 51-52.

[4] G.R. No. 90983, September 27, 1991, 202 SCRA 16.

[5] *See Government Service Insurance System v. Gines*, G.R. No. 85273, March 9, 1993, 219 SCRA 724, 725-726.

with the then Court of First Instance (CFI) of La Union. The action was docketed as Civil Case No. 2794. After trial, the CFI, by then renamed Regional Trial Court, rendered a Decision: (1) nullifying the foreclosure of BCBI's mortgaged properties; (2) ordering the cancellation of the titles issued to GSIS and the issuance of new ones in the name of BCBI; (3) ordering BCBI to pay GSIS ₱900,000.00 for the debenture bonds; and (4) directing GSIS to (a) restore to BCBI full possession of the foreclosed properties, (b) restructure the ₱4.25 Million worth of loans at the legal rate of interest from the finality of the judgment, (c) pay BCBI ₱1.9 Million representing accrued monthly rentals and ₱20,000.00 rental monthly until the properties are restored to BCBI's possession, and (d) pay the costs.[6]

GSIS appealed to the Court of Appeals. The appeal was docketed as CA-G.R. CV No. 09361. It appears that the Armovit Law Firm ceased to be the counsel of BCBI sometime before the appeal of GSIS. The said law firm and BCBI dispute the legality of the replacement, with BCBI claiming that the Armovit Law Firm had been remiss in its duties as BCBI's counsel.

On January 19, 1988, the Court of Appeals affirmed the RTC Decision with modification. The dispositive portion of the Decision of the appellate court reads:

> WHEREFORE, we affirm the appealed decision with MODIFICATION, as follows:
>
> 1. The foreclosure and auction sale on February 10, 1977 of BENGSON's properties covered by real estate and chattel mortgages mentioned in the notice of sale issued by the La Union provincial sheriff are set aside.
>
> 2. The writ of possession issued to GSIS as the highest bidder by the defunct Court of First Instance, sitting as a cadastral court, as a consequence of said foreclosure sale, is annulled.
>
> 3. The Register of Deeds of La Union is ordered to cancel the present certificates of title covering those properties and issue new ones in lieu thereof in the same names and with the same annotations,

[6] *Id.* at 728.

terms and conditions, including the mortgage in question, as appeared (sic) in the previous certificates of title as of the date BENGSON constituted the mortgage on those properties in favor of GSIS, it being understood that all expenses to be incurred incidental to such title cancellation and issuance shall be borne by GSIS.

4. GSIS is ordered to restore to BENGSON full possession of those mortgaged properties situated in San Fernando, La Union.

5. All properties under the mortgage in question, including those parcels of land situated in San Fernando, La Union and in Quezon City, shall remain under mortgage in favor of GSIS.

6. GSIS is ordered to restructure BENGSON's loan as promised, the restructuring to proceed from the premise that as of the foreclosure date, *i.e*. February 10, 1977, BENGSON had paid GSIS an aggregate amount of ₱286,000.00 on the subject loan.

7. The interest rates per annum stated in the first and second mortgage loan contracts entered into between BENGSON and GSIS, as well as all other terms and conditions provided for therein — except as qualified by the subsequent agreement of the parties regarding the promised loan restructuring and deferment of foreclosure by reason of the arrearages incurred — shall remain as originally stipulated upon by the parties.

8. BENGSON is ordered to pay GSIS the debenture bond with an aggregate face value of ₱900,000.00 at the stipulated interest rate of 14% per annum, quarterly; and to pay 14% interest per annum, compounded monthly, on the interest on said debenture bond, that had become due quarterly, in accordance with the stipulations provided for therein.

9. GSIS shall reimburse BENGSON the monthly rent of ₱20,000.00 representing income produced by one of the latter's mortgaged properties, *i.e.*, the Regent Theatre building, from February 15, 1977 until GSIS shall have restored the full possession of said building, together with the land on which it stands, to BENGSON.

10. The entire record of this case is ordered remanded to the trial court and the latter is directed to ascertain whether such mortgaged properties as machineries, equipment, and other movie paraphernalia, *etc*., are in fact no longer in existence per report of the provincial sheriff, as well as to determine their replacement

value if GSIS fails to return them; and, as prayed for by BENGSON, to receive evidence from the parties on the costs of suit awarded to it.

No pronouncement as to cost of this appeal. (Emphasis supplied.)[7]

The Decision of the Court of Appeals became final and executory on February 10, 1988 and the records were remanded to the court *a quo* on March 14, 1988. The GSIS did not file a Motion for Reconsideration or an appeal therefrom.[8]

The subsequent proceedings were summarized by this Court in its Decision in G.R. No. 90983,[9] which is now the subject of petitioner's Motion for Execution:

It x x x appears that when Atty. Armovit sought execution with the court *a quo*, he was informed by Romualdo Bengzon, president of the respondent corporation, that the firm had retained the services of Atty. Pacifico Yadao. He was also informed that the company would pay him the agreed compensation and that Atty. Yadao's fees were covered by a separate agreement. The private respondent, however, later ignored his billings and over the phone, directed him allegedly not to take part in the execution proceedings. Forthwith, he sought the entry of an attorney's lien in the records of the case. The lower court allegedly refused to make the entry and on the contrary, issued an order ordering the Philippine National Bank to "release to the custody of Mr. Romualdo F. Bengzon and or Atty. Pacifico Yadao" the sum of ₱2,760,000.00 (ordered by the Court of Appeals as rentals payable by the Government Service Insurance System).

Atty. Armovit then moved, apparently for the hearing of his motion to recognize attorney's lien, and thereafter, the trial court issued an order in the tenor as follows:

> When this case was called for hearing on the petition to record attorney's charging lien, Attys. Armovit and Aglipay appeared for the petitioners.

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[7] *Id.* at 728-730.

[8] *Id.* at 730.

[9] *Law Firm of Raymundo A. Armovit v. Court of Appeals*, *supra* note 4.

> Atty. Armovit informed the Court that they are withdrawing the petition considering that they are in the process of amicably settling their differences with the plaintiff, which manifestation was confirmed by Atty. Yadao as well as the plaintiffs, Romualdo Bengson and Brenda Bengson, who are present today.
>
> In view of this development, the petition to record attorney's charging lien, the same being in order and not contrary to law, morals and public policy, as prayed for by Attys. Armovit and Aglipay, it is hereby withdrawn. The parties, therefore are hereby directed to comply faithfully with their respective obligations.
>
> SO ORDERED.

However, upon the turnover of the money to the private respondent, Mrs. Brenda Bengson (wife of Romualdo Bengson) delivered to Atty. Armovit the sum of ₱300,000.00 only. Atty. Armovit protested and demanded the amount of ₱552,000.00 (twenty percent of ₱2,760,000.00), for which Mrs. Bengson made assurances that he will be paid the balance.

On November 4, 1988, however, Atty. Armovit received an order emanating from the trial court in the tenor as follows:

> During the hearing on the petition to record attorney's charging lien on October 11, 1988, Attys. Armovit and Aglipay withdrew their petition to record attorney's charging lien, which was duly approved by the Court, after which the Court directed the parties to comply faithfully with their respective obligations.
>
> In compliance with the Order of this Court, the plaintiff submitted a pleading denominated as compliance alleging that petitioner (Atty. Armovit) has already received from the plaintiff the sum of ₱300,000.00, Philippine Currency, as and by way of attorney's fees. With the receipt by the petitioner from the plaintiff of this amount, the latter has faithfully complied with its obligation.
>
> WHEREFORE, the Order of this Court dated October 11, 1988 approving the withdrawal of the petition to record attorney's charging lien, on motion of the petitioner, is now final.
>
> SO ORDERED.

Reconsideration having been denied, Atty. Armovit went to the Court of Appeals on a petition for *certiorari* and prohibition.

On August 25, 1989, the Court of Appeals rendered judgment dismissing the petition. Reconsideration having been likewise denied by the Appellate Court, Atty. Armovit instituted the instant appeal.[10]

This Court rendered its Decision in the foregoing case on September 27, 1991. The relevant portions of the Decision, including the *fallo* thereof, are quoted hereunder:

The disposition of the Court of Appeals was that since the receipt evidencing payment to Atty. Armovit of the sum of ₱300,000.00 "was without any qualification as 'advance' or 'partial' or 'incomplete'," the intention of the parties was that it was full payment. The Appellate Court also noted Atty. Armovit's withdrawal of his motion to record attorney's lien and figured that Atty. Armovit was satisfied with the payment of ₱300,000.00.

The only issue is whether or not Atty. Armovit is entitled to the sum of ₱252,000.00 more, in addition to the sum of ₱300,000.00 already paid him by the private respondent.

There is no question that the parties had agreed on a compensation as follows:

a) ₱15,000.00 by way of acceptance and study fee, payable within five (5) days from date;

b) 20% contingent fee computed on the value to be recovered by favorable judgment in the cases; and

c.) the execution and signing of a final retainer agreement complete with all necessary details.

(While the parties' agreement speaks of "a final retainer agreement" to be executed later, it does not appear that the parties did enter into a "final" agreement thereafter.)

The private respondent's version however is that while it may be true that the agreed compensation was twenty percent of all recoveries, the parties later agreed on a compromise sum approved allegedly by the trial court, per its Order of October 11, 1988.

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[10] *Id.* at 18-20.

x x x x x x x x x

Contingent fees are valid in this jurisdiction. It is true that attorney's fees must at all times be reasonable; however, we do not find Atty. Armovit's claim for "twenty percent of all recoveries" to be unreasonable. In the case of *Aro v. Nañawa*, decided in 1969, this Court awarded the agreed fees amid the efforts of the client to deny him fees by terminating his services. In parallel vein, we are upholding Atty. Armovit's claim for ₱252,000.00 more — pursuant to the contingent fee agreement — amid the private respondent's own endeavours to evade its obligations.

x x x x x x x x x

WHEREFORE, premises considered, the petition is GRANTED. The private respondent is ORDERED to pay the petitioner the sum of ₱252,000.00. Costs against the private respondent.[11]

Neither party filed a Motion for Reconsideration from the Decision of this Court. Thus, the Decision became final and executory on December 17, 1991.[12]

On October 29, 1992, the Armovit Law Firm filed in Civil Case No. 2794 an Omnibus Motion praying, among other things, that a final assessment of its attorney's fees be computed at 20% on the value of all the properties recovered by BCBI, deducting the amount already paid which is 20% of the money judgment for ₱1,900,00.00; and that a writ of execution for the full payment of the balance of its attorney's fees be issued.[13]

On February 24, 1993, the RTC issued the first assailed Order denying the Armovit Law Firm's Omnibus Motion. The RTC held that the issue regarding attorney's fees had already been resolved by this Court in G.R. No. 90983, whereby this Court ordered BCBI to pay the Armovit Law Firm the sum of ₱252,000.00, in addition to the ₱300,000.00 already paid. The RTC noted that the Decision of this Court had long become final and executory and in fact, was already executed upon the

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[11] *Id.* at 21-25.

[12] *Rollo* (G.R. No. 90983), p. 321.

[13] *Rollo* (G.R. No. 154559), p. 40.

payment of the sum of ₱252,000.00. The RTC also stressed that the Armovit Law Firm had no more participation in the prosecution of the case before the appellate court, as BCBI was, by then, already represented by another counsel. Thus, according to the RTC, it would constitute unjust enrichment to grant the Armovit Law Firm attorney's fees despite having no more participation in the case.[14]

The Armovit Law Firm filed a Motion for Reconsideration, which was denied by the RTC on June 7, 1993.[15]

The Armovit Law Firm appealed the Orders of the RTC to the Court of Appeals. The appeal was docketed as CA-G.R. CV No. 43099.

When the Court of Appeals became repeatedly unsuccessful in securing the original records of Civil Case No. 2794 due to the progress of the execution of the same in the trial court, the appellate court, in the first assailed Resolution dated November 28, 1996, directed Atty. Raymundo Armovit to submit a certified copy of the complete original records at his expense.[16] Atty. Armovit filed a Motion for Reconsideration praying that BCBI be ordered to defray the costs of the copying of the pertinent records, as he has no responsibility whatsoever for the delay. Atty. Armovit added that the photocopying of the records would be futile as there was still the need to await the termination of the proceedings before the trial court.[17] On April 24, 2001, the Court of Appeals received a letter from the Officer-in-Charge of the RTC informing the appellate court of the pendency before this Court of G.R. No. 137448 and G.R. No. 141454, which were both connected with the execution of the Decision in Civil Case No. 2794. Due to all of the foregoing circumstances, the Court of Appeals issued on August 27, 2001 the second assailed Resolution ordering that CA-G.R. CV No. 43099 be archived

[14] *Id.* at 40-41.

[15] *Id.* at 43-44.

[16] *Id.* at 47.

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

temporarily pending receipt of the original records of Civil Case No. 2794.[18] The Armovit Law Firm's Motion for Reconsideration was denied in the third assailed Resolution dated June 11, 2002.[19]

On September 9, 2002, the Armovit Law Firm filed the present action captioned "Petition and/or Motion for Execution," a joint Petition for *Certiorari* and Motion for Execution, with the following prayer:

> WHEREFORE, petitioner respectfully prays that the instant petition for *certiorari* be given due course and, after due proceedings, judgment be rendered setting aside as null and void *ab initio* the respondent courts *Orders dated February 24 and June 7, 1993* (Annexes A and B) and *Resolutions dated November 28, 1996, August 27, 2001 and June 11, 2002* (Annexes C, D and E); and ordering respondent trial court as follows:
>
> 1. To immediately issue a writ of execution of the final and executory Decision of September 29, 1991, of the Supreme Court in *Law Firm of Raymundo A. Armovit vs. Court of Appeals, et al.* (G.R. No. 90983) on the twenty percent of all recoveries on the following:
>
> a. All the mortgaged properties recovered by private respondent from the GSIS by annotating petitioner's charging lien at the back of their corresponding titles.
>
> b. The ₱29,982,824.19 received by private respondent on September 26, 1994, as per *Sheriff's Return* dated October 3, 1994 (Annex EE), plus the legal rate of interest from such date until fully paid.
>
> 2. To assess the value of the real properties recovered by private respondent from the GSIS and apply petitioner's charging lien by deducting therefrom the sum of ₱552,000.00 priorly applied to the accumulated rentals recovered from GSIS by private respondent. After the assessment and determination of the value of petitioner's *twenty percent of all recoveries* to cause the execution thereof.[20]

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[18] *Id.* at 48.

[19] *Id.* at 51-52.

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

According to the Armovit Law Firm, the RTC and the Court of Appeals committed the following legal errors:

I.

THE TRIAL COURT ERRED IN VARYING THE FINAL AND EXECUTORY SUPREME COURT DECISION BY LIMITING THE EXECUTION OF PETITIONER'S ATTORNEY'S FEES OF "TWENTY PERCENT OF ALL RECOVERIES" ONLY TO THE RENTALS AND EXCLUDING THE REST OF THE RECOVERIES MADE BY THE BENGSONS.

II.

THE COURT OF APPEALS ERRED IN SENDING PETITIONER'S APPEAL TO THE ARCHIVES.

III.

THE APPELLATE AND TRIAL COURTS ERRED IN DEFYING THE SUPREME COURT IN ITS FINAL AND EXECUTORY DECISION AWARDING PETITIONER A CONTINGENT FEE OF "TWENTY PERCENT OF ALL RECOVERIES."[21]

The present action is devoid of merit.

For convenient reference, the dispositive portion of the judgment sought to be executed, namely our Decision in G.R. No. 90983, is re-quoted as follows:

> WHEREFORE, premises considered, the petition is GRANTED. The private respondent is ORDERED to pay the petitioner the sum of ₱252,000.00. Costs against the private respondent.[22]

As can be readily observed, the Court ordered the payment of the sum of ₱252,000.00, nothing more, nothing less. While the body of the Decision quoted the agreement of the parties stating the compensation as "20% contingent fee computed on the value to be recovered by favorable judgment on the cases,"[23]

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[21] *Id.* at 20.

[22] *Law Firm of Raymundo A. Armovit v. Court of Appeals*, *supra* note 4 at 25.

[23] *Id.* at 21.

this Court specifically ordered BCBI to pay the Armovit Law Firm the aforementioned sum only, in addition to the ₱300,000.00 already paid. BCBI was therefore held to be liable for the total amount of ₱552,000.00, representing 20% of the ₱2,760,000.00 received by BCBI as rental payments from GSIS. Significantly, the order upon GSIS to reimburse BCBI for rental payments constitutes the only monetary award in favor of BCBI in the final and executory Decision in CA-G.R. CV No. 09361.[24] This Court confined its award to the said sum despite the fact that the Armovit Law Firm prayed for a much greater amount in its Memorandum:

> WHEREFORE, petitioner respectfully prays for judgment declaring respondent trial court's orders (Annexes "N" and "Q") and respondent Court of Appeals' confirmatory decisions (Annexes "R" and "T") null and void *ab initio*, and instead directing that petitioner be paid his attorney's fees of 20% of all monies and properties received and to be received by respondent BCBI in consequence of the final judgment secured for them by petitioner (Annex "E" in rel. annex "G"), as follows —
>
> a) 20% of ₱2,760,000.00, the rental arrearages due and already received by BCBI, which amounts to ₱552,000.00, minus the ₱300,000.00 paid unto petitioner, or a net balance of ₱252,000.00 due petitioner;
>
> b) **20% of ₱15 million**, the market value of the commercial lots, multi-story buildings and residential lots and houses, already placed in BCBI's possession, **which amounts to ₱3,000,000.00 still due petitioner**; and
>
> c) **20% of ₱20 million** worth of hotel and movie machines and equipment units, centralized air conditioning facilities, *etc.*, to be paid in cash to BCBI, **which amounts to ₱4,000,000.00 in unpaid fees to petitioner** —
>
> or, in the alternative, should trial of facts be deemed appropriate, that the case be remanded for further proceedings to receive petitioner's evidence on the amount of his attorney's fees due and unpaid, the same to be presided over by another trial judge chosen by proper

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[24] *Government Service Insurance System v. Gines, supra* note 5 at 729.

raffle; that respondent judge Genaro Gines be prohibited from any further intervention in Civil Case No. 2794; and at all events, that treble costs be fixed and imposed upon respondents.

Petitioner also prays for such other reliefs as may be just and equitable in the premises.[25] (Emphases supplied.)

As stated above, the Armovit Law Firm did not file a Motion for Reconsideration of the Decision in G.R. No. 90983 to protest the exclusion in the dispositive portion of several items it specifically prayed for in its pleadings. The Decision thus became final and executory on December 17, 1991.[26] The Armovit Law Firm cannot now ask the trial court, or this Court, to execute the Decision in G.R. No. 90983 as if these items prayed for were actually granted.

The Armovit Law Firm, in insisting on its claim, pins its entire case on the statement in the body of the Decision that "we do not find Atty. Armovit's claim for 'twenty percent of all recoveries' to be unreasonable."[27] In this regard, our ruling in *Grageda v. Gomez*[28] is enlightening:

It is basic that when there is a conflict between the dispositive portion or *fallo* of a Decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. An order of execution is based on the disposition, not on the body, of the Decision. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing.

Indeed, the foregoing rule is not without an exception. We have held that where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail. x x x.[29]

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[25] *Rollo* (G.R. No. 90983), pp. 268-269.

[26] *Id.* at 321.

[27] *Law Firm of Raymundo A. Armovit v. Court of Appeals*, *supra* note 4 at 24-25.

[28] G.R. No. 169536, September 21, 2007, 533 SCRA 677.

[29] *Id.* at 691.

Applying this ruling to the case at bar, it is clear that the statement in the body of our 1991 Decision (that "we do not find Atty. Armovit's claim for 'twenty percent of all recoveries' to be unreasonable"[30]) is not an order which can be the subject of execution. Neither can we ascertain from the body of the Decision an inevitable conclusion clearly showing a mistake in the dispositive portion. On the contrary, the context in which the statement was used shows that it is premised on the interpretation that Atty. Armovit's valid claim is only for an additional ₱252,000.00 in attorney's fees:

> Contingent fees are valid in this jurisdiction. It is true that attorney's fees must at all times be reasonable; however, **we do not find Atty. Armovit's claim for "twenty percent of all recoveries" to be unreasonable**. In the case of *Aro v. Nañawa*, decided in 1969, this Court awarded the agreed fees amid the efforts of the client to deny him fees by terminating his services. In parallel vein, **we are upholding Atty. Armovit's claim for ₱252,000.00 more — pursuant to the contingent fee agreement** — amid the private respondent's own endeavours to evade its obligations.[31] (Emphases supplied.)

The confusion created in the case at bar shows yet another reason why mere pronouncements in bodies of Decisions may not be the subject of execution: random statements can easily be taken out of context and are susceptible to different interpretations. When not enshrined in a clear and definite order, random statements in bodies of Decisions can still be the subject of another legal debate, which is inappropriate and should not be allowed in the execution stage of litigation.

Consequently, the trial court cannot be considered to have committed grave abuse of discretion in denying the execution of the statement in the body of our 1991 Decision that "we do not find Atty. Armovit's claim for 'twenty percent of all recoveries' to be unreasonable."[32] All things considered, it was

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[30] *Law Firm of Raymundo A. Armovit v. Court of Appeals*, *supra* note 4 at 24-25.

[31] *Id.*

[32] *Id.*

the interpretation of petitioner Armovit Law Firm, not that of the trial court, which had the effect of varying the final and executory Decision of this Court in G.R. No. 90983. The instant Petition for *Certiorari* should therefore fail.

WHEREFORE, the Petition is *DISMISSED*. Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 159328. October 5, 2011]

HEIRS OF ANTONIO FERAREN, represented by ANTONIO FERAREN, JR., JUSTINA FERAREN-TABORA, LEAH FERAREN-HONASAN, ELIZABETH MARIE CLAIRE FERAREN-ARRASTIA, MA. TERESA FERAREN-GONZALES, JOHANNA MICHELYNNE FERAREN YABUT, SCHELMA ANTONETTE FERAREN-MENDOZA and JUAN MIGUEL FERAREN YABUT, *petitioners, vs.* **COURT OF APPEALS (FORMER 12TH DIVISION) and CECILIA TADIAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS TO THE SUPREME COURT; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS. — It is fundamental that a petition for review on *certiorari* filed with this Court under Rule 45 of the Rules of Court shall, as a general rule, raise only questions of law and that this Court is not duty-bound to analyze again and

weigh the evidence introduced in and considered by the tribunals below. However, there are recognized exceptions to this rule, to wit: (*a*) When the findings are grounded entirely on speculation, surmises, or conjectures; (*b*) When the inference made is manifestly mistaken, absurd, or impossible; (*c*) When there is grave abuse of discretion; (*d*) When the judgment is based on a misapprehension of facts; (*e*) **When the findings of facts are conflicting**; (*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) **When the CA's findings are contrary to those by the trial court**; (*h*) When the findings are conclusions without citation of specific evidence on which they are based; (*i*) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (*k*) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. ID.; RULES OF COURT; TECHNICAL RULES MAY BE RELAXED ONLY FOR FURTHERANCE OF JUSTICE AND TO BENEFIT THE DESERVING; RATIONALE. — This Court has previously held that technical rules may be relaxed only for the furtherance of justice and to benefit the deserving. Moreover, rules of procedure do not exist for the convenience of the litigants. These rules are established to provide order to and enhance the efficiency of our judicial system. They are not to be trifled with lightly or overlooked by the mere expedience of invoking "substantial justice." In a long line of decisions, this Court has repeatedly held that, while the rules of procedure are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.

3. ID.; EVIDENCE; JUDICIAL ADMISSION; CONTRADICTION THEREOF MAY BE ALLOWED ONLY IF IT CAN BE PROVED THAT SUCH ADMISSION WAS MADE THROUGH PALPABLE MISTAKE OR THAT NO SUCH ADMISSION WAS MADE. — Under Section 4, Rule 129 of the Rules of Court, petitioners may not contradict this judicial

admission unless they are able to show that it was made through palpable mistake or that no such admission was made. In the instant case, petitioners' subsequent claim in their Position Paper that their house was built during the time that their parents were the owners of the disputed lot is a direct contradiction of their judicial admission in their Answer. However, petitioners failed to prove that such admission was made through palpable mistake or that no such admission was made. Hence, they may not contradict the same.

4. CIVIL LAW; SPECIAL CONTRACTS; LEASE; RIGHT OF THE LESSEE SHOULD THE LESSOR REFUSE TO REIMBURSED THE IMPROVEMENT INTRODUCED THEREIN IN GOOD FAITH; THE SOLE RIGHT OF THE LESSEE IS TO REMOVE THE IMPROVEMENTS WITHOUT CAUSING ANY MORE DAMAGE TO THE PROPERTY LEASED THAN IS NECESSARY. — Hence, under Article 1678, the lessor has the option of paying one-half of the value of the improvements that the lessee made in good faith, which are suitable to the use for which the lease is intended, and which have not altered the form and substance of the land. On the other hand, the lessee may remove the improvements should the lessor refuse to reimburse. It appears, nonetheless, that in her Complaint, private respondent prayed for the demolition of petitioners' residential house constructed on the subject lot. It is, thus, clear that private respondent does not want to appropriate the improvements. As such, petitioners cannot compel her to reimburse to them one-half of the value of their house. The sole right of petitioners under Article 1678 then is to remove the improvements without causing any more damage upon the property leased than is necessary.

APPEARANCES OF COUNSEL

Gacayan Paredes Agmata & Associates Law Offices for petitioners.

Alfredo F. Tadiar for private respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the May 21, 2003 Decision[1] and the July 17, 2003 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 71372. The assailed CA Decision reversed and set aside the Decisions of the Municipal Trial Court (MTC) of San Fernando City, La Union, Branch 2 in Civil Case No. 3463[3] and the Regional Trial Court (RTC) of San Fernando City, La Union, Branch 26 in Civil Case No. 6617,[4] while the questioned CA Resolution denied petitioners' Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

On May 25, 1999, herein private respondent Celia Tadiar (Celia) filed with the MTC of San Fernando, La Union a Complaint for Unlawful Detainer against herein petitioners Heirs of Antonio Feraren. In said Complaint, Celia alleged that she and her three brothers are co-owners of a 1,200 square meter parcel of land located in the *poblacion* of San Fernando City in La Union; that on September 21, 1960, the said lot was sold by their father to the spouses Antonio and Justina Feraren (Spouses Feraren) on *pacto de retro*; it was stipulated that the right to repurchase may be exercised within ten years; on August 31, 1970, Celia and her co-heirs re-acquired the subject property; thereafter, the lot was leased on a month-to-month basis to the Spouses Feraren who have constructed a residential house thereon; that sometime in March 1992, Celia and her co-heirs informed

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[1] Penned by Associate Justice Eliezer R. de los Santos, with Associate Justices Romeo A. Brawner and Regalado E. Maambong, concurring; CA *rollo*, pp. 168-174.

[2] *Id*. at 191.

[3] Records, pp. 67-70.

[4] *Id*. at 107-113.

the Spouses Feraren of their intention to terminate their lease contract; the Spouses Feraren, in turn, offered to sell them their house or buy the subject lot, which offers were declined by Celia and her co-heirs and, instead, allowed the Spouses Feraren to continue renting the property; after the death of Antonio in 1995, herein petitioners requested Celia and her co-heirs to extend the lease until June 30, 1997 and even volunteered to temporarily vacate the said property; Celia and her co-heirs agreed and they did not even increase the rentals; nonetheless, petitioners failed to comply with their commitment to temporarily vacate; they continued to stay within the premises of the subject property and refused to vacate the same notwithstanding repeated demands from Celia and her co-heirs.[5]

In their Answer, herein petitioners contended that a 128-square-meter portion of the lot being claimed by private respondent is their property; even before the Spouses Feraren entered into a contract of sale with *pacto de retro* with the father of Celia, the former were already in possession of the remaining portion of the subject property on the strength of a lease contract executed in their favor by the latter in 1949; their construction of a residential house on the subject property was by virtue of a right granted under the said contract of lease; petitioners were very much willing to vacate the disputed lot but only upon payment of the value of all the improvements that they have legally introduced as builders in good faith on the said lot, which includes the house presently standing thereon as well as the concrete fence surrounding the said house; in the alternative, they offered to buy the parcel of land subject of the complaint.[6]

For failure of the parties to arrive at an amicable settlement, the MTC, in its Order[7] dated November 3, 2000, directed them to submit their position papers and other evidence within ten (10) days from receipt of a copy of the said Order.

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[5] *Id*. at 2-7.

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

[7] *Id*. at 48.

Private respondent did not file a position paper.

On the other hand, petitioners filed their Position Paper[8] on March 15, 2001. Petitioners alleged therein that their parents are builders in good faith having built their house on the lot in question during the time that they were the owners of the disputed lot.

On June 15, 2001, the MTC rendered its Decision dismissing the complaint for unlawful detainer. The trial court gave credence to petitioners' contention that their parents built the house in controversy on the subject lot while they were the owners of the said lot. As such, the MTC held that as long as private respondent refuses to reimburse petitioners of the value of the improvements they have introduced on the lot in question, they (petitioners) may not be compelled to vacate the same.

On appeal, the RTC of San Fernando City, La Union, in its Decision dated January 28, 2002, affirmed *in toto* the judgment of the MTC.

Private respondent then filed a petition for review with the CA.

On May 21, 2003, the CA promulgated its presently assailed Decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the judgment rendered by the Municipal Trial Court of San Fernando City, La Union in Civil Case No. 3463 and the Decision rendered by the Regional Trial Court of La Union in the same case are both **REVERSED** and **SET ASIDE**. A new judgment is hereby rendered:
>
> 1. Declaring the respondents not entitled to reimbursement for the cost of their residential house built on the land owned by the petitioner; and
>
> 2. Directing the respondents to vacate the premises and restore possession thereof to the petitioner.
>
> SO ORDERED.[9]

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[8] *Id*. at 49-66-A.

[9] CA *rollo*, p. 173.

The CA based its Decision on its finding that the subject residential house was built during the time petitioners' parents were lessees of the lot in question.

Petitioners filed a Motion for Reconsideration, but the same was denied by the CA *via* its Resolution dated July 17, 2003.

Hence, the present petition with the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONERS ADMITTED IN THEIR ANSWER THAT THEIR RESIDENTIAL HOUSE WAS CONSTRUCTED DURING THE LIFETIME OF THE LEASE CONTRACT AND NOT DURING THE 10-YEAR PERIOD WHEN THE LOT WHERE IT STOOD WAS SOLD UNDER *PACTO DE RETRO* TO THE PETITIONERS' PARENTS AS SHOWN BY UNREBUTTED EVIDENCE.

II

THE RESPONDENT COURT ERRED IN REVERSING THE DECISIONS OF THE REGIONAL TRIAL COURT AND THE MUNICIPAL TRIAL COURT OF SAN FERNANDO CITY, LA UNION.[10]

Petitioners allege in the instant petition that the house presently standing on the subject parcel of land is different from the house built on the same lot in 1949. Petitioners insist on their claim that the house built at the time that their parents were lessees of the subject property in 1949 was demolished to give way to the construction of the present house which was erected sometime in the late 1960's when the said lot was then owned by their parents by virtue of the *pacto de retro* sale executed in the latter's favor on September 21, 1960.

The Court finds the petition unmeritorious.

At the outset, the Court notes that the issues raised in the present petition are essentially questions of fact. It is fundamental that a petition for review on *certiorari* filed with this Court

[10] *Rollo*, p. 16.

under Rule 45 of the Rules of Court shall, as a general rule, raise only questions of law and that this Court is not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below.[11] However, there are recognized exceptions to this rule, to wit:

(*a*) When the findings are grounded entirely on speculation, surmises, or conjectures;
(*b*) When the inference made is manifestly mistaken, absurd, or impossible;
(*c*) When there is grave abuse of discretion;
(*d*) When the judgment is based on a misapprehension of facts;
(*e*) **When the findings of facts are conflicting**;
(*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
(*g*) **When the CA's findings are contrary to those by the trial court**;
(*h*) When the findings are conclusions without citation of specific evidence on which they are based;
(*i*) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
(*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
(*k*) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[12]

In the present case, the findings of the MTC and the RTC are contrary to those made by the CA. The RTC affirmed the findings of the MTC that the subject house which is presently

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[11] *Heirs of Felicidad Vda. de De la Cruz v. Heirs of Pedro Fajardo*, G.R. No. 184966, May 30, 2011; *Josefa S. Abalos and Development Bank of the Philippines v. Spouses Lomantong Darapa and Sinab Dimakuta*, G.R. No. 164693, March 23, 2011; *Sevilla v. Court of Appeals*, G.R. No. 150284, November 22, 2010, 635 SCRA 508, 514.

[12] *Spouses Moises and Clemencia Andrada v. Pilhino Sales Corporation, represented by its Branch Manager, Jojo S. Saet*, G.R. No. 156448, February 23, 2011. (Emphasis ours.)

standing on the disputed parcel of land was built at the time that the ownership of the said lot was in the name of petitioners' parents. The CA, on the other hand, ruled that the abovementioned house was constructed when petitioners' parents were in possession of the lot in question as lessees. Thus, this Court's review of such findings is warranted.

A careful review of the records and the evidence presented in the instant case shows that the CA did not commit error in finding that the house in question was built at the time petitioners' parents possessed the subject lot as lessees.

Firstly, the Court agrees with the CA that petitioners' Position Paper and the affidavits of its witnesses should not have been considered by the trial courts since these were filed beyond the 10-day reglementary period required under Section 10, Rule 70 of the Rules of Court and Section 9 of the Revised Rule on Summary Procedure.[13] Petitioners do not dispute the appellate court's finding that they submitted their position paper and affidavits more than three months after the deadline set by the abovementioned rules. In this regard, this Court, in *Teraña v. De Sagun*,[14] held as follows:

> x x x By its express terms, the purpose of the RSP [Revised Rule on Summary Procedure] is to "achieve an expeditious and inexpensive determination" of the cases they cover, among them, forcible entry and unlawful detainer cases. To achieve this objective, the RSP expressly prohibit[s] certain motions and pleadings that could cause delay, among them, a motion for extension of time to file pleadings, affidavits or any other paper. If the extension for the filing of these submissions cannot be allowed, we believe it illogical and incongruous to admit a pleading that is already filed late. Effectively, we would then allow indirectly what we prohibit to be done directly. It is for

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[13] Sec. 10. Submission of affidavits and position papers. — Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the affidavits of their witnesses and other evidence on the factual issues defined in the order, together with their position papers setting forth the law and the facts relied upon by them. (The same provisions appear under Section 9 of the Revised Rule on Summary Procedure)

[14] G.R. No. 152131, April 29, 2009, 587 SCRA 60.

this reason that in *Don Tino Realty Development Corporation v. Florentino* [G.R. No. 134222, September 10, 1999, 314 SCRA 197], albeit on the issue of late filing of an answer in a summary proceeding, we stated that *"[t]o admit a late answer is to put a premium on dilatory measures, the very mischief that the rules seek to redress."*

The strict adherence to the reglementary period prescribed by the RSP is due to the essence and purpose of these rules. The law looks with compassion upon a party who has been illegally dispossessed of his property. Due to the urgency presented by this situation, the RSP provides for an expeditious and inexpensive means of reinstating the rightful possessor to the enjoyment of the subject property. This fulfills the need to resolve the ejectment case quickly. x x x[15]

As noted by the CA, petitioners did not even bother to file a motion asking the trial court to admit their position paper which was belatedly filed. Indeed, the record is barren of any evidence to show that petitioners, at least, tried to offer any explanation or justification for such delay. They simply ignored the Rules. This Court has previously held that technical rules may be relaxed only for the furtherance of justice and to benefit the deserving.[16] Moreover, rules of procedure do not exist for the convenience of the litigants.[17] These rules are established to provide order to and enhance the efficiency of our judicial system.[18] They are not to be trifled with lightly or overlooked by the mere expedience of invoking "substantial justice."[19] In a long line of decisions, this Court has repeatedly held that, while the rules of procedure are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary

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[15] Id. at 71-72.

[16] *Barangay Dasmariñas, thru Barangay Captain Ma. Encarnacion R. Legaspi v. Creative Play Corner School, et al.*, G.R. No. 169942, January 24, 2011.

[17] *Villa v. Heirs of Enrique Altavas*, G.R. No. 162028, July 14, 2008, 558 SCRA 157, 166.

[18] *Id.*

[19] *Id.*

to the orderly and speedy discharge of judicial business.[20] In the instant case, petitioners' complete disregard of the Rules of Court and of the Revised Rule on Summary Procedure only shows that they are not deserving of their relaxation. Hence, the MTC erred in admitting petitioners' position paper and taking the same into consideration in rendering its judgment.

In any case, the Court finds no error in the ruling of the CA that petitioners' statement in their Answer, that their parents built the subject residential house as lessees under the authority given to them by private respondent's father in their contract of lease executed in 1949, is a judicial admission. Under Section 4, Rule 129 of the Rules of Court,[21] petitioners may not contradict this judicial admission unless they are able to show that it was made through palpable mistake or that no such admission was made. In the instant case, petitioners' subsequent claim in their Position Paper that their house was built during the time that their parents were the owners of the disputed lot is a direct contradiction of their judicial admission in their Answer. However, petitioners failed to prove that such admission was made through palpable mistake or that no such admission was made. Hence, they may not contradict the same.

Aside from the abovementioned admission made by petitioners in their Answer, there is nothing in the said Answer which claims that the subject house was constructed when petitioners' parents were the owners of the disputed lot. Neither was there any allegation nor even a hint that a house was first built on the lot in question in 1949 and that the same was demolished in the late 1960s to give way to the construction of the house which is presently standing on the disputed lot.

Thus, it appears from all indications that petitioners' claims and allegations in their Position Paper contradicting their

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[20] *Id.*

[21] 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. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

admission in their Answer are mere afterthought subsequent to realizing that they could not recover the full value of the house based on their acknowledgment that the same was erected at the time that their parents were lessees of the disputed parcel of land.

At this juncture, it would not be amiss to reiterate that the rights of a lessee, like petitioners in the present case, are governed by Article 1678 of the Civil Code, which reads:

> Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.
>
> With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.

Hence, under Article 1678, the lessor has the option of paying one-half of the value of the improvements that the lessee made in good faith, which are suitable to the use for which the lease is intended, and which have not altered the form and substance of the land. On the other hand, the lessee may remove the improvements should the lessor refuse to reimburse.[22]

It appears, nonetheless, that in her Complaint, private respondent prayed for the demolition of petitioners' residential house constructed on the subject lot. It is, thus, clear that private respondent does not want to appropriate the improvements. As such, petitioners cannot compel her to reimburse to them one-half of the value of their house. The sole right of petitioners

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[22] *Sulo sa Nayon Inc. v. Nayong Pilipino Foundation*, G.R. No. 170923, January 20, 2009, 576 SCRA 655, 666.

under Article 1678 then is to remove the improvements without causing any more damage upon the property leased than is necessary.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 169042. October 5, 2011]

ERDITO QUARTO, *petitioner, vs.* **THE HONORABLE OMBUDSMAN SIMEON MARCELO, CHIEF SPECIAL PROSECUTOR DENNIS VILLA IGNACIO, LUISITO M. TABLAN, RAUL B. BORILLO, and LUIS A. GAYYA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND *MANDAMUS*; REQUIREMENTS THAT NO OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW; NOT PRESENT IN CASE AT BAR. — As extraordinary writs, both Sections 1 (*certiorari*) and 3 (*mandamus*), Rule 65 of the Rules of Court require, as a pre-condition for these remedies, that there be no other plain, speedy and adequate remedy in the ordinary course of law. In the present case, the petitioner has not shown that he moved for a reconsideration of the assailed resolutions based substantially on the same grounds stated in this present petition. Neither did the petitioner file a motion for the inclusion of

the respondents in the informations before filing the present petition. These are adequate remedies that the petitioner chose to forego; he bypassed these remedies and proceeded to seek recourse through the present petition. Similarly, the petitioner has not shown that he filed the present petition with this Court within the sixty-day reglementary period from notice of the assailed Ombudsman's resolutions. He did not do so, of course, since he initially and erroneously filed a *certiorari* petition with the Sandiganbayan. We remind the petitioner that the remedy from the Ombudsman's orders or resolutions in criminal cases is to file a petition for *certiorari* under Rule 65 with this Court.

2. ID.; ID.; *MANDAMUS*; DEFINED AND CONSTRUED; THE REMEDY OF *MANDAMUS* LIES WHEN, ON THE BASIS OF THE SAME EVIDENCE, THE OMBUDSMAN ARBITRARILY EXCLUDES FROM AN INDICTMENT SOME INDIVIDUALS WHILE IMPLEADING ALL OTHERS. — *Mandamus* is the proper remedy to compel the performance of a ministerial duty imposed by law upon the respondent. In matters involving the exercise of judgment and discretion, *mandamus* may only be resorted to, to compel the respondent to take action; it cannot be used to direct the manner or the particular way discretion is to be exercised. In the exercise of his investigatory and prosecutorial powers, the Ombudsman is generally no different from an ordinary prosecutor in determining who must be charged. He also enjoys the same latitude of discretion in determining what constitutes sufficient evidence to support a finding of probable cause (that must be established for the filing of an information in court) and the degree of participation of those involved or the lack thereof. His findings and conclusions on these matters are not ordinarily subject to review by the courts except when he gravely abuses his discretion, *i.e.*, when his action amounts to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or when he acts outside the contemplation of law. If, on the basis of the same evidence, the Ombudsman ***arbitrarily*** excludes from an indictment some individuals while impleading all others, the remedy of *mandamus* lies since he is duty-bound, as a rule, to include in the information all persons who appear responsible for the offense involved.

3. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; POWER OF THE OMBUDSMAN TO GRANT IMMUNITY; EXPLAINED. — In the present case, the Ombudsman granted the respondents immunity from prosecution pursuant to RA No. 6770 which specifically empowers the Ombudsman to grant immunity *"in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives."* x x x To briefly outline the rationale for Sec. 17 of this law, among the most important powers of the State is the power to compel testimony from its residents; this power enables the government to secure vital information necessary to carry out its myriad functions. This power though is not absolute. The constitutionally-enshrined right against compulsory self-incrimination is a leading exception. The state's power to compel testimony and the production of a person's private books and papers run against a solid constitutional wall when the person under compulsion is himself sought to be penalized. In balancing between state interests and individual rights in this situation, the principles of free government favor the individual to whom the state must yield. A state response to the constitutional exception to its vast powers, especially in the field of ordinary criminal prosecution and in law enforcement and administration, is the use of an immunity statute. Immunity statutes seek a rational accommodation between the imperatives of an individual's constitutional right against self-incrimination (considered the fount from which all statutes granting immunity emanate) and the legitimate governmental interest in securing testimony. By voluntarily offering to give information on the commission of a crime and to testify against the culprits, a person opens himself to investigation and prosecution if he himself had participated in the criminal act. To secure his testimony without exposing him to the risk of prosecution, the law recognizes that the witness can be given immunity from prosecution. In this manner, the state interest is satisfied while respecting the individual's constitutional right against self-incrimination.

4. ID.; ID.; ID.; ID.; REQUIREMENTS; ELUCIDATED. — While the legislature is the *source* of the power to grant immunity, the authority to implement is lodged elsewhere. The authority to choose the individual to whom immunity would

be granted is a constituent part of the process and is essentially an executive function. x x x RA No. 6770 fully recognizes this prosecutory prerogative by empowering the Ombudsman to grant immunity, subject to "such terms and conditions" as he may determine. The only textual limitation imposed by law on this authority is the need to take "into account the pertinent provisions of the Rules of Court,"— *i.e.*, Section 17, Rule 119 of the Rules of Court. This provision requires that: (a) There is absolute necessity for the testimony of the accused whose discharge is requested; (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) The testimony of said accused can be substantially corroborated in its material points; (d) Said accused does not appear to be the most guilty; and (e) Said accused has not at any time been convicted of any offense involving moral turpitude. This Rule is itself unique as, without detracting from the executive nature of the power to prosecute and the power to grant immunity, it clarifies that in cases already filed with the courts, the prosecution merely makes a proposal and initiates the process of granting immunity to an accused-witness in order to utilize him as a witness against his co-accused. x x x Thus, it is the trial court that determines whether the prosecution's preliminary assessment of the accused-witness' qualifications to be a state witness satisfies the procedural norms. This relationship is in reality a symbiotic one as the trial court, by the very nature of its role in the administration of justice, largely exercises its prerogative based on the prosecutor's findings and evaluation. x x x RA No. 6770 recognizes that these same principles should apply when the Ombudsman directly grants immunity to a witness. The same consideration — to achieve the greater and higher purpose of securing the conviction of the most guilty and the greatest number among the accused — is involved whether the grant is secured by the public prosecutor with active court intervention, or by the Ombudsman. If there is any distinction at all between the public prosecutor and the Ombudsman in this endeavor, it is in the specificity of and the higher priority given by law to the Ombudsman's purpose and objective — to focus on offenses committed by public officers and employees to ensure accountability in the public service. This accounts for the Ombudsman's unique power to grant immunity by itself and

even prior to the filing of information in court, a power that the public prosecutor himself generally does not enjoy.

5. ID.; LEGISLATURE; POWER TO GRANT IMMUNITY; CONGRESS POSSESSES BROAD DISCRETION AND CAN LAY DOWN THE CONDITIONS AND THE EXTENT OF THE IMMUNITY TO BE GRANTED; CLARIFIED. — The power to grant immunity from prosecution is essentially a legislative prerogative. The exclusive power of Congress to define crimes and their nature and to provide for their punishment concomitantly carries the power to immunize certain persons from prosecution to facilitate the attainment of state interests, among them, the solution and prosecution of crimes with high political, social and economic impact. In the exercise of this power, Congress possesses broad discretion and can lay down the conditions and the extent of the immunity to be granted. Early on, legislations granting immunity from prosecution were few. However, their number escalated with the increase of the need to secure vital information in the course and for purposes of prosecution. These statutes considered not only the importance of the testimony sought, but also the unique character of some offenses and of some situations where the criminal participants themselves are in the best position to give useful testimony. RA No. 6770 or the Ombudsman Act of 1989 was formulated along these lines and reasoning with the vision of making the Ombudsman the protector of the people against inept, abusive and corrupt government officers and employees. Congress saw it fit to grant the Ombudsman the power to directly confer immunity to enable his office to effectively carry out its constitutional and statutory mandate of ensuring effective accountability in the public service.

6. ID.; CONSTITUTIONAL LAW; JUDICIARY; JUDICIAL REVIEW; IMMUNITY STATUTE CANNOT RULE OUT A REVIEW BY THE SUPREME COURT OF THE OMBUDSMAN'S EXERCISE OF DISCRETION; JUSTIFIED. — An immunity statute does not, and cannot, rule out a review by this Court of the Ombudsman's exercise of discretion. Like all other officials under our constitutional scheme of government, all their acts must adhere to the Constitution. The parameters of our review, however, are narrow. In the first place, what we review are executive acts of a constitutionally independent Ombudsman. Also, we undertake

the review given the underlying reality that this Court is not a trier of facts. Since the determination of the requirements under Section 17, Rule 119 of the Rules of Court is highly factual in nature, the Court must, thus, generally defer to the judgment of the Ombudsman who is in a better position (than the Sandiganbayan or the defense) to know the relative strength and/or weakness of the evidence presently in his possession and the kind, tenor and source of testimony he needs to enable him to prove his case. It should not be forgotten, too, that the grant of immunity effectively but conditionally results in the extinction of the criminal liability the accused-witnesses might have incurred, as defined in the terms of the grant. This point is no less important as the grant directly affects the individual and enforces his right against self-incrimination. These dynamics should constantly remind us that we must tread softly, but not any less critically, in our review of the Ombudsman's grant of immunity. From the point of view of the Court's own operations, we are circumscribed by the nature of the review powers granted to us under the Constitution and the Rules of Court. We rule on the basis of a petition for *certiorari* under Rule 65 and address mainly the Ombudsman's exercise of discretion. Our room for intervention only occurs when a clear and grave abuse of the exercise of discretion is shown. Necessarily, this limitation similarly reflects on the petitioner who comes to us on the allegation of grave abuse of discretion; the petitioner himself is bound to **clearly and convincingly establish that the Ombudsman gravely abused his discretion in granting immunity in order to fully establish his case.**

7. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CASE DISTINGUISHED FROM CRIMINAL CASE; APPLICATION IN CASE AT BAR. — The fact that the respondents had previously been found administratively liable, based on the same set of facts, does not necessarily make them the "most guilty." An administrative case is altogether different from a criminal case, such that the disposition in the former does not necessarily result in the same disposition for the latter, although both may arise from the same set of facts. The most that we can read from the finding of liability is that the respondents have been found to be administratively guilty by *substantial evidence* — the quantum of proof required in an administrative proceeding. The requirement of the Revised Rules of Criminal Procedure (which RA No. 6770 adopted by

reference) that the proposed witness should not appear to be the "most guilty" is obviously in line with the character and purpose *of a criminal proceeding,* and the much stricter standards observed in these cases. They are standards entirely different from those applicable in administrative proceedings.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for *certiorari* and *mandamus*[1] filed by Erdito Quarto (*petitioner*) assailing the Ombudsman's January 7, 2004[2] and November 4, 2004[3] resolutions which granted Luisito M. Tablan, Raul B. Borillo, and Luis A. Gayya (collectively, *respondents*) immunity from prosecution, resulting in the respondents' exclusion from the criminal informations filed before the Sandiganbayan. The petitioner seeks to nullify the immunity granted to the respondents, and to compel the Ombudsman to include them as accused in the informations for estafa through falsification of public documents[4] and for violation of Section 3(e), Republic Act (*RA*) No. 3019.[5]

FACTUAL ANTECEDENTS

The petitioner is the Chief of the Central Equipment and Spare Parts Division (*CESPD*),[6] Bureau of Equipment (*BOE*), Department of Public Works and Highways (*DPWH*), Port Area,

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[1] Under Sections 1 and 3, Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 103-135.

[3] *Id.* at 178-222.

[4] Criminal Case Nos. 28098-28100; *id.* at 257-284.

[5] Criminal Case Nos. 28251-28253; *id.* at 424, 426.

[6] *Id.* at 77.

Manila. As CESPD Chief, he is also the Head of the Special Inspectorate Team (*SIT*) of the DPWH.[7] The respondents are members of the SIT.[8]

On January 9, 2002, DPWH Secretary Simeon Datumanong created a committee to investigate alleged anomalous transactions involving the repairs and/or purchase of spare parts of DPWH service vehicles in 2001.[9] On January 17, 2002, the committee designated the DPWH Internal Audit Service (*IAS*) as its Technical Working Group to conduct the actual investigation.[10]

In the course of its investigation, the DPWH-IAS[11] learned that the emergency repairs and/or purchase of spare parts of DPWH service vehicles basically undergo the following documentary process:

I. Determination of repairs and/or spare parts needed

   a. The end-user requesting repair brings the service vehicle to the Motorpool Section, CESPD for initial inspection and preparation of Job Order; and

   b. Based on the Job Order, the SIT conducts a pre-repair inspection (to determine the necessity of repair and whether the repair is emergency in nature) and prepares a Pre-Repair Inspection Report, with a recommendation for its approval by the CESPD Chief.

II. Preparation and Approval of Requisition for Supplies and/or Equipment with accompanying documents (Job Order and Pre-Inspection Report)

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[7] *Id.* at 80, 84.

[8] The SIT members represent different divisions/services in DPWH, *viz.*: the Supplies Property Management Division, the Administrative Manpower and Management Service, the Asset and Supply Management and Control Division, the Comptrollership and Financial Management Service, and the CESPD-BOE; *id.* at 80-81.

[9] Per Department Order No. 15, Series of 2002; *id.* at 21, 70.

[10] *Id.* at 70.

[11] January 7 and March 1, 2004 resolutions of the Ombudsman; *id.* at 117-119, 150-151. Petitioner's Reply; *id.* at 464-466.

a. The Procurement Section, Administrative Manpower Management Service (*AMMS*) prepares the Requisition for Supplies and Equipment (*RSE*), the Canvass Quotation of three Suppliers, the Certificate of Emergency Purchase, and the Certificate of Fair Wear and Tear;

b. The end-user signs the RSE with the recommending approval of the concerned head of office; and

c. The AMMS Director approves the RSE.

III. Repair of Vehicles

a. The end-user selects the repair shop/auto supply from accredited establishments;

b. The selected repair shop/auto supply repairs the service vehicle and issues the corresponding sales invoice and/or official receipt;

c. The end-user accepts the repair and executes a Certificate of Acceptance;

d. The SIT conducts a post-repair inspection (to check if the vehicle was repaired and whether the repair conformed to specifications) and prepares a Post-Repair Inspection Report, with a recommendation for its approval by the CESPD Chief. The Motorpool and the end-user would prepare the Report of Waste Materials also for the signature of the CESPD Chief; and

e. The Assets and Supply Management and Control Division recommends payment of the expense/s incurred.

The processing of the payment of claims for reimbursement follows the above process.

Based on this procedure, the DPWH-IAS discovered that from March to December 2001, several emergency repairs and/or purchase of spare parts of hundreds of DPWH service vehicles, which were approved and paid by the government, did not actually

take place, resulting in government losses of approximately ₱143 million for this ten-month period alone.[12]

Thus, Atty. Irene D. Ofilada of the DPWH-IAS filed before the Office of the Ombudsman[13] a Complaint-Affidavit[14] and a Supplemental Complaint-Affidavit[15] charging several high-ranking DPWH officials and employees — including the petitioner, the respondents, and other private individuals who purportedly benefited from the anomalous transactions — with Plunder, Money Laundering, Malversation, and violations of RA No. 3019 and the Administrative Code.[16]

Atty. Ofilada imputed the following acts to the petitioner:

> With dishonesty and grave misconduct, [the petitioner] x x x **approved four (4) job orders** for [the] repairs [and/or] purchase of spare parts of [the vehicle assigned to Atty. Ofilada,] noted the certificate of urgency of said repairs [and/or] purchase[,] **concurred with both the pre-repair and post repair inspection reports thereon**, participated in the accomplishment of the supporting Requisition for Supplies and Equipment (RSE) x x x[,] and participated in the approval of the disbursement voucher authorizing payment of said repairs as necessary and lawful [even if said vehicle was never referred to the Motorpool Section, CESPD for repair].
>
> The documents relating to [this vehicle] were filed within a period of one month (between September to October 2001) [and] were used to authorize the payment of said non existent ghost repairs to the damage and prejudice of the [DPWH.][17] (emphases ours)

On the other hand, Atty. Ofilada charged the respondents with the following:

> With dishonesty and grave misconduct, [respondents] as members of the [SIT] x x x **accomplished and signed Pre-Repair Inspection**

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[12] *Id.* at 23.

[13] OMB-C-C-02-0507-H.

[14] Filed on August 7, 2002.

[15] Dated October 9, 2002; *rollo*, pp. 17-68.

[16] Section 43, Chapter V, Book VI.

[17] *Rollo*, p. 28.

and Post Repair Inspection Reports in support of the four job orders [and made] it appear that the vehicle was inspected prior and after the alleged repair [although they knew that the vehicle was never turned over for inspection]. The accomplishment of the Pre-Repair and Post-Repair Inspection Report[s] led to the preparation of the Request for Supplies and Equipment which was the basis of the preparation of the disbursement vouchers ultimately authorizing the payment of the said repairs thru reimbursement scheme to the damage and prejudice of the DPWH.

x x x the [P]re-[R]epair and [P]ost-[R]epair [I]nspection [R]eports of the [SIT] xxx are fictitious and falsified as no actual inspection could have transpired[.][18] (emphasis ours)

The petitioner denied the allegations against him, claiming that he merely relied on his subordinates when he signed the job orders and the inspection reports.[19] In contrast, the respondents admitted the existence of irregularities in the repairs and/or purchase of spare parts of DPWH service vehicles, and offered to testify and to provide evidence against the DPWH officials and employees involved in the anomaly in exchange for their immunity from prosecution. The respondents submitted:

5.2 x x x since we assumed our duties as members of the SIT xxx, we observed that [the] DPWH vehicles were being sent to the repair shop in violation of the prescribed guidelines governing the emergency repair of a **service vehicle. In most instances, service vehicles are immediately brought to a car repair shop of the end-user's choice without bringing it first to the [Motorpool Section, CESPD, BOE] for the preparation of the required job order by [Gayya] of the Motorpool Section and the pre-repair inspection to be conducted by the SIT. After the purported repairs are done, SIT members are made to sign a post-repair inspection report which already includes a typed-in recommendation for the payment of repairs, and the signature of the Head of the [SIT] indicating his alleged concurrence with the findings of the SIT despite the absence of an actual inspection.** The post-repair inspection report is accompanied by the following attachments, to wit: a) a falsified job order signed by the head of the [SIT] and the

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[18] *Id.* at 30-31.

[19] *Id.* at 83-84.

Chief of the Motorpool Section x x x [and] e) an empty or falsified [p]re-repair inspection report[.]

5.3 Initially[,] we tried to curb the above anomalous practices being perpetrated by suppliers and officials of the DPWH x x x [by making] known [our] objections to the questionable job orders for the proposed repairs of DPWH service vehicles[,] thus:

a. On July, 9, 1999, [Tablan] wrote the Head of the SIT a memorandum x x x stating that the job orders for [several identified vehicles] x x x violated the prohibition against splitting of job orders x x x. [Tablan recommended for public bidding the proposed repairs for the said vehicles].

b. In connection with the job orders involving [several identified vehicles] x x x Tablan and Borillo wrote the Head of the SIT a Memorandum x x x recommending that the whereabouts of the end-user be verified, and the service vehicle be re-inspected and/or disposed of.

c. Since the July 9, 1999 Memorandum was returned to x x x Tablan without any action being undertaken by the SIT Chief, [Tablan and Borillo] reiterated the recommendation for the public bidding of the proposed repairs described therein[.]

6. In our attempts to perform our sworn duties, however, we incurred the displeasure of the suppliers, the head of [SIT] and other officials of the DPWH who threatened various administrative sanctions against us if we should not accede to their wishes. x x x

7. In addition to the foregoing, there are other factors which conspired to prevent us from properly performing our duties. For one, the DPWH processes an average of 3,000 repairs per calendar year. Given the staggering number and extent of repairs, including the volume of paperwork, it was practically impossible for [us] to implement the rules which proved too tedious under the circumstance. As such, a "short-cut" of the rules was necessary to accommodate the demands of the end-user, the suppliers, our superiors, and other executives of the DPWH. x x x

8. The anomalous practices of the DPWH executives and suppliers in the purported repair of DPWH service vehicles were indeed more widespread and rampant in the year 2001. As a precautionary measure, we took the initiative of photocopying these sets of falsified documents

as they were presented to us before we affixed our respective signatures thereon. We grouped these documents into Sets A and B[.]

x x x x x x x x x

11. x x x That the service vehicle x x x has not been actually inspected by [Tablan and Borillo] is attested to by the pre and post repair inspection reports initially bearing the signature of the head of the SIT as concurring official without the required signatures of Borillo and Tablan. More importantly, these DPWH officials did not bother, in a majority of cases, to "cover their tracks" when they prepared and signed the pre and post repair inspection reports on the same dates. Based on proper procedure, a post repair inspection report is to be accomplished only after the preparation and approval of the Job Order, pre-repair inspection report, RSE, Cash Invoice and Acceptance by the end-user. In this case, the RSE, Cash Invoice and Certificate of Acceptance are dated much later than the post-repair inspection report. Since x x x there was no actual pre-repair and post-repair inspection conducted, the foregoing sample instances paved the way for the "ghost repairs" of DPWH service vehicles, to the detriment and prejudice of the government.

12. Because of the anomalous transactions, the joke circulating around the DPWH is that we are actually the directors of the DPWH since we are the "last to sign," so to speak. That the signature[s] of the [respondent] SIT members are merely *pro forma* is all the more pronounced in a sample set consisting of a number of pre-repair inspection reports for a particular month in 2001. The pre-repair inspection reports of the service vehicles indicated therein are empty of any findings and bear the signature of the head of the SIT as concurring official. **All the foregoing documents above detailed negate the convenient excuse proffered by DPWH executives that they sign the documents only after the SIT had inspected the service vehicle and prepared the pre and post repair inspection reports**.

x x x x x x x x x

14.1 x x x the above examples are only a representative sampling of the extent of the anomalous transactions involving DPWH service vehicles which can be considered "ghost repairs." There are more instances wherein [we] are willing to testify to in exchange for immunity from prosecution.[20] (emphases ours)

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[20] *Id.* at 94-101.

After conducting preliminary investigation, the Ombudsman filed with the Sandiganbayan[21] several informations charging a number of DPWH officials and employees with plunder,[22] estafa through falsification of official/commercial documents and violation of Section 3(e), RA No. 3019. On the other hand, the Ombudsman granted the respondents' request for immunity in exchange for their testimonies and cooperation in the prosecution of the cases filed.

The petitioner initially filed a *certiorari* petition with the Sandiganbayan, questioning the Ombudsman's grant of immunity in the respondents' favor. The Sandiganbayan, however, dismissed the petition for lack of jurisdiction and advised the petitioner to instead question the Ombudsman's actions before this Court.[23] Hence, this present petition.

THE PETITION

The petitioner argues that the Ombudsman should have included the respondents in the informations since it was their inspection reports that actually paved the way for the commission of the alleged irregularities.[24] The petitioner asserts that the respondents' criminal complicity clearly appears since "no repair could have started" and "no payment for repairs, ghost or not," could have been made without the respondents' pre-repair and post-repair inspection reports. By excluding the respondents in the informations, the Ombudsman is engaged in "selective prosecution" which is a clear case of grave abuse of discretion.

The petitioner claims that before the Ombudsman may avail of the respondents as state witnesses, they must be included first in the informations filed with the court. Thereafter, the Ombudsman can ask the court for their discharge so that they

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[21] *Id.* at 257-284.

[22] On January 20, 2005, the Sandiganbayan, Second Division dismissed, without prejudice to the filing of appropriate charges, Criminal Case No. 27969, for lack of probable cause; *id.* at 235-256.

[23] *Id.* at 285-292.

[24] Relying on Section 4, Rule 112 of the Revised Rules of Criminal Procedure.

can be utilized as state witnesses under the conditions laid down in Section 17, Rule 119 of the Rules of Court since the court has the "sole province" to determine whether these conditions exist.

These conditions require, *inter alia*, that there should be "absolute necessity" for the testimony of the proposed witness and that he/she should not appear to be the "most guilty." The petitioner claims that the respondents failed to comply with these conditions as the Ombudsman's "evidence," which became the basis of the informations subsequently filed, shows that the respondents' testimony is not absolutely necessary; in fact, the manner of the respondents' participation proves that they are the "most guilty" in the premises.

THE COMMENTS OF THE OMBUDSMAN AND THE RESPONDENTS

The Ombudsman counters that RA No. 6770 (the Ombudsman Act of 1989) expressly grants him the power to grant immunity from prosecution to witnesses. Given this power, the Ombudsman asserts that Section 17, Rule 119 of the Rules of Court, which presupposes that the witness is originally included in the information, is inapplicable to the present case since the decision on whom to prosecute is an executive, not a judicial, prerogative.[25]

The Ombudsman invokes this Court's policy of non-interference in the Ombudsman's exercise of his discretion in matters involving his investigatory and prosecutorial powers.[26] The petitioner's claim that the respondents are the "most guilty" is a matter of defense which the petitioner may raise not in this proceeding, but in the trial proper.[27]

On the other hand, the respondents submit that the Ombudsman has ample discretion in determining who should be included in

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[25] *Rollo*, p. 413.

[26] *Ibid.*

[27] *Id.* at 415.

the information on the basis of his finding of probable cause. The courts can only interfere in the Ombudsman's exercise of his discretion in case of a clear showing of grave abuse of discretion, which the petitioner failed to establish.[28]

THE PETITIONER'S REPLY[29]

While conceding that the Ombudsman has the power and the discretion to grant immunity to the respondents, the petitioner asserts that this power must be exercised within the confines of Section 17, Rule 119 of the Rules of Court which requires, *inter alia*, that the proposed witness must not appear to be the "most guilty." By ignoring this provision and extending immunity to the respondents whose false reports ultimately led to the payment for supposed repairs, and who are, thus, the "real culprits,"[30] the Ombudsman gravely abused his discretion — a fatal defect correctible by *certiorari*.

Amplifying on the respondents' "guilt," the petitioner cites the DPWH's decision in an administrative case which the Civil Service Commission affirmed, finding the respondents guilty of dishonesty and grave misconduct involving the same set of facts.[31]

OUR RULING

We **dismiss** the petition on two grounds: *first*, the petitioner did not avail of the remedies available to him before filing this present petition; and, *second*, within the context of the Court's policy of non-interference with the Ombudsman's exercise of his investigatory and prosecutory powers, the petitioner failed to establish that the grant of immunity to the respondents was attended by grave abuse of discretion.

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[28] *Id.* at 479.

[29] The petitioner replied thrice (dated November 21, 2005 and May 15, 2007 and October 4, 2007) to the Ombudsman's and the respondents' Comments.

[30] *Rollo*, p. 425.

[31] *Id.* at 468, 500.

I. The petitioner did not exhaust remedies available in the ordinary course of law

As extraordinary writs, both Sections 1 (*certiorari*) and 3 (*mandamus*), Rule 65 of the Rules of Court require, as a pre-condition for these remedies, that there be no other plain, speedy and adequate remedy in the ordinary course of law. In the present case, the petitioner has not shown that he moved for a reconsideration of the assailed resolutions based substantially on the same grounds stated in this present petition.[32] Neither did the petitioner file a motion for the inclusion of the respondents in the informations before filing the present petition.[33] These are adequate remedies that the petitioner chose to forego; he bypassed these remedies and proceeded to seek recourse through the present petition.[34]

Similarly, the petitioner has not shown that he filed the present petition with this Court within the sixty-day reglementary period[35] from notice of the assailed Ombudsman's resolutions. He did not do so, of course, since he initially and erroneously filed a *certiorari* petition with the Sandiganbayan. We remind the petitioner that the remedy from the Ombudsman's orders or

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[32] Section 7, Rule II of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman) allows the filing of a motion for reconsideration in criminal cases.

[33] *Sanchez v. Demetriou,* G.R. Nos. 111771-77, November 9, 1993, 227 SCRA 627.

[34] See *Delos Reyes v. Flores*, G.R. No. 168726, March 5, 2010, 614 SCRA 270.

[35] See *rollo,* pp. 6-7; Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC reads:

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

resolutions in criminal cases is to file a petition for *certiorari* under Rule 65[36] with this Court.[37]

The petition likewise fails even on the merits.

II. The respondents' exclusion in the informations is grounded on the Ombudsman's grant of immunity

Mandamus is the proper remedy to compel the performance of a ministerial duty imposed by law upon the respondent.[38] In matters involving the exercise of judgment and discretion, *mandamus* may only be resorted to, to compel the respondent to take action; it cannot be used to direct the manner or the particular way discretion is to be exercised.[39]

In the exercise of his investigatory and prosecutorial powers, the Ombudsman is generally no different from an ordinary prosecutor in determining who must be charged.[40] He also enjoys the same latitude of discretion in determining what constitutes sufficient evidence to support a finding of probable cause (that must be established for the filing of an information in court)[41] and the degree of participation of those involved or the lack thereof. His findings and conclusions on these matters are not ordinarily subject to review by the courts except when he gravely

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[36] RULES OF COURT.

[37] *Baviera v. Zoleta*, G.R. No. 169098, October 12, 2006, 504 SCRA 281; *Estrada v. Desierto*, 487 Phil. 169 (2004); *Perez v. Office of the Ombudsman*, 473 Phil. 372 (2004); *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, 430 Phil. 101 (2002); and *Kuizon v. Hon. Desierto*, 406 Phil. 611 (2001).

[38] RULES OF COURT, Rule 65, Section 3.

[39] Under exceptional circumstances however, as where there is gross abuse of discretion, manifest injustice or palpable excess of authority, courts may direct the exercise of this discretion. See *Angchangco, Jr. v. Hon. Ombudsman*, 335 Phil. 766 (1997).

[40] *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538, August 9, 2010, 627 SCRA 88.

[41] *Raro v. Sandiganbayan*, 390 Phil. 917 (2000).

abuses his discretion,[42] *i.e.*, when his action amounts to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or when he acts outside the contemplation of law.[43]

If, on the basis of the same evidence, the Ombudsman ***arbitrarily*** excludes from an indictment some individuals while impleading all others, the remedy of *mandamus* lies[44] since he is duty-bound, as a rule, to include in the information all persons who appear responsible for the offense involved.[45]

Citing the cases of *Guiao v. Figueroa*[46] and *Castro, Jr., et al. v. Castañeda and Liceralde*,[47] the petitioner argues for the inclusion of the respondents in the criminal informations, pointing out that the respondents accomplished the inspection reports that allegedly set in motion the documentary process in the repair of the DPWH vehicles; these reports led to the payment by the government and the consequent losses.

In *Guiao* and *Castro*, we ruled that *mandamus* lies to compel a prosecutor who refuses (i) to include in the information certain persons, whose participation in the commission of a crime clearly appears, and (ii) to follow the proper procedure for the discharge of these persons in order that they may be utilized as prosecution witnesses.

These cited cases, however, did not take place in the same setting as the present case as they were actions by the public prosecutor, not by the Ombudsman. In the present case, the

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[42] *Sanrio Company Limited v. Lim*, G.R. No. 168662, February 19, 2008, 546 SCRA 303; and *Angeles v. Desierto*, G.R. No. 133077, September 8, 2006, 501 SCRA 202.

[43] See *Hegerty v. Court of Appeals*, 456 Phil. 542 (2003); and *D.M. Consunji, Inc. v. Esguerra*, 328 Phil. 1168 (1996).

[44] *Baylosis v. Chavez, Jr.*, G.R. No. 95136, October 3, 1991, 202 SCRA 405.

[45] REVISED RULES OF CRIMINAL PROCEDURE, Rule 110, Section 2.

[46] 94 Phil. 1018 (1954).

[47] 111 Phil. 765 (1961).

Ombudsman granted the respondents immunity from prosecution pursuant to RA No. 6770 which specifically empowers the Ombudsman to grant immunity *"in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives."* The pertinent provision — Section 17 of this law — provides:

> Sec. 17. *Immunities*. — x x x.
>
> Under such terms and conditions as it may determine, **taking into account the pertinent provisions of the Rules of Court**, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office. [emphasis ours]

To briefly outline the rationale for this provision, among the most important powers of the State is the power to compel testimony from its residents; this power enables the government to secure vital information necessary to carry out its myriad functions.[48] This power though is not absolute. The constitutionally-enshrined right against compulsory self-incrimination is a leading exception. The state's power to compel testimony and the production of a person's private books and papers run against a solid constitutional wall when the person under compulsion is himself sought to be penalized. In balancing between state interests and individual rights in this situation,

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[48] In *United States v. Kastigar* (406 U.S. 441), the United States Supreme Court noted that "the power to compel testimony, and the corresponding duty to testify, are recognized in the Sixth Amendment requirements that an accused be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor." The Sixth Amendment is substantially reproduced in Section 14(2), Article III, 1987 Constitution.

the principles of free government favor the individual to whom the state must yield.[49]

A state response to the constitutional exception to its vast powers, especially in the field of ordinary criminal prosecution and in law enforcement and administration, is the use of an immunity statute.[50] Immunity statutes seek a rational accommodation between the imperatives of an individual's constitutional right against self-incrimination[51] (considered the fount from which all statutes granting immunity emanate[52]) and the legitimate governmental interest in securing testimony.[53] By voluntarily offering to give information on the commission of a crime and to testify against the culprits, a person opens himself to investigation and prosecution if he himself had participated in the criminal act. To secure his testimony without exposing him to the risk of prosecution, the law recognizes that the witness can be given immunity from prosecution.[54] In this manner, the state interest is satisfied while respecting the individual's constitutional right against self-incrimination.

III. Nature of the power to grant immunity

The power to grant immunity from prosecution is essentially a legislative prerogative.[55] The exclusive power of Congress to

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[49] See *United States v. North*, 910 F.2d 843C.A.D.C., 1990; and Cruz, Isagani, *Philippine Constitutional Law*, pp. 307-308, 2007 ed.

[50] The privilege can be claimed in any proceeding, be it criminal, civil, or administrative (*Rosete v. Lim*, G.R. No. 136051, June 8, 2006, 490 SCRA 125.

[51] CONSTITUTION, Art. III, Section 17.

[52] Varon, Joseph A., *Searches, Seizures and Immunities*, p. 731.

[53] *United States v. Kastigar*, *supra* note 48.

[54] *Commission on Elections v. Hon. Espanol*, 463 Phil. 245 (2003).

[55] A legislature is empowered to deprive a witness of the constitutional privilege against self-incrimination by according him complete immunity from prosecution for the offense to which the testimony relates (81 Am. Jur. 2d § 142, the power to suspend a criminal law by the tender of immunity to a witness is a legislative power, citing *Doyle v. Hofstader*, 257 NY 244).

define crimes and their nature and to provide for their punishment concomitantly carries the power to immunize certain persons from prosecution to facilitate the attainment of state interests, among them, the solution and prosecution of crimes with high political, social and economic impact.[56] In the exercise of this power, Congress possesses broad discretion and can lay down the conditions and the extent of the immunity to be granted.[57]

Early on, legislations granting immunity from prosecution were few.[58] However, their number escalated with the increase of the need to secure vital information in the course and for purposes of prosecution. These statutes[59] considered not only

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[56] *Mapa, Jr. v. Sandiganbayan,* G.R. No. 100295, April 26, 1994, 231 SCRA 783.

[57] *Tanchanco v. Sandiganbayan (Second Division),* 512 Phil. 590 (2005).

[58] In Philippine constitutional law, the concept of immunity is firmly established. For one, although the 1935 Constitution did not provide for the doctrine of sovereign immunity, it was considered part of the legal system brought to the country by the Americans (Fr. Joaquin Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines, A Commentary*, 2003, p. 1268). On the other hand, the President's immunity from suit is recognized as early as 1910 in *Forbes, etc. v. Chuoco Tiaco and Crossfield*, 16 Phil. 534 (1910). Similarly, the parliamentary immunity of the Members of Congress already exists under Section 15, Article VI of the 1935 Constitution.

In the field of ordinary law enforcement and criminal prosecution, relatively few immunity laws were enacted then: Commonwealth Act No. 83 (Securities Act, October 26, 1936); RA No. 602 (Minimum Wage Law, April 6, 1951); RA No. 1379 (An Act Declaring Forfeiture in Favor of the State any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor, June 18, 1955); and Presidential Decree (*PD*) No. 63 (Amending Certain Sections of Act Numbered Twenty-Four Hundred and Twenty-Seven, otherwise Known as the Insurance Act, as Amended, November 20, 1972).

[59] PD No. 749 (Granting Immunity from Prosecution to Givers of Bribes and Other Gifts and to their Accomplices in Bribery and Other Graft Cases against Public Officers, July 18, 1975); PD No. 1731 (Providing for Rewards and Incentives to Government Witnesses and Informants and other Purposes, October 8, 1980); PD No. 1732 (Providing Immunity from Criminal Prosecution to Government Witnesses and for other Purposes, October 8, 1980); PD No. 1886 (creating the Agrava Fact-Finding Board, October 22, 1983); 1987 Constitution, Article XIII, Section 18(8) (empowering the Commission on Human

the importance of the testimony sought, but also the unique character of some offenses and of some situations where the criminal participants themselves are in the best position to give useful testimony.[60] RA No. 6770 or the Ombudsman Act of 1989 was formulated along these lines and reasoning with the vision of making the Ombudsman the protector of the people against inept, abusive and corrupt government officers and employees.[61] Congress saw it fit to grant the Ombudsman the power to directly confer immunity to enable his office to effectively carry out its constitutional and statutory mandate of ensuring effective accountability in the public service.[62]

IV. Considerations in the grant of immunity

While the legislature is the *source* of the power to grant immunity, the authority to implement is lodged elsewhere. The authority to choose the individual to whom immunity would be granted is a constituent part of the process and is essentially an executive function. *Mapa, Jr. v. Sandiganbayan*[63] is instructive on this point:

> The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher

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Rights to grant immunity); RA No. 6646 (An Act Introducing Additional Reforms in the Electoral System and for other Purposes, January 5, 1988); Executive Order No. 14, August 18, 1986; RA No. 6770 (Ombudsman Act of 1989, November 17, 1989); RA No. 6981 (Witness Protection, Security and Benefit Act, April 24, 1991); RA No. 7916 (The Special Economic Zone Act of 1995, July 25, 1994); RA No. 9165 (Comprehensive Dangerous Drugs Act of 2002, June 7, 2002); RA No. 9416 (An Act Declaring as Unlawful Any Form of Cheating in Civil Service Examinations, *etc.*, March 25, 2007); and RA No. 9485 (Anti-Red Tape Act of 2007, June 2, 2007).

[60] See *United States v. Kastigar*, *supra* note 48; and *Chua v. CA*, 329 Phil. 841 (1996).

[61] *Atty. Ledesma v. Court of Appeals*, 503 Phil. 396 (2005).

[62] See CONSTITUTION, Art. XI, Section 13.

[63] *Supra* note 56, at 802.

objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law. **Whether or not the delicate power should be exercised, who should be extended the privilege, the timing of its grant, are questions addressed solely to the sound judgment of the prosecution. The power to prosecute includes the right to determine who shall be prosecuted and the corollary right to decide whom not to prosecute**. In reviewing the exercise of prosecutorial discretion in these areas, the jurisdiction of the respondent court is limited. For the business of a court of justice is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute. Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense. [emphasis ours]

RA No. 6770 fully recognizes this prosecutory prerogative by empowering the Ombudsman to grant immunity, subject to "such terms and conditions" as he may determine. The only textual limitation imposed by law on this authority is the need to take "into account the pertinent provisions of the Rules of Court," — *i.e.*, Section 17, Rule 119 of the Rules of Court.[64] This provision requires that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

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[64] See *Pontejos v. Office of the Ombudsman*, 518 Phil. 251 (2006).

This Rule is itself unique as, without detracting from the executive nature of the power to prosecute and the power to grant immunity, it clarifies that in cases already filed with the courts,[65] the prosecution merely makes a proposal and initiates the process of granting immunity to an accused-witness in order to utilize him as a witness against his co-accused.[66] As we explained in *Webb v. De Leon*[67] in the context of the Witness Protection, Security and Benefit Act:

> The right to prosecute vests the prosecutor with a wide range of discretion — the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors. We thus hold that it is not constitutionally impermissible for Congress to enact R.A. No. 6981 vesting in the Department of Justice the power to determine who can qualify as a witness in the program and who shall be granted immunity from prosecution. Section 9 of Rule 119 does not support the proposition that the power to choose who shall be a state witness is an inherent judicial prerogative. Under this provision, **the court is given the power to discharge a state witness only because it has already acquired jurisdiction over the crime and the accused. The discharge of an accused is part of the exercise of jurisdiction but is not a recognition of an inherent judicial function**. [emphasis ours]

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[65] Depending on how broad the statutory power to grant immunity is worded, the power to grant immunity may be exercised even during the trial of the criminal case. In *Mapa v. Sandiganbayan* (*supra* note 56, at 800-803), the Court, taking into account the exclusivity of the Presidential Commission on Good Government's power to grant immunity, ruled that while the Sandiganbayan has jurisdiction to review the PCGG-granted immunity, it can only determine the "procedural regularity" thereof and nothing more.

[66] Section 17, Rule 119 reads:

> ***Discharge of accused to be state witness.*** — When two or more persons are jointly charged with the commission of any offense, *upon motion of the prosecution* before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to *present evidence and the sworn statement of each proposed state witness at a hearing in support of* the discharge, the court is satisfied[.]

[67] G.R. No. 121234, August 23, 1995, 247 SCRA 652, 685.

Thus, it is the trial court that determines whether the prosecution's preliminary assessment of the accused-witness' qualifications to be a state witness satisfies the procedural norms.[68] This relationship is in reality a symbiotic one as the trial court, by the very nature of its role in the administration of justice,[69] largely exercises its prerogative based on the prosecutor's findings and evaluation. On this point, the Court's pronouncement in the 1918 case of *United States v. Abanzado*[70] is still very much relevant:

A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible there would be little need for the formality of a trial. He must rely in large part upon the suggestions and the information furnished by the prosecuting officer in coming to his conclusions as to the "necessity

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[68] In *United States v. Enriquez* (40 Phil. 603, 608 [1919]), the Court ruled that the "sole and principal object of the law (Act 2709) is, not to restrain and limit the action of the prosecuting officer, but especially to impose conditions whereby an accused, already charged in the information, may not be arbitrarily and capriciously [be] excluded therefrom x x x and to remedy the evil consequence of an unreasonable and groundless exclusion which produces the real impunity perhaps of the most guilty criminal and subjects to prosecution the less wicked, who have not found protection in whims and arbitrariness unlike others who have secured unfounded and unjust exclusion when they really deserved severe punishment."

Likewise, in *United States v. Abanzado* (37 Phil. 658, 664 [1918]), the Court said "that it was not the intention of the legislator xxx to deprive the prosecution and the state of the right to make use of accomplices and informers as witnesses, but merely to regulate the exercise of that right by establishing the conditions under which it may properly be exercised" and "to rest the manner of the enforcement of these conditions in the sound judicial discretion of the courts."

[69] In *Mapa v. Sandiganbayan* (*supra* note 56, at 802), the Court ruled that the court's business is to be an "impartial tribunal, and not to get involved with the success or failure of the prosecution" since due process "demands that courts keep the scales of justice at equipoise between and among all litigants."

[70] *Supra* note 68, at 664.

for the testimony of the accused whose discharge is requested"; as to the availability or nonavailability of other direct or corroborative evidence; as to which of the accused is "most guilty," and the like.

Notably, this cited case also observes that the Rules-provided guidelines are mere express declarations of the conditions which the courts ought to have in mind in exercising their sound discretion in granting the prosecution's motion for the discharge of an accused.[71] In other words, these guidelines are necessarily implied in the discretion granted to the courts.

RA No. 6770 recognizes that these same principles should apply when the Ombudsman directly grants immunity to a witness. The same consideration — to achieve the greater and higher purpose of securing the conviction of the most guilty and the greatest number among the accused[72] — is involved whether the grant is secured by the public prosecutor with active court intervention, or by the Ombudsman. If there is any distinction at all between the public prosecutor and the Ombudsman in this endeavor, it is in the specificity of and the higher priority given by law to the Ombudsman's purpose and objective — to focus on offenses committed by public officers and employees to ensure accountability in the public service. This accounts for the Ombudsman's unique power to grant immunity by itself and even prior to the filing of information in court, a power that the public prosecutor himself generally does not enjoy.[73]

V. Extent of judicial review of a bestowed immunity

An immunity statute does not, and cannot, rule out a review by this Court of the Ombudsman's exercise of discretion. Like

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[71] *Id.* at 667.

[72] *People v. Feliciano*, 419 Phil. 324 (2001).

[73] Under RA No. 6981 (Witness Protection, Security and Benefit Act), the grant of immunity to a witness who has participated in the commission of a crime is merely one of the consequences of the witness' admission into the Witness Protection Program administered by the Department of Justice (Sections 10 and 12, RA No. 6981).

all other officials under our constitutional scheme of government, all their acts must adhere to the Constitution.[74] The parameters of our review, however, are narrow. In the first place, what we review are executive acts of a constitutionally independent Ombudsman.[75] Also, we undertake the review given the

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[74] *Tanchanco v. Sandiganbayan (Second Division)*, 512 Phil. 590 (2005).

[75] The pertinent sections of Article XI of the 1987 Constitution read:

> Section 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of **recognized probity and independence**, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have, for ten years or more, been a judge or engaged in the practice of law in the Philippines.
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> During their tenure, they shall be subject to the same disqualifications and prohibitions as provided for in Section 2 of Article 1X-A of this Constitution.
>
> Section 10. The Ombudsman and his Deputies shall have the **rank** of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary which shall not be decreased during their term of office.
>
> Section 11. The Ombudsman and his Deputies shall serve for a term of **seven years** without reappointment. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office.
>
> Section 14. The Office of the Ombudsman shall enjoy **fiscal autonomy**. Its approved annual appropriations shall be automatically and regularly released. (emphases ours)

Under Section 12, Article XI of the Constitution, the Office of the Ombudsman is envisioned as "protector of the people" to function essentially as a complaints and action bureau. (*Office of the Ombudsman v. Samaniego*, G.R. No. 175573, September 11, 2008, 564 SCRA 567, 573.) The Philippine Ombudsman is considered at "a notch above other grievance-handling [investigative] bodies" (*Department of Justice v. Liwag*, G.R. No. 149311, February 11, 2005, 451 SCRA 83, 96) given independence that is never enjoyed by his predecessors; by giving him an "active role" in the enforcement of laws on anti-graft and corrupt practices and related offenses (*Uy v. Sandiganbayan*, 407 Phil. 154, 172 [2001]); by making his recommendation to a concerned public officer of taking an appropriate action against an erring subordinate as not merely advisory but actually mandatory within the bounds of law (*Ledesma v. Office of the Ombudsman*, 503 Phil. 396, 407 [2005]; Section 13[3], Article XI of

underlying reality that this Court is not a trier of facts. Since the determination of the requirements under Section 17, Rule 119 of the Rules of Court is highly factual in nature, the Court must, thus, generally defer to the judgment of the Ombudsman who is in a better position (than the Sandiganbayan or the defense) to know the relative strength and/or weakness of the evidence presently in his possession and the kind, tenor and source of testimony he needs to enable him to prove his case.[76] It should not be forgotten, too, that the grant of immunity effectively but conditionally results in the extinction of the criminal liability the accused-witnesses might have incurred, as defined in the terms of the grant.[77] This point is no less important as the grant directly

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the 1987 Constitution; Section 15[3] of RA No. 6770). The Ombudsman's disciplinary authority extends over *all* elective and appointive officials of the government and its subdivisions, instrumentalities and agencies, except for impeachable officers, members of Congress and the Judiciary (Section 21 of RA No. 6770). As the Ombudsman is expected to be an "activist watchman," (*Office of the Ombudsman v. Lucero*, G.R. No. 168718, November 24, 2006, 508 SCRA 106, 115) his actions, though not falling squarely under the broad powers granted him by the Constitution and RA No. 6770, but are reasonable in line with his official function, and consistent with law and with the constitution, have been upheld by the court (*Office of the Ombudsman v. Samaniego*, *supra*).

[76] See *People v. Ocimar*, G.R. No. 94555, August 17, 1992.

[77] *Commission on Elections v. Judge Español*, 463 Phil. 240 (2003). See *Brown v. Walker*, 161 U.S. 591, 595 (1896). The grant of immunity simply "operates" as a conditional pardon. Pardon and immunity are conceptually different from each other. Unlike pardon which the President may grant only after conviction by final judgment (Section 19, Article VII, 1987 Constitution), immunity may be granted even before the filing of an information (See *Tanchanco v. Sandiganbayan, supra* note 57) or even during the trial of the criminal case (See *Mapa v. Sandiganbayan, supra* note 56). Under the 1981Amendment to the 1973 Constitution, pardon may be granted at any time after the commission of the offense, whether before or after conviction. The 1987 Constitution reverted to the 1935 and 1973 Constitutions, which require "conviction" or "final conviction" before pardon may be granted. Specifically, the 1987 Constitution requires conviction by final judgment to prevent the President from exercising executive power in derogation of the judicial power (See *People v. Salle, Jr.*, G.R. No. 103567, December 4, 1995, 250 SCRA 590). While immunity would substantially have the same effect as pardon, there will be no "derogation of judicial power" considering that the immunity is granted not purely for immunity's sake but, most importantly, for the purpose of securing the conviction of the other accused who are the most guilty.

affects the individual and enforces his right against self-incrimination. These dynamics should constantly remind us that we must tread softly, but not any less critically, in our review of the Ombudsman's grant of immunity.

From the point of view of the Court's own operations, we are circumscribed by the nature of the review powers granted to us under the Constitution and the Rules of Court. We rule on the basis of a petition for *certiorari* under Rule 65 and address mainly the Ombudsman's exercise of discretion. Our room for intervention only occurs when a clear and grave abuse of the exercise of discretion is shown. Necessarily, this limitation similarly reflects on the petitioner who comes to us on the allegation of grave abuse of discretion; the petitioner himself is bound to **clearly and convincingly establish that the Ombudsman gravely abused his discretion in granting immunity in order to fully establish his case.**[78]

As a last observation, we note the unique wording of the grant of the power of immunity to the Ombudsman. It is not without significance that the law encompassed (and appears to have pointedly not separated) the consideration of Section 17, Rule 119 of the Rules of Court within the broader context of "such terms and conditions as the Ombudsman may determine." This deliberate statutory wording, to our mind, indicates the intent to define the role of Section 17, Rule 119 in the Ombudsman's exercise of discretion. It suggests a broad grant

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[78] Should the petitioner clearly and convincingly establish that the Ombudsman gravely abused his discretion in granting immunity to the witness, the latter cannot invoke double jeopardy once he is subsequently included in the information, even assuming that all the other requisites of double jeopardy exist (Section 7, Rule 117 of the Revised Rules of Criminal Procedure). Double jeopardy may be invoked only if the accused has been previously **convicted or acquitted,** or the case against him **dismissed or otherwise terminated without his express consent**. Since the grant of immunity operates as a conditional pardon (for the offenses covered by the immunity) and, thus, requires acceptance by the grantee (Joaquin G. Bernas, S.J. *The 1987 Constitution of the Republic of the Philippines, A Commentary*, p. 810), it is clear that the dismissal of the case against the immune witness is **with** his express consent.

of discretion that allows the Ombudsman's consideration of factors other than those outlined under Section 17, Rule 119; the wording creates the opening for the invocation, when proper, of the constitutional and statutory intents behind the establishment of the Ombudsman.

Based on these considerations, we shall now proceed to determine whether the petitioner has clearly and convincingly shown that the Ombudsman gravely abused his discretion in granting immunity to the respondents.

Va. Absolute necessity for testimony of the respondents

Under the factual and legal situation before us, we find that the petitioner miserably failed to clearly and convincingly establish that the Ombudsman gravely abused his discretion in granting immunity to the respondents. While he claims that both conditions (a) and (d) of Section 17, Rule 119 of the Rules of Court are absent, we observe his utter lack of argument addressing the "absolute necessity" of the respondents' testimony. In fact, the petitioner simply concluded that the requirement of "absolute necessity" does not exist based on the Ombudsman's "evidence," without even attempting to explain how he arrived at this conclusion.

We note in this regard that the respondents' proposed testimony tends to counteract the petitioner's personal defense of good faith (*i.e.*, that he had no actual participation and merely relied on his subordinates) in approving the job orders and in his concurrence with the inspection reports. In their Joint Counter-Affidavit, the respondents narrated the accused DPWH officials/employees' flagrant disregard of the proper procedure and the guidelines in the repair of DPWH service vehicles which culminated in losses to the government. Particularly telling is the respondents' statement that a number of pre-repair inspection reports for a particular month in 2001 bear the petitioner's signature despite the fact that these reports are not supported by findings from the respondents as SIT members.[79] This kind

[79] *Rollo,* p. 99.

of statement cannot but impact on how the Ombudsman viewed the question of "absolute necessity" of the respondents' testimony since this testimony meets the defense of good faith head-on to prove the prosecution's allegations. Under these circumstances, we cannot preempt, foreclose, nor replace with our own the Ombudsman's position on this point *as it is clearly not without basis*.

Vb. The respondents do not appear to be the "most guilty"

Similarly, far from concluding that the respondents are the "most guilty," we find that the circumstances surrounding the preparation of the inspection reports can significantly lessen the degree of the respondents' criminal complicity in defrauding the government. Again, this is a matter that the Ombudsman, in the exercise of his discretion, could not have avoided when he considered the grant of immunity to the respondents.

We note, too, that while the petitioner incessantly harped on the respondents' role in the preparation of the inspection reports, yet, as head of the SIT, he was eerily silent on the circumstances surrounding this preparation, particularly on the respondents' explanation that they tried "to curb the anomalous practices"[80] in the DPWH. We are aware, of course, that the present petition merely questions the immunity granted to the respondents and their consequent exclusion from the informations; it does not assail the finding of probable cause against the petitioner himself. This current reality may explain the petitioner's silence on the respondents' assertions; the respondents' allegations, too, still have to be proven during the trial. However, these considerations are not sufficient to save the petitioner from the necessity of controverting the respondents' allegations, *even* for the limited purpose of the present petition, since his counter-assertion on this basic ground (that the respondents bear the most guilt) is essential and critical to the viability of his petition.

In considering the respondents' possible degree of guilt, we are keenly aware of their admission that they resorted to a "short-

[80] *Supra* note 20.

cut"[81] in the procedure to be observed in the repairs and/or purchase of emergency parts of DPWH service vehicles. To our mind, however, this admission does not necessarily result in making the respondents the "most guilty" in the premises; not even a semblance of being the "most guilty" can be deduced therefrom.

In sum, the character of the respondents' involvement *vis-à-vis* the crimes filed against the DPWH officials/employees, coupled with the substance of the respondents' disclosures, compels this Court to take a dim view of the position that the Ombudsman gravely abused his discretion in granting immunity to the respondents. The better view is that the Ombudsman simply saw the higher value of utilizing the respondents themselves as witnesses instead of prosecuting them in order to fully establish and strengthen its case against those mainly responsible for the criminal act, as indicated by the available evidence.

VI. The respondents' administrative liability has no bearing at all on the immunity granted to the respondents

The fact that the respondents had previously been found administratively liable, based on the same set of facts, does not necessarily make them the "most guilty." An administrative case is altogether different from a criminal case, such that the disposition in the former does not necessarily result in the same disposition for the latter, although both may arise from the same set of facts.[82] The most that we can read from the finding of liability is that the respondents have been found to be administratively guilty by *substantial evidence* — the quantum of proof required in an administrative proceeding. The requirement of the Revised Rules of Criminal Procedure (which RA No. 6770 adopted by reference) that the proposed witness should not appear to be the "most guilty" is obviously in line with the

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[81] *Rollo*, p. 96.

[82] *People v. Sandiganbayan*, G.R. No. 164577, July 5, 2010, 623 SCRA 147.

character[83] and purpose[84] *of a criminal proceeding,* and the much stricter standards[85] observed in these cases. They are standards entirely different from those applicable in administrative proceedings.

VII. The policy of non-interference with the Ombudsman's investigatory and prosecutory powers cautions a stay of judicial hand

The Constitution and RA No. 6770 have endowed the Office of the Ombudsman with a wide latitude of investigatory and prosecutory powers, freed, to the extent possible within our governmental system and structure, from legislative, executive, or judicial intervention, and insulated from outside pressure and improper influence.[86] Consistent with this purpose and subject to the command of paragraph 2, Section 1, Article VIII of the 1987 Constitution,[87] the Court reiterates its policy of non-interference with the Ombudsman's

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[83] In a criminal case, the accused is indicted for an act which constitutes an offense against the State; thus, criminal cases are brought in the name of the People of the Philippines (Rule 110, Section 2, Revised Rules of Criminal Procedure). In an administrative (disciplinary) case, the respondent is charged for an act or omission which constitutes an infraction of civil service rules and regulations necessary to maintain the standards in government service.

[84] The purpose of the criminal prosecution is the punishment of crime. On the other hand, the purpose of administrative (disciplinary) proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust (*Judge Caña v. Gebusion,* 385 Phil. 773 [2000]). Since their purpose is different, the kind of penalty imposable is likewise different consistent with their respective purpose.

[85] The quantum of proof required in criminal proceedings is proof beyond reasonable doubt; whereas in administrative proceedings, substantial evidence is all that is required. The technical rules of criminal procedure together with all the rights of an accused come to the fore in criminal cases, unlike in administrative proceedings where technical rules of evidence and procedure are not strictly applied (*Ocampo v. Office of the Ombudsman,* 379 Phil. 21 [2000]).

[86] *Quiambao v. Desierto,* G.R. No. 149069, 20 September 2004, 482 Phil. 157; *The Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Ombudsman Aniano Desierto,* G. R. No. 136192, August 14, 2001.

[87] Section 1, Article VIII, 1987 Constitution reads:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

exercise of his investigatory and prosecutory powers (among them, the power to grant immunity to witnesses[88]), and respects the initiative and independence inherent in the Ombudsman who, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service."[89] *Ocampo IV v. Ombudsman*[90] best explains the reason behind this policy:

> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

Following this policy, we deem it neither appropriate nor advisable to interfere with the Ombudsman's grant of immunity to the respondents, particularly in this case, where the petitioner has not clearly and convincingly shown the grave abuse of discretion that would call for our intervention.

WHEREFORE, the petition is hereby *DISMISSED*. Costs against the petitioner.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

Judicial power includes the duty of the courts of justice to settle actual controversies 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.

[88] *Pontejos v. Office of the Ombudsman*, G.R. Nos. 158613-14, February 22, 2006.

[89] *Quiambao v. Desierto*, G.R. No. 149069, 20 September 2004, 482 Phil. 157; *The Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Ombudsman Aniano Desierto*, G. R. No. 136192, August 14, 2001.

[90] G.R. Nos. 103446-47, August 30, 1993.

FIRST DIVISION

[G.R. No. 169293. October 5, 2011]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **TRAVERSE DEVELOPMENT CORPORATION and CENTRAL SURETY AND INSURANCE COMPANY,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; CIRCUMSTANCES WHEN ATTORNEY'S FEES MAY BE RECOVERED AS ACTUAL OR COMPENSATORY DAMAGES. — In the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code, to wit: Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: (1) When exemplary damages are awarded; (2) **When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;** (3) In criminal cases of malicious prosecution against the plaintiff; (4) In case of a clearly unfounded civil action or proceeding against the plaintiff; (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim; (6) In actions for legal support; (7) In actions for the recovery of wages of household helpers, laborers and skilled workers; (8) In actions for indemnity under workmen's compensation and employer's liability laws; (9) In a separate civil action to recover civil liability arising from a crime; (10) When at least double judicial costs are awarded; (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, the attorney's fees and expenses of litigation must be reasonable. **Even if it were true that DBP had a hand in the transfer of Traverse's insurance coverage to Central, such act is not sufficient to hold it solidarily liable with Central for the payment of attorney's fees and cost of litigation under the above provision of the Civil Code.**

2. ID.; ID.; ID.; THE AWARD OF ATTORNEY'S FEES IS THE EXCEPTION RATHER THAN THE RULE AND THE COURT MUST STATE EXPLICITLY THE LEGAL REASON FOR SUCH AWARD; EXPLAINED. — The award of attorney's fees is the exception rather than the rule and the court must state explicitly the legal reason for such award. As we held in *ABS-CBN Broadcasting Corporation v. Court of Appeals*: The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. **The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.** Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

APPEARANCES OF COUNSEL

Benilda A. Tejada for petitioner.

Conrado R. Mangahas & Associates for Central Surety & Insurance Co., Inc.

Quisumbing Fernando & Javellana Law Offices for Traverse Dev't. Corp.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari*[1] of the September 30, 2004 **Decision**[2] and August 11, 2005 **Resolution**[3] of the

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 8-18; penned by Associate Justice Roberto A. Barrios with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring.

[3] *Id.* at 20-22.

Court of Appeals in CA-G.R. CV No. 65311, which affirmed the November 24, 1998 **Decision**[4] of the Regional Trial Court (RTC) of Quezon City, Branch 87, in **Civil Case No. Q-37497**, as modified by its February 1, 1999 **Order**.[5]

The facts are simple and straightforward.

The Development of the Philippines (DBP)-Tarlac Branch granted a "Real Estate Loan" of ₱910,000.00 to Traverse Development Corporation (Traverse) for the construction of its three-storey commercial building at Tañedo St., Tarlac City. To secure the payment of this loan, Traverse constituted a mortgage on the land on which the building was to be built on July 21, 1980.[6] Among the conditions imposed by DBP in the mortgage contract was Traverse's acquisition of an insurance coverage for an amount not less than the loan, to be endorsed in DBP's favor.[7]

From 1980 to 1981, Traverse submitted to DBP three policies in accordance with the insurance condition in the mortgage contract. The last of these three was FGU Policy No. 6246, in the amount of ₱1 Million, for the period of one year, from May 7, 1981 to May 7, 1982.[8]

On May 6, 1982, FGU Insurance Corporation (FGU) renewed Traverse's Fire Insurance Policy for another year, from May 7, 1982 to May 7, 1983, for the same amount of 1 Million, under Policy No. 61146.[9] However, as DBP had already transferred the building's insurance to Central Surety & Insurance Company (Central), for the same terms, under Fire Insurance Policy No. TAR 1056 (Policy No. TAR 1056), issued on May 7, 1982, it returned the FGU Policy to Traverse.[10]

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[4] CA *rollo*, pp. 127-143.

[5] Records, Vol. I, p. 542.

[6] *Id.* at 277-278.

[7] *Id.* at 280.

[8] *Id.* at 297-299.

[9] Records, Vol. III, p. 26.

[10] *Id.* at 1.

On August 9, 1982, during the effectivity of Policy No. TAR 1056, a fire of undetermined origin razed and gutted Traverse's building. The following day, Traverse informed Central of the mishap and requested it to immediately conduct the necessary inspection, evaluation, and investigation.[11]

On September 7, 1982, Traverse submitted to Central written proof of the loss sustained by its building, together with its claim in the amount of ₱1 Million. On November 6, 1982, Central proposed to settle Traverse's claim on the basis of cost of repairs of the affected parts of the building for ₱230,748.00.[12] Believing that this was highly inequitable and unreasonable, Traverse denied such proposal.

Having failed to arrive at a settlement, Traverse, on February 28, 1983, filed a Complaint[13] before the RTC, against Central and DBP for payment of its claim and damages.

Traverse averred that it was obvious from the beginning that Central was unable or unwilling to fulfill its liability under Policy No. TAR 1056. Traverse alleged that due to the unjustifiable delay of Central to settle its claims, it was prevented from receiving rentals for its building, its loan with DBP had increased due to interest and penalties, and it had suffered actual damages. Traverse impleaded DBP as a co-defendant because of its alleged failure or refusal to convince Central to pay Traverse's claims, considering that it transferred Traverse's insurance to Central without Traverse's knowledge.[14]

In its Answer, DBP denied that Traverse had no knowledge of the transfer of its insurance to Central as evidenced by its payment of the premium, documentary stamp tax, and other charges for the new insurance policy. DBP also claimed that it was Traverse that transferred its insurance to Central to avoid

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[11] *Id.* at 4.

[12] *Id.* at 17.

[13] Records, Vol. 1, pp. 1-5.

[14] *Id.* at 2.

delays in renewing its insurance, since FGU had no branch office in Tarlac.[15]

Central argued in its Answer that Traverse had no valid and sufficient cause of action because aside from violating material conditions in its policy, DBP, as the endorsee of the policy, was the real party-in-interest. Central also averred that Traverse had no one else to blame but itself for the ballooning interest of its loan and lack of rentals since it insisted on an exaggerated, unjustified, and unreasonable claim, considering that the building was not a total loss, as the building was only partially damaged.[16]

On November 24, 1998, the RTC rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, in the light of all the foregoing, judgment is hereby rendered as follows:
>
> (a) ordering defendant CENTRAL SURETY to pay the DBP one million pesos (₱1,000,000.00) representing the amount for which Fire Insurance Policy No. TAR-1056 was issued, plus interest thereon at 24% which is double the legal interest ceiling computed from thirty (30) days after defendant received proof of loss on September 29, 1982 (Exh. "D-3", pp. 183-184 Rec.);
>
> (b) ordering defendant DBP to extinguish plaintiff's loan totally, including interest, penalties and charges;
>
> (c) ordering defendant CENTRAL SURETY to pay plaintiff nominal damages in the amount of ₱50,000,00;
>
> (d) ordering both defendants to pay jointly and severally the plaintiff, attorney's fees in the amount of ₱50,000.00, plus cost of litigation.[17]

The RTC held that "total loss" did not require that the building be annihilated and turned into rubble, as long as the property was destroyed to such an extent as to deprive it of the character

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[15] *Id.* at 37.

[16] *Id.* at 45-47.

[17] CA *rollo*, pp. 142-143.

in which it was insured. In holding Central liable for damages, interests, penalties, attorney's fees, and costs of suit, the RTC noted how Central had tried to evade Traverse's claims. It said that Traverse made no declarations as to the use of its building as it had been established that not only was its insurance policy transferred to Central without its knowledge, but that Policy No. TAR 1056 was copied verbatim from its FGU policy.[18]

The RTC adjudged DBP to be solidarily liable with Central for damages, attorney's fees, and costs of suit in view of its refusal or failure to pursue the claim against Central. The RTC said that as beneficiary-assignee of Policy No. TAR 1056, DBP should not have stopped at following-up its claim through letters and telegrams but should have either filed its own case against Central or joined Traverse as a co-plaintiff. The RTC took DBP's inaction as suggestive of its deliberate participation in the transfer of Traverse's existing insurance coverage from FGU to Central.[19]

On January 13, 1999, DBP filed a Motion for Reconsideration[20] based on the following grounds:

1. THE HONORABLE COURT ERRED IN ORDERING DEFENDANT DBP TO EXTINGUISH [TRAVERSE'S] LOAN TOTALLY INCLUDING INTEREST, PENALTIES AND CHARGES.

2. THE HONORABLE COURT ALSO ERRED IN ORDERING DEFENDANT DBP TO PAY [TRAVERSE] JOINTLY AND SEVERALLY THE ATTORNEY'S FEE AND COST OF LITIGATION.[21]

On February 1, 1999, the RTC partially granted DBP's motion by completely deleting paragraph (b) and modifying paragraph (c) of the disposition of its November 24, 1998 Decision. The dispositive portion of the RTC's decision in Civil Case No. Q-37497, as revised, reads:

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[18] *Id.* at 137-140.

[19] *Id.* at 140-142.

[20] Records, Vol. I, pp. 520-524.

[21] *Id.* at 520.

a) ordering defendant CENTRAL SURETY to pay the DBP one million pesos (₱1,000,000.00) representing the amount for which Fire Insurance Policy No. TAR-1056 was issued, plus interest thereon at 24% which is double the legal interest ceiling computed from thirty (30) days after defendant received proof of loss on September 29, 1982 (Exh. "D-3", pp. 183-184 Rec.);

(b) ordering defendant CENTRAL SURETY to pay plaintiff nominal damages in the amount of ₱50,000,00;

(c) ordering both defendants to pay plaintiff jointly and severally attorney's fees in the amount of ₱50,000.00, plus cost of litigation.[22]

Both Central and DBP appealed the decision of the RTC to the Court of Appeals, which appeal was docketed as CA-G.R. CV No. 65311.

On September 30, 2004, the Court of Appeals dismissed the appeal and affirmed the RTC.

On October 18, 2004, Central moved for the reconsideration of the Court of Appeals' Decision, alleging that it dealt in good faith with Traverse.[23]

On October 20, 2004, DBP filed its own Motion for Partial Reconsideration, seeking the rectification of the misquoted dispositive portion, which was from the November 24, 1998 Decision of the RTC, and the setting aside of the order making DBP solidarily liable with Central for the payment of attorney's fees and costs of suit.[24]

On August 11, 2005, the Court of Appeals resolved both motions for reconsideration, denying Central's as its arguments were but a rehash of its petition, and partially granting DBP's, in view of the RTC's February 1, 1999 Order.[25]

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[22] *Id.* at 542.

[23] *Id.* at 283-291.

[24] *Id.* at 293-302.

[25] *Rollo*, pp. 20-22.

Undaunted, DBP, on September 27, 2005, filed a petition for review of its case before this Court. Pending the resolution of its petition, DBP then moved for this Court to Direct the Lower Court to Issue Writ of Partial Execution.

In seeking our review of its case, DBP assigns only one error, to wit:

THE COURT OF APPEALS ERRED IN HOLDING PETITIONER DBP SOLIDARILY LIABLE WITH RESPONDENT CENTRAL FOR ATTORNEY'S FEES IN THE AMOUNT OF ₱50,000.00 PLUS COST OF LITIGATION.[26]

DBP claims that it cannot be held solidarily liable with Central for the payment of attorney's fees without contravening Article 2208 of the Civil Code, which sanctions an award only when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. DBP argues that there is no legal justification to hold it liable for attorney's fees and cost of litigation as nowhere in the decision was it stated that Traverse was compelled to litigate because of DBP's act or omission. DBP alleges that Central's refusal to pay Traverse's claim could not be attributed to it especially since it exerted all efforts to collect from Central. It avers that filing a cross-claim would have been a mere surplusage and failure to file such cannot be considered as a basis for its liability. DBP further asseverates that the speculation that Traverse would have been able to easily collect from FGU had its insurance not been transferred to Central is not a basis for awarding attorney's fees since it was Traverse itself that chose to transfer its insurance to Central.[27]

This Court's Ruling

The resolution of this case hinges upon the lone issue of whether or not DBP can be held solidarily liable with Central for the payment of attorney's fees and cost of litigation, in light of the

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[26] *Id.* at 32.

[27] *Id.* at 32-37.

fact that it was the one that facilitated the transfer of Traverse's insurance coverage from FGU to Central.

Both the RTC and the Court of Appeals held DBP liable for attorney's fees and costs of suit because said courts believed that DBP should have been more aggressive in pursuing its claim against Central.

In the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code,[28] to wit:

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;
>
> (2) **When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;**
>
> (3) In criminal cases of malicious prosecution against the plaintiff;
>
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
>
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
>
> (6) In actions for legal support;
>
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
>
> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
>
> (9) In a separate civil action to recover civil liability arising from a crime;
>
> (10) When at least double judicial costs are awarded;

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[28] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 528 (1999).

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

Even if it were true that DBP had a hand in the transfer of Traverse's insurance coverage to Central, such act is not sufficient to hold it solidarily liable with Central for the payment of attorney's fees and cost of litigation under the above provision of the Civil Code.

Records show that during the testimony of the former insurance examiner of DBP-Tarlac, Victoria Punzalan (Punzalan), she claimed that she had repeatedly reminded Mrs. Lourdes Roxas, Traverse's President, of the impending expiration of Traverse's insurance coverage with FGU.[29] Mrs. Roxas, however replied that her son would not be able to attend to it as he was out of the country at that time. Subsequently, Atty. Ruperto Zamora of Central called up Punzalan, upon the supposed instruction of Mrs. Roxas, to draw up Traverse's insurance coverage.[30] DBP only came to know that Traverse had already renewed its insurance policy with FGU on May 6, 1981, after Central had already drawn up Policy No. TAR 1056.[31]

We thus find that DBP could not be blamed for facilitating such transfer in light of the previous delays in Traverse's submission of its insurance policy. It is worthy to note that Policy No. TAR 1056 was drawn on May 7, 1986, the date that Traverse's previous FGU policy was set to expire. Moreover, Central was not only one of DBP's accredited insurance companies, but it also had a local branch office, which made transactions with it faster and easier.

This Court also cannot sustain the insinuation that DBP's lax attitude in pursuing its claim against Central was tantamount

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[29] TSN, March 9, 1989, p. 10; records, Vol. II, p. 313.

[30] *Id.* at 11; records, Vol. I, p. 492.

[31] *Id.* at 15; *id.* at 497.

to bad faith as to make it liable for attorney's fees and costs of suit. Even a resort to the principle of equity will not justify making DBP liable.

The award of attorney's fees is the exception rather than the rule and the court must state explicitly the legal reason for such award.[32] As we held in *ABS-CBN Broadcasting Corporation v. Court of Appeals*:[33]

> The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. **The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.** Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[34] (Emphasis supplied.)

It should be remembered that Traverse's insurance policy was assigned to DBP. While it is true that DBP still had the real estate mortgage to ensure the payment of Traverse's loan, it would be in its favor to facilitate Central's payment on Policy No. TAR 1056 rather than go through the process of foreclosing Traverse's lot or having to demand payment again, albeit from Traverse this time. Moreover, Traverse's own evidence shows that DBP had tried its best to facilitate and coordinate meetings between Traverse and Central. DBP Tarlac even suggested to its main office to have Central blacklisted from its roster of accredited insurance companies as an effect of its handling of the Traverse fire insurance claim.[35]

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[32] *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006, 479 SCRA 404, 414.

[33] *Supra* note 28.

[34] *Id.* at 529.

[35] CA *rollo*, p. 141.

It was not DBP's act of facilitating the transfer of Traverse's insurance policy from FGU to Central that compelled Traverse to litigate its claims, but rather Central's persistent refusal to pay such claims. Thus, only Central should be held liable for the payment of attorney's fees and costs of suit.

In view of the foregoing, the Motion filed by DBP to direct the lower court to issue a writ of partial execution has become moot.

WHEREFORE, this Court *GRANTS* the petition and *MODIFIES* the September 30, 2004 Decision as well as the August 11, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 65311 by holding that petitioner Development Bank of the Philippines is *not liable* for the payment of attorney's fees and costs of suit in said case.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Villarama, Jr., JJ., concur.*

FIRST DIVISION

[G.R. No. 170512. October 5, 2011]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **ANTONIO T. REYES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE OFFENSE; MISCONDUCT, CONSTRUED; SIMPLE AND GRAVE MISCONDUCT, DISTINGUISHED. — In *Salazar v. Barriga,* the Court characterized the administrative offenses of misconduct and grave misconduct as follows: Misconduct

means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. Corruption as an element of grave misconduct consists in the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others.

2. ID.; ID.; IN ADMINISTRATIVE AND QUASI-JUDICIAL PROCEEDINGS; FINDINGS OF FACT BY THE OFFICE OF THE OMBUDSMAN ARE CONCLUSIVE WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTION. — Indeed, Section 27 of Republic Act No. 6770 mandates that the findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence. In administrative and quasi-judicial proceedings, only substantial evidence is necessary to establish the case for or against a party. Substantial evidence is more than a mere scintilla of evidence. It is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. *Dadulo v. Court of Appeals* reiterates that in reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. However, while it is not the function of the Court to analyze and weigh the parties' evidence all over again, an exception thereto lies as when there is serious ground to believe that a possible miscarriage of justice would thereby result.

3. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; CARDINAL PRINCIPLES LAID DOWN BY THE COURT IN COMPLIANCE TO DUE PROCESS, ENUMERATED; NON-COMPLIANCE THEREOF IN CASE AT BAR. — *Department of Health v. Camposano* restates the guidelines laid down in *Ang Tibay v. Court of Industrial Relations* that due process in administrative proceedings requires compliance

with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (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*; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved. x x x The fact that Reyes was able to assail the adverse decision of the petitioner *via* a Motion for Reconsideration Cum Motion to Set the Case for Preliminary Conference did not cure the violation of his right to due process in this case. Reyes filed the said motion precisely to raise the issue of the violation of his right to due process. There is nothing on record to show that Reyes was furnished with, or had otherwise received, a copy of the affidavits of Peñaloza, Amper and Valdehueza, whether before or after the Decision dated September 24, 2001 was issued. Thus, it cannot be said that Reyes had a fair opportunity to squarely and intelligently answer the accusations therein or to offer any rebuttal evidence thereto. x x x A judgment in an administrative case that imposes the extreme penalty of dismissal must not only be based on substantial evidence but also rendered with due regard to the rights of the parties to due process.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Lagamon Law Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks the reversal of the Decision[2] dated July 4, 2005 and the Resolution[3] dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 70571. The judgment of the appellate court reversed and set aside the Decision[4] dated September 24, 2001 and the Joint Order[5] dated February 15, 2002 of the Office of the Ombudsman for Mindanao in OMB-MIN-ADM-01-170; while the appellate court's resolution denied the motion for reconsideration[6] assailing its decision.

On January 11, 2001, Jaime B. Acero executed an affidavit against herein respondent Antonio Reyes and Angelito Peñaloza, who were the Transportation Regulation Officer II/Acting Officer-in-Charge and Clerk III, respectively, of the Land Transportation Office (LTO) District Office in Mambajao, Camiguin. Acero narrated thus:

> That, on January 10, 2001, at about 2:00 o'clock P.M. I went to the Land Transportation Office, at Mambajao, Camiguin to apply for a driver's license;
>
> That, I was made to take an examination for driver's license applicants by a certain Tata Peñaloza whose real name is Angelito, a clerk in said office;

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[1] *Rollo*, pp. 12-45.

[2] *Id.* at 46-52; penned by Associate Justice Edgardo A. Camello with Associate Justices Teresita Dy-Liacco Flores and Myrna Dimaranan Vidal, concurring.

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

[4] *Id.* at 55-60; penned by Graft Investigation Officer I Quintin J. Pedrido, Jr. and approved by Deputy Ombudsman for Mindanao Antonio E. Valenzuela and Ombudsman Aniano A. Desierto.

[5] *Id.* at 61-65.

[6] *Id.* at 66-79.

That, after the examination, [Peñaloza] informed me that I failed in the examination; however if I am willing to pay additional assessment then they will reconsider my application and I am referring to [Peñaloza] and [Reyes];

That, I asked how much will that be and [Peñaloza] in the presence of [Reyes] answered ₱680.00, so I agreed;

That, I then handed ₱1,000.00 to [Peñaloza] and [Peñaloza] handed it to the cashier;

That, [Peñaloza] in turn handed to me the change of ₱320.00 only and a little later I was given the LTO Official Receipt No. 62927785 (January 10, 2001) but only for ₱180.00 which O.R. serves as my temporary license for 60 days; and the balance of ₱500.00 was without O.R. and retained by Peñaloza;

That, I feel that the actuation of Antonio Reyes and Angelito Peñaloza are fraudulent in that they failed to issue receipt for the extra ₱500.00 paid to them; and [Reyes] know that I am with [the Commission on Audit];

That, I execute this affidavit to file charges against the guilty parties.[7]

Attached to Acero's affidavit was the LTO Official Receipt No. 62927785, showing his payment of ₱180.00.[8]

The above affidavit was apparently filed with the Office of the Provincial Prosecutor in Camiguin, but the same was later referred[9] to the Office of the Ombudsman-Mindanao. The latter office thereafter ordered[10] Reyes and Peñaloza to submit their counter-affidavits within ten days from notice.

On June 19, 2001, Peñaloza filed his Counter-Affidavit.[11] He denied telling Acero that if the latter were willing to pay additional costs, Reyes and Peñaloza would reconsider his

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[7] *Id.* at 123.

[8] *Id.* at 124.

[9] Records, p. 9.

[10] *Id.* at 25.

[11] *Rollo*, pp. 127-130.

application. Peñaloza stated that he did administer the examination to Acero but since he was very busy, he requested their security guard, Dominador Daypuyat, to check the answers of Acero using their answer guide. After Daypuyat checked Acero's paper, Peñaloza noted the score of 22/40. Peñaloza informed Acero of the failing grade and told him that it was up to Reyes to decide on the matter. Acero then went to the office of Reyes and after a few minutes, he came back and returned his application documents to Peñaloza. After examining the application form, Peñaloza saw that the same did not contain Reyes' signature but a plus sign (+) and the number 27 beside the score of 22/40. Peñaloza knew that it was Reyes who wrote the "+ 27" and the same indicated that Acero had to pay additional costs in order to pass the examination, as was done in the past.

Thereafter, when Peñaloza allegedly informed Reyes that Acero was an auditor, the latter was summoned into Reyes' office. Reyes asked if Acero wanted to retake the examination or just pay the additional costs. Acero eventually said "yes" and Peñaloza inferred that the former agreed to pay Reyes the extra costs. Peñaloza recounted that Reyes instructed him to prepare the driver's license of Acero. Peñaloza gave Acero's application documents to Lourdes Cimacio, the senior statistician, who processed the driver's license. When the cashier asked for Acero's payment, the latter gave Peñaloza a one-thousand-peso bill. The cashier, in turn, handed to Peñaloza a change of ₱820.00. From the said amount, Peñaloza gave to Acero ₱320.00, while ₱500.00 was given to Reyes. Acero soon left the office. Peñaloza said that Acero called their office not long after, asking for a receipt for the ₱500.00. Peñaloza then asked if Acero had not come to an understanding with Reyes that a receipt would not be issued for the additional cost. Acero insisted on a receipt then hanged up. Peñaloza told Reyes of Acero's demand and Reyes told him to cancel the driver's license. When told that the same could not be done anymore, Reyes allegedly gave Peñaloza ₱500.00, instructing the latter to return the money to Acero under circumstances where nobody could see them. Peñaloza stated that he waited for Acero to come back to their office but the latter did not do so anymore.

Peñaloza also submitted in evidence the affidavit[12] of Rey P. Amper. Amper narrated that he started working at the LTO in Mambajao, Camiguin in September 1988 as a driver-examiner. In February 1994, Reyes became the acting Head of Office, and eventually the Head of Office, of the LTO in Mambajao. About four months thereafter, Reyes verbally instructed Amper to send to him (Reyes) all the applicants for driver's licenses who failed the examinations. In case Reyes was absent, the applicants were to wait for him. Subsequently, Reyes gave Amper a piece of paper containing the rates to be charged to the "applicant-flunkers" in addition to the legal fees. Amper was also told to deliver the additional payments to Reyes. Amper stated that his office table and that of Reyes were located in one room. Reyes would allegedly tell the applicant-flunkers to either re-take the examinations or pay additional costs. In most cases, Amper said that the applicant-flunkers would only be too willing to pay the extra costs. Reyes would then instruct Amper to add more points to applicant-flunkers' scores, which meant that Reyes and the applicants concerned had come to an agreement for the payment of additional costs. Amper added that the said practice of Reyes was a "goad to his conscience" and he talked about it to Peñaloza. They allegedly reported the matter to their District Representative Pedro Romualdo, but the latter could only express his regrets for having recommended Reyes to his position. The practice of Reyes of claiming additional costs continued up to the time Amper left the LTO. Amper declared that he knew that it was Reyes alone who took and benefitted from his illegal exactions. The employees of the LTO in Mambajao were purportedly aware of the practice of Reyes but they were afraid to come out against their Head of Office.

The affidavit[13] of Margie B. Abdala was also presented by Peñaloza. Abdala stated that she accompanied Peñaloza and the latter's wife, Ebony, to the house of Acero on January 13, 2001. Ebony urged Acero not to include Peñaloza anymore in the complaint. Acero assured them that his complaint was

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[12] *Id.* at 134-135.

[13] Records, pp. 33-34.

principally directed against Reyes for requiring him (Acero) to pay additional costs for which he was not issued any official receipt. Peñaloza brought with him Acero's application form for a driver's license, which had already been approved by Reyes, and he asked the latter to complete the same. Peñaloza also tried to return the ₱500.00 from Reyes that was not covered by a receipt. Acero, however, refused to fill up the application form and to accept the money. When Ebony asked why Acero agreed to pay the additional cost required by Reyes, the latter answered that he did not understand what was meant by additional cost.

On June 19, 2001, Reyes manifested[14] that, for purposes of the instant case, he was adopting the counter-affidavit he filed in another Ombudsman case, docketed as OMB-MIN-01-0090,[15] as both cases involved the same parties and the same incident.

In his counter-affidavit,[16] Reyes claimed that Acero's complaint was a "blatant distortion of the truth and a mere fabrication of the complainant."[17] Reyes asserted that a perusal of the affidavit-complaint revealed that the only imputation against him was that Peñaloza allegedly told Acero to pay ₱680.00 in his (Reyes') presence. The affidavit revealed that it was Peñaloza who processed the application of Acero; the money was allegedly given to Peñaloza and it was he who handed the change back to Acero; and he had no participation and was not present when the money changed hands. Reyes stated that when he conducted an informal investigation on the complaint, Peñaloza admitted to having pocketed the extra ₱500.00. Reyes allegedly reprimanded Peñaloza and ordered the latter to return the money to Acero. Based on the receipt submitted by Acero, the same proved that as far as the LTO and Reyes were concerned, what

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

[15] OMB-MIN-01-0090 was the criminal case filed by Acero against Reyes and Peñaloza for violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

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

[17] *Id.* at 125.

was received by the office was only ₱180.00. Reyes contended that he did not ask or receive money from Acero and it was Peñaloza who pocketed the ₱500.00.

In an Order[18] dated June 20, 2001, the Office of the Ombudsman-Mindanao directed the parties to appear before its office on July 11, 2001 for a preliminary conference. The parties were to consider, among others, the need for a formal investigation or whether the parties were willing to submit their case for resolution on the basis of the evidence on record and such other evidence as they will present at the conference.

On July 6, 2001, Acero sent the Office of the Ombudsman-Mindanao a telegram,[19] stating that he was waiving his right to avail of the preliminary conference.

On July 11, 2001, the Office of the Ombudsman-Mindanao issued an Order,[20] stating that none of the parties appeared in the preliminary conference scheduled for that day. In view of the non-appearance of the respondents therein, they were considered to have waived their right to a preliminary conference. The case was then deemed submitted for decision.

On July 23, 2001, the counsel for Peñaloza informed the Office of the Ombudsman-Mindanao that his client was waiving his right to a formal investigation and was willing to submit the case for resolution on the basis of the evidence on record. Peñaloza also submitted the additional affidavit of one of their witnesses, Rickie Valdehueza.

In his affidavit,[21] Valdehueza stated that on January 5, 2001, he applied for a driver's license with the LTO in Mambajao, Camiguin. He took an examination on that day, which was conducted by an employee he later came to know as Dominador Daypuyat. After the latter checked his test paper, Valdehueza

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[18] Records, p. 40.

[19] *Id.* at 41.

[20] *Id.* at 42.

[21] *Rollo*, pp. 131-132.

was told that he got a failing score. His application was then turned over to Peñaloza, who told him to see Reyes. Valdehueza said that Reyes advised him not to retake the examination anymore and just pay ₱1,500.00. Valdehueza bargained for ₱1,200.00 since he had no money and Reyes agreed. Reyes then wrote the sign "+ 20" next to Valdueza's score of 30, such that what appeared on the test paper was "30 + 20." Reyes returned the test paper and instructed Valdehueza to tell Peñaloza to add "20" to his score. Valdehueza went back to the LTO on January 10, 2001 bringing ₱1,200.00. Before he could go to Reyes' office, he was accosted by Daypuyat in the lobby who informed him that his license was already completed. Daypuyat also took ₱700.00 to give to Reyes. Valdehueza gave ₱500.00 to the cashier as payment for the ₱240.00 license fee. He told the cashier to just give his change to Reyes.

On September 24, 2001, the Office of the Ombudsman-Mindanao rendered a Decision in OMB-MIN-ADM-01-170, adjudging Reyes guilty of grave misconduct and finding Peñaloza guilty of simple misconduct. The pertinent portion of the decision reads:

> Here, as borne out of the record, there is no denying the fact that [Acero] failed in the examination given for a driver's license, yet ultimately, herein complainant was granted a temporary driver's license. It is therefore very logical to presume that something in between was agreed upon between the applicant and the person charged with the grant of license.
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> Based on the testimony of [Peñaloza] and corroborated by the testimonies of Rey P. Amper (Record, pp. 31-32) and Rickie Valdehueza (Record, pp. 44-45), [Reyes] would give the flunker the option of retaking the examination or to simply pay an additional cost to have a passing grade without actually re-taking the same. As testified to by Rey P. Amper, "*x x x in almost all cases, the applicant-flunker would only be too willing to pay the additional costs, in which case, Mr. Reyes would instruct him to go back to my table. Then Mr. Reyes would call me, saying: 'Ray, just add more to his score.', which to me meant that he and the applicant-flunker had come to an agreement to pay the 'additional costs'.*" Mr. Amper testifies further that this matter of extending a passing grade to a flunker for a monetary consideration has been a system

within this LTO agency perpetrated by [Reyes] since he assumed as Head of Office thereat.

Verily, [Reyes] took advantage of his position and office in exacting the so-called additional cost from those who flunked the examination. There is nowhere in the record authorizing the Head of Office of the LTO to adjust a failing grade into a passing grade. In addition, there is nowhere in the record that supports the legality of collecting additional costs over and above the legal fees. This is a pure and simple case of extortion and certainly, such act is a breach of his oath of office as well as a deliberate disregard of existing rules and regulations. Based on the foregoing, this Office finds respondent [Reyes] guilty of grave misconduct.

As regards [Peñaloza], while he may have helped or facilitated in the collection of that additional costs, he could not be as guilty as [Reyes].

Understandably, it is normal for a subordinate to keep mum while an anomaly is going on specially when the perpetrator is the Head of Office. There is fear in him and normally, such subordinate would just "ride along", so to speak. But nonetheless, [Peñaloza] has to be sanctioned. While the infraction he had helped accomplished may not have been voluntary on his part but as a public official, he should have registered his objection regardless of the consequence that may occur. Based on the foregoing, this Office finds respondent [Peñaloza] guilty of simple misconduct.

WHEREFORE, there being substantial evidence, this Office finds respondent Antonio T. Reyes guilty of grave misconduct and he is hereby meted the penalty of DISMISSAL from the service pursuant to Section 23(c) [Grave Offenses], Rule XIV of the Rules Implementing Book V of Executive Order No. 292. Likewise, this Office finds respondent Angelito G. Peñaloza guilty of Simple Misconduct and he is hereby meted the penalty of SUSPENSION from office without pay for a period of Six (6) months based on Section 23(b) [Less Grave Offenses] Rule XIV of the Rules Implementing Book V of Executive Order No. 292. In both instances, the execution of the penalties imposed shall be made immediately after the same shall have been final and executory.[22]

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[22] *Id.* at 58-59.

In their bid to challenge the above ruling, Reyes filed a Motion for Reconsideration cum Motion to Set the Case for Preliminary Conference,[23] while Peñaloza filed a Motion for Reconsideration.[24] On February 15, 2002, the Office of the Ombudsman-Mindanao issued a Joint Order,[25] denying the aforesaid motions of Reyes and Peñaloza.

Reyes elevated the case to the Court of Appeals *via* a Petition for Review[26] under Rule 43 of the Rules of Court, which petition was docketed as CA-G.R. SP No. 70571.

In the assailed Decision dated July 4, 2005, the Court of Appeals granted the petition of Reyes and reversed the judgment of the Office of the Ombudsman-Mindanao. The appellate court reasoned thus:

> It must be pointed out that in the complaint-affidavit filed by Acero, it was only Peñaloza who received the money and the balance of ₱500.00 which was without O.R. was retained by Peñaloza. Nowhere in the complaint-affidavit could one find the name of Reyes, herein petitioner, nor is it alleged there that Reyes was around when Acero handed to Peñaloza the ₱1000.00. From the evidence on record, it was, clearly, only Peñaloza all along. Nowhere in the record is Reyes' complicity suggested or even slightly hinted.
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> x x x x x x x x x
>
> It does not appear on record that [Reyes] was the one who ordered and received the "additional assessment." Rather, it was Peñaloza alone who approached the complainant, discussed about the "additional assessment", and retained the balance of ₱500 basing on the complaint-affidavit filed by Acero.
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> We note with sadness that the counter-affidavit of Peñaloza, of itself, was considered enough evidence by the investigation officer in finding [Reyes] guilty of grave misconduct, and dismissing him from government service. The testimony of Peñaloza is, however,

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[23] *Id.* at 80-85.

[24] Records, pp. 62-66.

[25] *Rollo*, pp. 61-65.

[26] *Id.* at 86-103.

a self-serving declaration considering that he is the co-respondent in the Ombudsman case filed by Acero. Such a declaration which was obviously made principally to save his own neck should have been received with caution. This vital objection to the admission of this kind of evidence is its hearsay character and to permit its unqualified introduction in evidence would open the door to frauds and perjuries.

It may be true that Reyes failed to attend the scheduled preliminary conference where he could have refuted all the hearsay evidence submitted against him. The introduction of such as evidence does not, however, give them the probative value which they did not bear in the first place. Hearsay evidence, whether objected to or not, cannot be given credence.

The self-serving evidence presented in the form of a counter-affidavit by Peñaloza should not have been taken hook, line and sinker, so to speak, for there was no way of ascertaining the truth of their contents. Moreover, in the Motion for Reconsideration dated November 13, 2001 [Reyes] claimed that he was not furnished any copy of Peñaloza's counter-affidavit. Thus, admissions made by Peñaloza in his sworn statement are binding only on him. *Res inter alios acta alteri nocere non debet.* The rights of a party cannot be prejudiced by an act, declaration or omission of another.

The charge of misconduct is a serious charge, a "capital offense" in a manner of speaking, which may cause the forfeiture of one's right to hold a public office. Therefore, said charge must be proven and substantiated by clear and convincing evidence. Mere allegation will not suffice. It should be supported by competent evidence, by substantial evidence. We find the case against [Reyes] wanting in this regard.

FOR THESE REASONS, the instant petition is GRANTED. The decision dated 24 September 2001 and the Joint Order dated 15 February 2002 are REVERSED and SET ASIDE. [Reyes] is hereby exonerated from the administrative charge for insufficiency of evidence.[27]

The Office of the Ombudsman, through the Office of the Solicitor General, filed a Motion for Reconsideration[28] of the

[27] *Id.* at 49-52.

[28] *Id.* at. 66-79.

Court of Appeals decision. The same was, however, denied in the assailed Resolution dated October 27, 2005.

Hence, the Office of the Ombudsman (petitioner) filed the instant petition, raising the following issues:

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS, IN NULLIFYING THE DECISION OF THE OMBUDSMAN, DECIDED A QUESTION OF SUBSTANCE CONTRARY TO LAW AND APPLICABLE JURISPRUDENCE IN THAT:

(i) It re-examined and weighed the evidence submitted in the administrative proceedings and worse, substituted its judgment for that of the Ombudsman; and,

(ii) It made a conclusion that substantial evidence does not exist to warrant a finding of administrative culpability on the part of respondent Reyes.[29]

In essence, the fundamental issue in the instant case is whether the charge of grave misconduct against Reyes was sufficiently proven by substantial evidence. Petitioner settled this issue in the affirmative, while the Court of Appeals ruled otherwise.

In *Salazar v. Barriga*,[30] the Court characterized the administrative offenses of misconduct and grave misconduct as follows:

> Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of official functions and duties of a public officer.
>
> In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. Corruption as an element of grave misconduct consists in the act of an official who unlawfully or wrongfully uses his station or character to procure some benefit for himself, contrary to the rights of others.[31]

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[29] *Id.* at 186.

[30] A.M. No. P-05-2016, April 19, 2007, 521 SCRA 449.

[31] *Id.* at 453-454.

Here, petitioner adjudged Reyes guilty of grave misconduct after finding that Reyes, being then the Head of Office of the LTO in Mambajao, Camiguin, illegally exacted money from Acero in exchange for the issuance of a driver's license to the latter, notwithstanding that Acero did not pass the requisite written examination therefor.

In assailing the judgment of the Court of Appeals, petitioner avers that the findings of fact of the Office of the Ombudsman are entitled to great weight and must be accorded full respect and credit as long as they are supported by substantial evidence. Petitioner argues that it is not the task of the appellate court to weigh once more the evidence submitted before an administrative body and to substitute its own judgment for that of the administrative agency with respect to the sufficiency of evidence.

Indeed, Section 27 of Republic Act No. 6770 mandates that the findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence.[32] In administrative and quasi-judicial proceedings, only substantial evidence is necessary to establish the case for or against a party. Substantial evidence is more than a mere scintilla of evidence. It is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[33]

Dadulo v. Court of Appeals[34] reiterates that in reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of

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[32] Section 27 of Republic Act No. 6770 pertinently provides:

SEC. 27. *Effectivity and Finality of Decisions*. — x x x

x x x x x x x x x

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

[33] *Bascos, Jr. v. Taganahan*, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 674-675.

[34] G.R. No. 175451, April 13, 2007, 521 SCRA 357, 363.

witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. However, while it is not the function of the Court to analyze and weigh the parties' evidence all over again, an exception thereto lies as when there is serious ground to believe that a possible miscarriage of justice would thereby result.

After carefully perusing the records of this case, we find that the above-cited exception, rather than the general rule, applies herein. Otherwise stated, the Court deems it proper that a review of the case should be made in order to arrive at a just resolution.

In the main, the evidence submitted by the parties in OMB-MIN-ADM-01-170 consisted of their sworn statements, as well as that of their witnesses. In the affidavit of Acero, he categorically identified both Reyes and Peñaloza as the persons who had the prerogative to reconsider his failed examination, provided that he paid an additional amount on top of the legal fees. For his part, Peñaloza ostensibly admitted the charge of Acero in his counter-affidavit but he incriminated Reyes therein as the mastermind of the illicit activity complained of. To corroborate this allegation, Peñaloza submitted the affidavits of Amper and Valdehueza. Amper was a former LTO employee who allegedly had first-hand knowledge of the practice of Reyes of imposing and pocketing additional fees; while Valdehueza declared that he was an applicant for a driver's license who was likewise made to pay the said additional fees to Reyes. Upon the other hand, Reyes' counter-affidavit repudiated the allegations of Acero, insisting that it was Peñaloza who illegally took the amount of ₱500.00 from Acero.

Reyes faults petitioner for placing too much reliance on the counter-affidavit of Peñaloza, as well as the affidavits of Amper and Valdehueza. Reyes claims that he was not furnished a copy of the said documents before petitioner rendered its Decision dated September 24, 2001. Reyes, thus, argues that his right to due process was violated. Petitioner, on the other hand, counters that Reyes was afforded due process since he was given all the opportunities to be heard, as well as the opportunity to file a motion for reconsideration of petitioner's adverse decision.

On this point, the Court finds merit in Reyes' contention.

Ledesma v. Court of Appeals[35] elaborates on the well established doctrine of due process in administrative proceedings as follows:

> Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[36]

Moreover, *Department of Health v. Camposano*[37] restates the guidelines laid down in *Ang Tibay v. Court of Industrial Relations*[38] that due process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (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*; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.[39]

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[35] G.R. No. 166780, December 27, 2007, 541 SCRA 444.

[36] *Id.* at 451-452.

[37] 496 Phil. 886 (2005).

[38] 69 Phil. 635 (1940).

[39] *Id.* at 641-644.

In the present case, the fifth requirement stated above was not complied with. Reyes was not properly apprised of the evidence offered against him, which were eventually made the bases of petitioner's decision that found him guilty of grave misconduct.

To recall, after the affidavit of Acero was filed with the Office of the Ombudsman-Mindanao, the respondents therein, *i.e.*, Reyes and Peñaloza, were ordered to submit their counter-affidavits in order to discuss the charges lodged against them. While Peñaloza acknowledged in his counter-affidavit his participation in the illicit transaction complained of, he pointed to Reyes as the main culprit. Peñaloza thereafter submitted the affidavits of Amper and Valdehueza as witnesses who would substantiate his accusations. However, the records reveal that only the Office of the Ombudsman-Mindanao and Acero were furnished copies of the said affidavits.[40] Thus, Reyes was able to respond only to the affidavit of Acero. It would appear that Reyes had no idea that Peñaloza, a co-respondent in the administrative case, would point an accusing finger at him and even supply the inculpatory evidence to prove his guilt. The said affidavits were made known to Reyes only after the rendition of the petitioner's Decision dated September 24, 2001.

The fact that Reyes was able to assail the adverse decision of the petitioner *via* a Motion for Reconsideration Cum Motion to Set the Case for Preliminary Conference did not cure the violation of his right to due process in this case. Reyes filed the said motion precisely to raise the issue of the violation of his right to due process. There is nothing on record to show that Reyes was furnished with, or had otherwise received, a copy of the affidavits of Peñaloza, Amper and Valdehueza, whether before or after the Decision dated September 24, 2001 was issued. Thus, it cannot be said that Reyes had a fair opportunity to squarely and intelligently answer the accusations therein or to offer any rebuttal evidence thereto.

It is true that, in the past, this Court has held that the right to due process of a respondent in an administrative case was

[40] Records, p. 26.

not violated if he was able to file a motion for reconsideration to refute the evidence against him. However, the instant case should be differentiated from *Ruivivar v. Office of the Ombudsman*,[41] which likewise involved the issue of administrative due process. In the said case, Ruivivar was found administratively liable for discourtesy in the course of her official functions and was meted the penalty of reprimand. In her motion for reconsideration, Ruivivar argued that she was deprived of due process because she was not furnished copies of the affidavits of complainant's witnesses. Thereafter, the Ombudsman ordered that Ruivivar be furnished with copies of the affidavits of the witnesses, with the directive for her to file any pleading that she may deem appropriate. As Ruivivar still opted not to controvert the affidavits that were belatedly provided to her, the Ombudsman ruled that her right to due process was not violated and her administrative liability was upheld. The Court affirmed the ruling of the Ombudsman, declaring that "the law can no longer help one who had been given ample opportunity to be heard but who did not take full advantage of the proffered chance."[42]

In the instant case, petitioner plainly disregarded Reyes' protestations without giving him a similar opportunity, as in *Ruivivar*, to be belatedly furnished copies of the affidavits of Peñaloza, Amper and Valdehueza to enable him to refute the same. As it were, petitioner rendered its Decision dated September 24, 2001 on the basis of evidence that were not disclosed to Reyes. This the Court cannot sanction. A judgment in an administrative case that imposes the extreme penalty of dismissal must not only be based on substantial evidence but also rendered with due regard to the rights of the parties to due process.

WHEREFORE, the Decision dated July 4, 2005 and the Resolution dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 70571, as well as the Decision dated September 24, 2001 and the Joint Order dated February 15, 2002 of the

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[41] G.R. No. 165012, September 16, 2008, 565 SCRA 324.

[42] *Id.* at 340.

Office of the Ombudsman in OMB-MIN-ADM-01-170, are hereby *REVERSED* and *SET ASIDE*.

The records of OMB-MIN-ADM-01-170 are *REMANDED* to the Office of the Ombudsman, which is hereby ordered (a) to furnish respondent Antonio T. Reyes copies of the affidavits of Angelito G. Peñaloza, Rey P. Amper and Rickie Valdehueza, and (b) to conduct further proceedings in OMB-MIN-ADM-01-170 as may be appropriate.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 172954. October 5, 2011]

ENGR. JOSE E. CAYANAN, *petitioner, vs.* **NORTH STAR INTERNATIONAL TRAVEL, INC.,** *respondent*.

SYLLABUS

COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; THE PRESUMPTION OF LAW IS THAT EVERY PARTY TO AN INSTRUMENT ACQUIRES THE SAME FOR A CONSIDERATION OR FOR VALUE. — We have held that upon issuance of a check, in the absence of evidence to the contrary, it is presumed that the same was issued for valuable consideration which may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken by the other side. Under the Negotiable Instruments Law, it is

presumed that every party to an instrument acquires the same for a consideration or for value. As petitioner alleged that there was no consideration for the issuance of the subject checks, it devolved upon him to present convincing evidence to overthrow the presumption and prove that the checks were in fact issued without valuable consideration. Sadly, however, petitioner has not presented any credible evidence to rebut the presumption, as well as North Star's assertion, that the checks were issued as payment for the US$85,000 petitioner owed.

APPEARANCES OF COUNSEL

Napoleon M. Marapao for petitioner.
Alexandre John Andrada Villanueva for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Engr. Jose E. Cayanan appeals the May 31, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 65538 finding him civilly liable for the value of the five checks which are the subject of Criminal Case Nos. 166549-53.

The antecedent facts are as follows:

North Star International Travel Incorporated (North Star) is a corporation engaged in the travel agency business while petitioner is the owner/general manager of JEAC International Management and Contractor Services, a recruitment agency.

On March 17,[2] 1994, Virginia Balagtas, the General Manager of North Star, in accommodation and upon the instruction of its client, petitioner herein, sent the amount of US$60,000[3] to

[1] *Rollo*, pp. 35-45. Penned by Associate Justice Roberto A. Barrios with Associate Justices Mario L. Guariña III and Santiago Javier Ranada concurring.

[2] March 15 in some parts of the records but the date appearing on the telegraphic transfer receipt/money transfer slip is March 17.

[3] Exh. "8", records, p. 262.

View Sea Ventures Ltd., in Nigeria from her personal account in Citibank Makati. On March 29, 1994, Virginia again sent US$40,000 to View Sea Ventures by telegraphic transfer,[4] with US$15,000 coming from petitioner. Likewise, on various dates, North Star extended credit to petitioner for the airplane tickets of his clients, with the total amount of such indebtedness under the credit extensions eventually reaching ₱510,035.47.[5]

To cover payment of the foregoing obligations, petitioner issued the following five checks to North Star:

Check No	:	246822
Drawn Against	:	Republic Planters Bank
Amount	:	₱695,000.00
Dated/Postdated	:	May 15, 1994
Payable to	:	North Star International Travel, Inc.
Check No	:	246823
Drawn Against	:	Republic Planters Bank
Amount	:	₱278,000.00
Dated/Postdated	:	May 15, 1994
Payable to	:	North Star International Travel, Inc.
Check No	:	246824
Drawn Against	:	Republic Planters Bank
Amount	:	₱22,703.00
Dated/Postdated	:	May 15, 1994
Payable to	:	North Star International Travel, Inc.
Check No	:	687803
Drawn Against	:	PCIB
Amount	:	₱1,500,000.00
Dated/Postdated:	:	April 14, 1994
Payable to	:	North Star International Travel, Inc.
Check No	:	687804
Drawn Against	:	PCIB
Amount	:	₱35,000.00

[4] Exh. "9", *id.* at 263.

[5] *Id.* at 35.

Dated/Postdated	:	April 14, 1994
Payable to	:	North Star International Travel, Inc.[6]

When presented for payment, the checks in the amount of ₱1,500,000 and ₱35,000 were dishonored for insufficiency of funds while the other three checks were dishonored because of a stop payment order from petitioner.[7] North Star, through its counsel, wrote petitioner on September 14, 1994[8] informing him that the checks he issued had been dishonored. North Star demanded payment, but petitioner failed to settle his obligations. Hence, North Star instituted Criminal Case Nos. 166549-53 charging petitioner with violation of *Batas Pambansa Blg. 22*, or the Bouncing Checks Law, before the Metropolitan Trial Court (MeTC) of Makati City.

The Informations,[9] which were similarly worded except as to the check numbers, the dates and amounts of the checks, alleged:

> That on or about and during the month of March 1994 in the Municipality of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, being the authorized signatory of [JEAC] Int'l Mgt & Cont. Serv. did then and there willfully, unlawfully and feloniously make out[,] draw and issue to North Star Int'l. Travel Inc. herein rep. by Virginia D. Balagtas to apply on account or for value the checks described below:
>
> x x x x x x x x x
>
> said accused well knowing that at the time of issue thereof, did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason PAYMENT STOPPED/DAIF and despite receipt of

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[6] *Id.* at 36, 53-54.

[7] *Id.* at 56.

[8] Exh. "R", *id.* at 291.

[9] *Id.* at 1-10.

notice of such dishonor the accused failed to pay the payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

Contrary to law.

Upon arraignment, petitioner pleaded not guilty to the charges.

After trial, the MeTC found petitioner guilty beyond reasonable doubt of violation of B.P. 22. Thus:

WHEREFORE, finding the accused, ENGR. JOSE E. CAYANAN GUILTY beyond reasonable doubt of Violation of Batas Pambansa Blg. 22 he is hereby sentenced to suffer imprisonment of one (1) year for each of the offense committed.

Accused is likewise ordered to indemnify the complainant North Star International Travel, Inc. represented in this case by Virginia Balagtas, the sum of TWO MILLION FIVE HUNDRED THIRTY THOUSAND AND SEVEN HUNDRED THREE PESOS (₱2,530,703.00) representing the total value of the checks in [question] plus FOUR HUNDRED EIGHTY[-]FOUR THOUSAND SEVENTY [-]EIGHT PESOS AND FORTY[-]TWO CENTAVOS (₱484,078.42) as interest of the value of the checks subject matter of the instant case, deducting therefrom the amount of TWO HUNDRED TWENTY THOUSAND PESOS (₱220,000.00) paid by the accused as interest on the value of the checks duly receipted by the complainant and marked as Exhibit "FF" of the record.

x x x x x x x x x

SO ORDERED.[10]

On appeal, the Regional Trial Court (RTC) acquitted petitioner of the criminal charges. The RTC also held that there is no basis for the imposition of the civil liability on petitioner. The RTC ratiocinated that:

In the instant cases, the checks issued by the accused were presented beyond the period of NINETY (90) DAYS and therefore, there is no violation of the provision of Batas Pambansa Blg. 22 and the accused is not considered to have committed the offense. There

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

being no offense committed, accused is not criminally liable and there would be no basis for the imposition of the civil liability arising from the offense.[11]

Aggrieved, North Star elevated the case to the CA. On May 31, 2006, the CA reversed the decision of the RTC insofar as the civil aspect is concerned and held petitioner civilly liable for the value of the subject checks. The *fallo* of the CA decision reads:

> WHEREFORE, the petition is GRANTED. The assailed Decision of the RTC insofar as Cayanan's civil liability is concerned, is NULLIFIED and SET ASIDE. The indemnity awarded by the MeTC in its September 1, 1999 Decision is REINSTATED.
>
> SO ORDERED.[12]

The CA ruled that although Cayanan was acquitted of the criminal charges, he may still be held civilly liable for the checks he issued since he never denied having issued the five postdated checks which were dishonored.

Petitioner now assails the CA decision raising the lone issue of whether the CA erred in holding him civilly liable to North Star for the value of the checks.[13]

Petitioner argues that the CA erred in holding him civilly liable to North Star for the value of the checks since North Star did not give any valuable consideration for the checks. He insists that the US$85,000 sent to View Sea Ventures was not sent for the account of North Star but for the account of Virginia as her investment. He points out that said amount was taken from Virginia's personal dollar account in Citibank and not from North Star's corporate account.

Respondent North Star, for its part, counters that petitioner is liable for the value of the five subject checks as they were

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[11] *Id.* at 61.

[12] *Id.* at 44.

[13] *Id.* at 26.

issued for value. Respondent insists that petitioner owes North Star ₱2,530,703 plus interest of ₱264,078.45, and that the ₱220,000 petitioner paid to North Star is conclusive proof that the checks were issued for value.

The petition is bereft of merit.

We have held that upon issuance of a check, in the absence of evidence to the contrary, it is presumed that the same was issued for valuable consideration which may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken by the other side.[14] Under the Negotiable Instruments Law, it is presumed that every party to an instrument acquires the same for a consideration or for value.[15] As petitioner alleged that there was no consideration for the issuance of the subject checks, it devolved upon him to present convincing evidence to overthrow the presumption and prove that the checks were in fact issued without valuable consideration.[16] Sadly, however, petitioner has not presented any credible evidence to rebut the presumption, as well as North Star's assertion, that the checks were issued as payment for the US$85,000 petitioner owed.

Notably, petitioner anchors his defense of lack of consideration on the fact that he did not personally receive the US$85,000 from Virginia. However, we note that in his pleadings, he never denied having instructed Virginia to remit the US$85,000 to View Sea Ventures. Evidently, Virginia sent the money upon the agreement that petitioner will give to North Star the peso

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[14] *Palana v. People*, G.R. No. 149995, September 28, 2007, 534 SCRA 296, 305.

[15] Section 24, Negotiable Instruments Law.

Sec. 24. *Presumption of consideration.* — Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

[16] See *Bayani v. People*, G. R. No. 155619, August 14, 2007, 530 SCRA 84, 95.

equivalent of the amount remitted plus interest. As testified to by Virginia, *Check No. 246822* dated May 15, 1994 in the amount of ₱695,000.00 is equivalent to US$25,000; *Check No. 246823* dated May 15, 1994 in the amount of ₱278,000 is equivalent to US$10,000; *Check No. 246824* in the amount of ₱22,703 represents the one month interest for ₱695,000 and ₱278,000 at the rate of twenty-eight (28%) percent *per annum*;[17] *Check No. 687803* dated April 14, 1994 in the amount of ₱1,500,000 is equivalent to US$50,000 and *Check No. 687804* dated 14 April 1994 in the amount of ₱35,000 represents the one month interest for ₱1,500,000 at the rate of twenty-eight (28%) percent *per annum*.[18] Petitioner has not substantially refuted these averments.

Concomitantly, petitioner's assertion that the dollars sent to Nigeria was for the account of Virginia Balagtas and as her own investment with View Sea Ventures deserves no credence. Virginia has not been shown to have any business transactions with View Sea Ventures and from all indications, she only remitted the money upon the request and in accordance with petitioner's instructions. The evidence shows that it was petitioner who had a contract with View Sea Ventures as he was sending contract workers to Nigeria; Virginia Balagtas' participation was merely to send the money through telegraphic transfer in exchange for the checks issued by petitioner to North Star. Indeed, the transaction between petitioner and North Star is actually in the nature of a loan and the checks were issued as payment of the principal and the interest.

As aptly found by the trial court:

> It is to be noted that the checks subject matter of the instant case were issued in the name of North Star International Inc., represented by private complainant Virginia Balagtas in replacement of the amount of dollars remitted by the latter to Vie[w] Sea Ventures in Nigeria. x x x But Virginia Balagtas has no business transaction with Vie[w]

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[17] TSN, July 31, 1996, p. 4; records, p. 429.

[18] See Exh. "DD", records, p. 307; see also TSN, July 27, 1998, p. 4; records, p. 544; TSN, August 17, 1998, p. 8; records, p. 563.

Sea Ventures where accused has been sending his contract workers and the North Star provided the trip tickets for said workers sent by the accused. North Star International has no participation at all in the transaction between accused and the Vie[w] Sea Ventures except in providing plane ticket used by the contract workers of the accused upon its understanding with the latter. The contention of the accused that the dollars were sent by Virginia Balagtas to Nigeria as business investment has not been shown by any proof to set aside the foregoing negative presumptions, thus negates accused contentions regarding the absence of consideration for the issuance of checks. x x x[19]

Petitioner claims that North Star did not give any valuable consideration for the checks since the US$85,000 was taken from the personal dollar account of Virginia and not the corporate funds of North Star. The contention, however, deserves scant consideration. The subject checks, bearing petitioner's signature, speak for themselves. The fact that petitioner himself specifically named North Star as the payee of the checks is an admission of his liability to North Star and not to Virginia Balagtas, who as manager merely facilitated the transfer of funds. Indeed, it is highly inconceivable that an experienced businessman like petitioner would issue various checks in sizeable amounts to a payee if these are without consideration. Moreover, we note that Virginia Balagtas averred in her Affidavit[20] that North Star caused the payment of the US$60,000 and US$25,000 to View Sea Ventures to accommodate petitioner, which statement petitioner failed to refute. In addition, petitioner did not question the Statement of Account No. 8639[21] dated August 31, 1994 issued by North Star which contained itemized amounts including the US$60,000 and US$25,000 sent through telegraphic transfer to View Sea Ventures per his instruction. Thus, the inevitable conclusion is that when petitioner issued the subject checks to North Star as payee, he did so to settle his obligation with North Star for the US$85,000. And since the only payment petitioner

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[19] *Rollo*, pp. 54-55.

[20] Records, pp. 62-65.

[21] *Id.* at 88.

made to North Star was in the amount of ₱220,000.00, which was applied to interest due, his liability is not extinguished. Having failed to fully settle his obligation under the checks, the appellate court was correct in holding petitioner liable to pay the value of the five checks he issued in favor of North Star.

WHEREFORE, the present appeal by way of a petition for review on *certiorari* is *DENIED* for lack of merit. The Decision dated May 31, 2006 of the Court of Appeals in CA-G.R. SP No. 65538 is *AFFIRMED.*

With costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *del Castillo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 178321. October 5, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CONRADO LAOG *y* RAMIN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY SUBSTANTIAL REASON WHICH WOULD JUSTIFY THE REVERSAL OF THE TRIAL COURT'S ASSESSMENTS AND CONCLUSIONS, THE REVIEWING COURT IS GENERALLY BOUND BY THE FORMER'S FINDINGS. — Jurisprudence has decreed that the issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which

opportunity is denied to the appellate courts" and "absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case." This rule is even more stringently applied if the appellate court concurred with the trial court.

2. ID.; ID.; ID.; POSITIVE IDENTIFICATION OF THE ACCUSED SHOULD PREVAIL OVER THE ALIBI AND DENIAL OF THE APPELLANT; APPLICATION IN CASE AT BAR. — Time and again, we have held that positive identification of the accused, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of the appellant whose testimony is not substantiated by clear and convincing evidence. AAA was firm and unrelenting in pointing to appellant as the one who attacked her and Jennifer, stabbing the latter to death before raping AAA. It should be noted that AAA knew appellant well since they were relatives by affinity. As correctly held by the CA, with AAA's familiarity and proximity with the appellant during the commission of the crime, her identification of appellant could not be doubted or mistaken. In fact, AAA, upon encountering appellant, did not run away as she never thought her own uncle would harm her and her friend. Moreover, the most natural reaction of victims of violence is to strive to see the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed. There is no evidence to show any improper motive on the part of AAA to testify falsely against appellant or to falsely implicate him in the commission of a crime. Thus, the logical conclusion is that the testimony is worthy of full faith and credence. x x x Appellant does not dispute that he was near the vicinity of the crime on the evening of June 6, 2000. In fact, during his cross-examination, appellant admitted that his house was more or less only 100 meters from the crime scene. Thus, his defense of alibi is not worthy of any credit for the added reason that he has not shown that it was physically impossible for him to be at the scene of the crime at the time of its commission. In view of the credible testimony of AAA, appellant's defenses of denial and alibi

deserve no consideration. We stress that these weak defenses cannot stand against the positive identification and categorical testimony of a rape victim.

3. ID.; ID.; ID.; NOT AFFECTED BY DISCREPANCIES REFERRING ONLY TO MINOR DETAILS AND COLLATERAL MATTERS. — Discrepancies referring only to minor details and collateral matters — not to the central fact of the crime — do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged. It cannot be overemphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.

4. CRIMINAL LAW; RAPE; MEDICAL EXAMINATION OF THE VICTIM, AS WELL AS THE MEDICAL CERTIFICATE, IS MERELY CORROBORATIVE IN CHARACTER AND IS NOT AN INDISPENSABLE ELEMENT FOR CONVICTION IN RAPE. — It must be underscored that the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict. Thus we have ruled that a medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element for conviction in rape. What is important is that the testimony of private complainant about the incident is clear, unequivocal and credible, as what we find in this case.

5. ID.; COMPLEX CRIME; CONCEPT OF SPECIAL COMPLEX CRIME, EXPLAINED. — In *People v. Larrañaga*, this Court explained the concept of a special complex crime, as follows: A discussion on the nature of special complex crime is imperative. **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 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. In the cases at bar, particularly Criminal Case No. CBU-45303, the Information specifically alleges that the victim Marijoy was raped "on the occasion and in connection" with her detention and was killed "subsequent thereto and on the occasion thereof." Considering that the prosecution was able to prove each of the component offenses, appellants should be convicted of the special complex crime of kidnapping and serious illegal detention with homicide and rape. x x x A special complex crime, or more properly, a composite crime, has its own definition and special penalty in the Revised Penal Code, as amended. Justice Regalado, in his Separate Opinion in the case of *People v. Barros*, explained that composite crimes are "neither of the same legal basis as nor subject to the rules on complex crimes in Article 48 [of the Revised Penal Code], since they do not consist of a single act giving rise to two or more grave or less grave felonies [compound crimes] nor do they involve an offense being a necessary means to commit another [complex crime proper].

6. ID.; RAPE; PENALTY FOR THE COMPOSITE ACTS OF RAPE AND THE KILLING COMMITTED BY REASON OR ON OCCASION OF THE RAPE, EXPLAINED. — Article 266-B of the Revised Penal Code, as amended, provides only a single penalty for the composite acts of rape and the killing committed *by reason* or *on the occasion* of the rape. x x x Considering that the prosecution in this case was able to prove both the rape of AAA and the killing of Jennifer both perpetrated by appellant, he is liable for rape with homicide under the above provision. There is no doubt that appellant killed Jennifer to prevent her from aiding AAA or calling for help once she is able to run away, and also to silence her completely so she may not witness the rape of AAA, the original intent of appellant. His carnal desire having been satiated, appellant purposely covered AAA's body with grass, as he

did earlier with Jennifer's body, so that it may not be easily noticed or seen by passersby. Appellant indeed thought that the savage blows he had inflicted on AAA were enough to cause her death as with Jennifer. But AAA survived and appellant's barbaric deeds were soon enough discovered.

7. ID.; RAPE WITH HOMICIDE; EFFECT OF THE CIRCUMSTANCES ESTABLISHED DURING THE COMMISSION OF THE CRIME, CLARIFIED. — The facts established showed that the constitutive elements of rape with homicide were consummated, and it is immaterial that the person killed in this case is someone other than the woman victim of the rape. An analogy may be drawn from our rulings in cases of robbery with homicide, where the component acts of homicide, physical injuries and other offenses have been committed by reason or on the occasion of robbery. x x x In the special complex crime of rape with homicide, the term "homicide" is to be understood in its generic sense, and includes murder and slight physical injuries committed by reason or on occasion of the rape. Hence, even if any or all of the circumstances (treachery, abuse of superior strength and evident premeditation) alleged in the information have been duly established by the prosecution, the same would not qualify the killing to murder and the crime committed by appellant is still rape with homicide. As in the case of robbery with homicide, the aggravating circumstance of treachery is to be considered as a generic aggravating circumstance only. x x x The aggravating circumstance of abuse of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressor that is plainly and obviously advantageous to the aggressor and purposely selected or taken advantage of to facilitate the commission of the crime. It is taken into account whenever the aggressor purposely used excessive force that is out of proportion to the means of defense available to the person attacked.

8. ID.; ID.; PENALTY, EXPLAINED. — Abuse of superior strength in this case therefore is merely a generic aggravating circumstance to be considered in the imposition of the penalty. The penalty provided in Article 266-B of the Revised Penal Code, as amended, is *death.* However, in view of the passage on June 24, 2006 of R.A. No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" the

Court is mandated to impose on the appellant the penalty of *reclusion perpetua* without eligibility for parole.

9. ID.; ID.; CIVIL LIABILITY; AWARD OF EXEMPLARY DAMAGES, JUSTIFIED. — The aggravating/qualifying circumstances of abuse of superior strength and use of deadly weapon have greater relevance insofar as the civil aspect of this case is concerned. While the trial court and CA were correct in holding that both the victim of the killing (Jennifer) and the rape victim (AAA) are entitled to the award of exemplary damages, the basis for such award needs further clarification. x x x In view of the presence of abuse of superior strength in the killing of Jennifer, her heirs are entitled to exemplary damages pursuant to Article 2230. With respect to the rape committed against AAA, Article 266-B of the Revised Penal Code, as amended, provides that a man who shall have carnal knowledge of a woman through force, threat or intimidation under Article 266-A (a), whenever such rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. Since the use of a deadly weapon raises the penalty for the rape, this circumstance would justify the award of exemplary damages to the offended party (AAA) also in accordance with Article 2230. Article 266-B likewise provides for the imposition of death penalty if the crime of rape is committed with any of the aggravating/ qualifying circumstances enumerated therein. Among these circumstances is minority of the victim and her relationship to the offender: x x x The failure of the prosecution to allege in the information AAA's relationship to appellant will not bar the consideration of the said circumstance in the determination of his civil liability. In any case, even without the attendance of aggravating circumstances, exemplary damages may still be awarded where the circumstances of the case show the "highly reprehensible or outrageous conduct of the offender." x x x In this case, the brutal manner by which appellant carried out his lustful design against his niece-in-law who never had an inkling that her own uncle would do any harm to her and her friend, justified the award of exemplary damages.

10. ID.; ID.; ID.; AWARD OF MORAL DAMAGES, MANDATORY. — In cases of murder and homicide, the award of moral damages is mandatory, without need of allegation and proof other than the death of the victim. Anent the award of civil indemnity,

the same is increased to ₱75,000 to conform with recent jurisprudence. As to expenses incurred for the funeral and burial of Jennifer, the CA correctly awarded her heirs the amount of ₱25,000 as actual damages, said amount having been stipulated by the parties during the trial.

11. ID.; ID.; ID.; WHEN CIVIL INDEMNITY IS MANDATORY. — Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape while moral damages are awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

For our review is the March 21, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00234 which affirmed appellant's conviction for murder in Criminal Case No. 2162-M-2000 and rape in Criminal Case No. 2308-M-2000.

Appellant Conrado Laog *y* Ramin was charged with murder before the Regional Trial Court (RTC), Branch 11, of Malolos, Bulacan. The Information,[2] which was docketed as Criminal Case No. 2162-M-2000, alleged:

That on or about the 6th day of June, 2000, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a lead pipe and with intent to kill one Jennifer Patawaran-Rosal, did then and there wil[l]fully, unlawfully and feloniously,

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[1] *Rollo*, pp. 3-16. Penned by Associate Justice Noel G. Tijam with Associate Justices Vicente S.E. Veloso and Sesinando E. Villon concurring.

[2] Records, Vol. I, p. 1.

with evident premeditation, abuse of superior strength and treachery, attack, assault and hit with the said lead pipe the said Jennifer Patawaran-Rosal, thereby inflicting upon said Jennifer Patawaran-Rosal serious physical injuries which directly caused her death.

Contrary to law.

He was likewise charged before the same court with the crime of rape of AAA.[3] The second Information,[4] which was docketed as Criminal Case No. 2308-M-2000, alleged:

That on or about the 6th day of June, 2000, in the municipality of San Rafael, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation, that is, by attacking and hitting with a lead pipe one [AAA] which resulted [in] her incurring serious physical injuries that almost caused her death, and while in such defenseless situation, did then and there have carnal knowledge of said [AAA] against her will and consent.

Contrary to law.

When arraigned, appellant pleaded not guilty to both charges. The two cases were thereafter tried jointly because they arose from the same incident.

The prosecution presented as its principal witness AAA, the rape victim who was 19 years old at the time of the incident. Her testimony was corroborated by her grandfather BBB, Dr. Ivan Richard Viray, and her neighbor CCC.

AAA testified that at around six o'clock in the evening of June 6, 2000, she and her friend, Jennifer Patawaran-Rosal, were walking along the rice paddies on their way to apply for work at a canteen near the National Highway in Sampaloc, San

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[3] Consistent with our decision in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, the real name of the rape victim in this case is withheld and instead fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed in this decision.

[4] Records, Vol. II, p. 1.

Rafael, Bulacan. Suddenly, appellant, who was holding an ice pick and a lead pipe, waylaid them and forcibly brought them to a grassy area at the back of a concrete wall. Without warning, appellant struck AAA in the head with the lead pipe causing her to feel dizzy and to fall down. When Jennifer saw this, she cried out for help but appellant also hit her on the head with the lead pipe, knocking her down. Appellant stabbed Jennifer several times with the ice pick and thereafter covered her body with thick grass.[5] Appellant then turned to AAA. He hit AAA in the head several times more with the lead pipe and stabbed her on the face. While AAA was in such defenseless position, appellant pulled down her jogging pants, removed her panty, and pulled up her blouse and bra. He then went on top of her, sucked her breasts and inserted his penis into her vagina. After raping AAA, appellant also covered her with grass. At that point, AAA passed out.[6]

When AAA regained consciousness, it was nighttime and raining hard. She crawled until she reached her uncle's farm at daybreak on June 8, 2000.[7] When she saw him, she waved at him for help. Her uncle, BBB, and a certain Nano then brought her to Carpa Hospital in Baliuag, Bulacan where she stayed for more than three weeks. She later learned that Jennifer had died.[8]

During cross-examination, AAA explained that she did not try to run away when appellant accosted them because she trusted appellant who was her uncle by affinity. She said that she never thought he would harm them.[9]

BBB testified that on June 8, 2000, at about six o'clock in the morning, he was at his rice field at Sampaloc, San Rafael, Bulacan when he saw a woman waving a hand and then fell down. The woman was about 200 meters away from him when

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[5] TSN, June 20, 2001, pp. 3-4; TSN, December 12, 2001, pp. 3-7.

[6] *Id.* at 4-5.

[7] *Id.* at 6; TSN, December 12, 2001, pp. 12-13.

[8] *Id.* at 6-7.

[9] TSN, December 12, 2001, p. 7.

he saw her waving to him, and he did not mind her. However, when she was about 100 meters away from him, he recognized the woman as AAA, his granddaughter. He immediately approached her and saw that her face was swollen, with her hair covering her face, and her clothes all wet. He asked AAA what happened to her, and AAA uttered, "*Si Tata Coni*" referring to appellant who is his son-in-law.[10] With the help of his neighbor, he brought AAA home.[11] AAA was later brought to Carpa Hospital in Baliuag, Bulacan where she recuperated for three weeks.

CCC, neighbor of AAA and Jennifer, testified that sometime after June 6, 2000, she visited AAA at the hospital and asked AAA about the whereabouts of Jennifer. AAA told her to look for Jennifer somewhere at Buenavista. She sought the assistance of Barangay Officials and they went to Buenavista where they found Jennifer's cadaver covered with grass and already bloated.[12]

Meanwhile, Dr. Ivan Richard Viray, a medico-legal officer of the Province of Bulacan, conducted the autopsy on the remains of Jennifer. His findings are as follows:

> …the body is in advanced stage of decomposition[;] … eyeballs and to[n]gue were protru[d]ed; the lips and abdomen are swollen; … desquamation and bursting of bullae and denudation of the epidermis in the head, trunks and on the upper extremities[;] [f]rothy fluid and maggots coming from the nose, mouth, genital region and at the site of wounds, … three (3) lacerations at the head[;] two (2) stab wounds at the submandibular region[;] four [4] punctured wounds at the chest of the victim[.]
>
> … cause of death of the victim was hemorrhagic shock as result of stab wounds [in] the head and trunk.[13]

The prosecution and the defense also stipulated on the testimony of Elizabeth Patawaran, Jennifer's mother, as to the civil aspect

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[10] TSN, January 16, 2002, pp. 5-7.

[11] *Id.* at 8.

[12] TSN, May 22, 2002, pp. 4-7.

[13] TSN, February 27, 2002, p. 5.

of Criminal Case No. 2162-M-2000. It was stipulated that she spent ₱25,000 for Jennifer's funeral and burial.[14]

Appellant, on the other hand, denied the charges against him. Appellant testified that he was at home cooking dinner around the time the crimes were committed. With him were his children, Ronnie, Jay, Oliver and Conrado, Jr. and his nephew, Rey Laog. At around seven o'clock, he was arrested by the police officers of San Rafael, Bulacan. He learned that his wife had reported him to the police after he "went wild" that same night and struck with a lead pipe a man whom he saw talking to his wife inside their house. When he was already incarcerated, he learned that he was being charged with murder and rape.[15]

Appellant further testified that AAA and Jennifer frequently went to his *nipa* hut whenever they would ask for rice or money. He claimed that in the evening of June 5, 2000, AAA and Jennifer slept in his *nipa* hut but they left the following morning at around seven o'clock. An hour later, he left his house to have his scythe repaired. However, he was not able to do so because that was the time when he "went wild" after seeing his wife with another man. He admitted that his *nipa* hut is more or less only 100 meters away from the scene of the crime.[16]

The defense also presented appellant's nephew, Rey Laog, who testified that he went to appellant's house on June 5, 2000, at around three o'clock in the afternoon, and saw AAA and Jennifer there. He recalled seeing AAA and Jennifer before at his uncle's house about seven times because AAA and his uncle had an illicit affair. He further testified that appellant arrived before midnight on June 5, 2000 and slept with AAA. The following morning, at around six o'clock, AAA and Jennifer went home. He and appellant meanwhile left the house together. Appellant was going to San Rafael to have his scythe repaired while he proceeded to his house in Pinakpinakan, San Rafael, Bulacan.[17]

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[14] CA *rollo*, p. 31.

[15] TSN, December 4, 2002, pp. 3-5.

[16] *Id.* at 4-7.

[17] TSN, March 26, 2003, pp. 3-5.

After trial, the RTC rendered a Joint Decision[18] on June 30, 2003 finding appellant guilty beyond reasonable doubt of both crimes. The dispositive portion of the RTC decision reads:

> WHEREFORE, in Crim. Case No. 2162-M-2000, this court finds the accused Conrado Laog GUILTY beyond reasonable doubt of Murder under Art. 248 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of Jennifer Patawaran, the following sums of money:
>
> a. ₱60,000.00 as civil indemnity;
> b. ₱50,000.00 as moral damages;
> c. ₱30,000.00 as exemplary damages.
>
> WHEREFORE, in Crim. Case No. 2308-M-2000, this Court hereby finds the accused Conrado Laog GUILTY beyond reasonable doubt of Rape under Art. 266-A par. (a) of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the private complainant the following sums of money.
>
> a. ₱50,000.00 as civil indemnity;
> b. ₱50,000.00 as moral damages;
> c. ₱30,000.00 as exemplary damages.
>
> SO ORDERED.[19]

Appellant appealed his conviction to this Court. But conformably with our pronouncement in *People v. Mateo*,[20] the case was referred to the CA for appropriate action and disposition.

In a Decision dated March 21, 2007, the CA affirmed with modification the trial court's judgment. The dispositive portion of the CA decision reads:

> WHEREFORE, the instant Appeal is **DISMISSED**. The assailed Joint Decision, dated June 30, 2003, of the Regional Trial Court of Malolos, Bulacan, Branch 11, in Criminal Case Nos. 2162-M-2000

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[18] CA *rollo*, pp. 29-33.

[19] *Id.* at 32-33.

[20] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

& 2308-M-2000, is hereby **AFFIRMED with MODIFICATION.** In Criminal Case [No.] 2162-M-2000, Accused-Appellant is further ordered to pay the heirs of Jennifer Patawaran [an] ***additional ₱25,000.00 as actual damages.*** The exemplary damages awarded by the Trial Court in 2162-M-2000 & 2308-M-2000 are hereby ***reduced to ₱25,000.00 each***.

SO ORDERED.[21]

Appellant is now before this Court assailing the CA's affirmance of his conviction for both crimes of rape and murder. In a Resolution[22] dated August 22, 2007, we required the parties to submit their respective Supplemental Briefs, if they so desire. However, the parties submitted separate Manifestations in lieu of Supplemental Briefs, adopting the arguments in their respective briefs filed in the CA. Appellant had raised the following errors allegedly committed by the trial court:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE TESTIMONY OF PROSECUTION WITNESS [AAA].

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[23]

Appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt for the killing of Jennifer Patawaran-Rosal and the rape of AAA. He assails AAA's credibility, the prosecution's main witness, and points out alleged inconsistencies in her testimony. Appellant also contends that the prosecution failed to establish that he carefully planned the execution of the crimes charged. According to him, AAA's narration that he

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[21] *Rollo*, p. 15.

[22] *Id.* at 20.

[23] CA *rollo*, p. 70.

waylaid them while walking along the rice paddies on their way to apply for work negates evident premeditation since there was no evidence that the said path was their usual route.

Appellant further contends that the trial court and CA erred in appreciating the qualifying circumstance of abuse of superior strength. He argues that for abuse of superior strength to be appreciated in the killing of Jennifer, the physical attributes of both the accused and the victim should have been shown in order to determine whether the accused had the capacity to overcome the victim physically or whether the victim was substantially weak and unable to put up a defense. Additionally, he attempts to cast doubt upon AAA's testimony, arguing that it lacked some details on how, after she was raped and stabbed by appellant, she was still able to put on her clothes and crawl to her grandfather's farm.

The appeal lacks merit.

Appellant principally attacks the credibility of prosecution witness AAA. Jurisprudence has decreed that the issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which opportunity is denied to the appellate courts"[24] and "absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case."[25] This rule is even more stringently applied if the appellate court concurred with the trial court.[26]

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[24] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 524.

[25] *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 161.

[26] *Id.*

Here, both the trial and appellate courts gave credence and full probative weight to the testimony of AAA, the lone eyewitness to Jennifer's killing and was herself brutally attacked by appellant who also raped her. Appellant had not shown any sufficiently weighty reasons for us to disturb the trial court's evaluation of the prosecution eyewitness' credibility. In particular, we defer to the trial court's firsthand observations on AAA's deportment while testifying and its veritable assessment of her credibility, to wit:

> From the moment [AAA] took the stand, this Court has come to discern in her the trepidations of a woman outraged who is about to recount the ordeal she had gone through. She took her oath with trembling hands, her voice low and soft, hardly audible. Face down, her eyes were constantly fixed on the floor as if avoiding an eye contact with the man she was about to testify against. After a few questions in direct, the emotion building up inside her came to the fore and she burst into tears, badly shaken, unfit to continue any further with her testimony. Thus, in deference to her agitated situation, this Court has to defer her direct-examination. When she came back, however, to continue with her aborted questioning, this time, composed and collected, direct and straightforward in her narration, all vestiges of doubt on her credibility vanished.[27]

Indeed, records bear out that AAA became so tense and nervous when she took the witness stand for the first time that the trial court had to cut short her initial direct examination. However, during the next hearing she was able to narrate her harrowing ordeal in a clear and straightforward manner, describing in detail how appellant waylaid them and mercilessly hit and attacked her and Jennifer with a lead pipe and ice pick before raping her. We quote the pertinent portions of her testimony:

> Q: During your previous testimony, Madam Witness, you said that you're not able to reach your place of work on June 6, 2000, what is the reason why you did not reach your place of work?
> A: We were waylaid *(hinarang)* by Conrado Laog, sir.
>
> Q: In what manner were you waylaid by Conrado Laog?
> A: Conrado Laog hit me with the pipe on my head, sir.

[27] CA *rollo*, pp. 31-32.

x x x x x x x x x

Q: Where were you when you were hit?
A: We were walking along the rice puddies (sic), Your Honor.

Fiscal:
Q: And what happened to you when you were hit with the lead pipe by Conrado Laog?
A: I fell down *(nabuwal)* because I felt dizzy, sir.

Q: Now, what happened next, if any?
A: I heard Jennifer crying, sir.

Q: And you heard Jennifer but did you see her?
A: Yes, sir.

Q: Where was Conrado Laog when you heard Jennifer crying?
A: He was beside me, sir.

Court:
Q: How about Jennifer, where was she when you heard her crying?
A: She was standing on the rice puddies, (sic), Your Honor.

Fiscal:
Q: And what was Conrado Laog doing?
A: He approached Jennifer, sir.

Q: Then, what happened next?
A: He hit Jennifer with the pipe, sir.

Q: And what happened to Jennifer?
A: She fell down, sir.

Q: What did Conrado Laog do next?
A: He stabbed Jennifer, sir.

Q: After Conrado Laog stabbed Jennifer, what happened next?
A: He covered Jennifer with grasses, sir.

Q: And after that, what did Conrado Laog do?
A: He came back to me, sir.

Q: When Conrado Laog came back to you, what did you do, if any?
A: He hit me with the pipe several times, sir.

Q: And what happened to you?
A: And he stabbed me on my face, sir.

Q: Then, what happened to you?
A: After that, he pulled down my jogging pants, sir. He removed my panty and my blouse and my bra.

Q: After that, what did he do next?
A: And then, he went on top of me, sir.

Q: Then, what happened?
A: He sucked my breast, sir.

Q: And after that?
A: He was forcing his penis into my vagina, sir.

Q: Did he suc[c]eed in putting his penis into your vagina?
A: Yes, sir.

Q: For how long did the accused Conrado Laog insert his penis into your vagina?
A: For quite sometime, sir.

Q: After that, what happened?
A: After that, he stood up, sir.

Q: And where did he go?
A: After that, he covered me with grasses, sir.

Q: And after that, what did you do?
A: I fell unconscious, sir.

Q: Now, if Conrado Laog is inside the courtroom, will you be able to point to him?

Interpreter:
Witness is pointing to a man wearing an inmate's uniform and when asked his name, answered: Conrado Laog.

x x x x x x x x x[28]

On the other hand, appellant merely interposed the defense of denial and alibi. He claimed that at the time of the incident, he was at his house with his children and nephew cooking dinner. His defense, however, cannot prevail over the straightforward and credible testimony of AAA who positively identified him as the perpetrator of the murder and rape. Time and again, we

[28] TSN, June 20, 2001, pp. 3-5.

have held that positive identification of the accused, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of the appellant whose testimony is not substantiated by clear and convincing evidence.[29] AAA was firm and unrelenting in pointing to appellant as the one who attacked her and Jennifer, stabbing the latter to death before raping AAA. It should be noted that AAA knew appellant well since they were relatives by affinity. As correctly held by the CA, with AAA's familiarity and proximity with the appellant during the commission of the crime, her identification of appellant could not be doubted or mistaken. In fact, AAA, upon encountering appellant, did not run away as she never thought her own uncle would harm her and her friend. Moreover, the most natural reaction of victims of violence is to strive to see the appearance of the perpetrators of the crime and observe the manner in which the crime is being committed.[30] There is no evidence to show any improper motive on the part of AAA to testify falsely against appellant or to falsely implicate him in the commission of a crime. Thus, the logical conclusion is that the testimony is worthy of full faith and credence.[31]

In *People v. Nieto*,[32] we reiterated that —

> It is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him. The defense of alibi is likewise unavailing. Firstly, alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving,

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[29] *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 393.

[30] *People v. Honra, Jr.*, G.R. Nos. 136012-16, September 26, 2000, 341 SCRA 110, 127, citing *People v. Pulusan*, G.R. No. 110037, May 21, 1998, 290 SCRA 353, 372.

[31] See *People v. Malate*, G.R. No. 185724, June 5, 2009, 588 SCRA 817, 827.

[32] *Supra* note 24 at 527-528.

and undeserving of any weight in law. Secondly, alibi is unacceptable when there is a positive identification of the accused by a credible witness. Lastly, in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.

Appellant does not dispute that he was near the vicinity of the crime on the evening of June 6, 2000. In fact, during his cross-examination, appellant admitted that his house was more or less only 100 meters from the crime scene. Thus, his defense of alibi is not worthy of any credit for the added reason that he has not shown that it was physically impossible for him to be at the scene of the crime at the time of its commission.

In view of the credible testimony of AAA, appellant's defenses of denial and alibi deserve no consideration. We stress that these weak defenses cannot stand against the positive identification and categorical testimony of a rape victim.[33]

Appellant attempts to discredit AAA's accusation of rape by pointing out that while she testified on being very weak that she even passed out after she was raped by appellant, she nevertheless stated that when she crawled her way to her grandfather's farm she was wearing her clothes. Appellant also contends that the prosecution should have presented the physician who examined AAA to prove her allegations that she was beaten and raped by appellant.

We are not persuaded.

Based on AAA's account, appellant did not undress her completely — her blouse and bra were merely lifted up (*"nililis"*) while her undergarments were just pulled down, which therefore explains why she still had her clothes on when she crawled to her grandfather's farm. Nonetheless, this matter raised by appellant is a minor detail which had nothing to do with the elements

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[33] *People v. Orande*, G.R. Nos. 141724-27, November 12, 2003, 415 SCRA 699, 708.

of the crime of rape. Discrepancies referring only to minor details and collateral matters — not to the central fact of the crime — do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole.[34] For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged.[35] It cannot be overemphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.[36]

As to the fact that the physician who examined AAA at the hospital did not testify during the trial, we find this not fatal to the prosecution's case.

It must be underscored that the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[37] Thus we have ruled that a medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element for conviction in rape. What is important is that the testimony of private complainant about the incident is clear, unequivocal and credible,[38] as what we find in this case.

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[34] *People v. Suarez,* G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 345.

[35] *People v. Villarino,* G.R. No. 185012, March 5, 2010, 614 SCRA 372, 387, citing *People v. Masapol,* G.R. No. 121997, December 10, 2003, 417 SCRA 371, 377.

[36] *People v. Wasit,* G.R. No. 182454, July 23, 2009, 593 SCRA 721, 729.

[37] *People v. Cadap,* G.R. No. 190633, July 5, 2010, 623 SCRA 655, 663, citing *People v. Espino, Jr.,* G.R. No. 176742, June 17, 2008, 554 SCRA 682, 700-701.

[38] *People v. Tamano,* G.R. No. 188855, December 8, 2010, 637 SCRA 672, 688, citing *People v. Arivan,* G.R. No. 176065, April 22, 2008, 552 SCRA 448, 468-469.

While we concur with the trial court's conclusion that appellant indeed was the one who raped AAA and killed Jennifer, we find that appellant should not have been convicted of the separate crimes of murder and rape. An appeal in a criminal case opens the entire case for review on any question, including one not raised by the parties.[39] The facts alleged and proven clearly show that the crime committed by appellant is rape with homicide, a special complex crime provided under Article 266-B, paragraph 5 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353.[40]

In *People v. Larrañaga*,[41] this Court explained the concept of a special complex crime, as follows:

A discussion on the nature of special complex crime is imperative. **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 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. In the cases at bar, particularly Criminal Case No. CBU-45303, the Information specifically alleges that the victim Marijoy was raped "on the occasion and in connection" with her detention and was killed "subsequent thereto and on the occasion thereof." Considering that the prosecution was able to prove each

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[39] *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 613-614, citing *Esqueda v. People*, G.R. No. 170222, June 18, 2009, 589 SCRA 489, 506.

[40] *The Anti-Rape Law of 1997*, which took effect on October 22, 1997.

[41] G.R. Nos. 138874-75, February 3, 2004, 421 SCRA 530.

of the component offenses, appellants should be convicted of the special complex crime of kidnapping and serious illegal detention with homicide and rape. x x x[42] (Emphasis supplied.)

A special complex crime, or more properly, a composite crime, has its own definition and special penalty in the Revised Penal Code, as amended. Justice Regalado, in his Separate Opinion in the case of *People v. Barros*,[43] explained that composite crimes are "neither of the same legal basis as nor subject to the rules on complex crimes in Article 48 [of the Revised Penal Code], since they do not consist of a single act giving rise to two or more grave or less grave felonies [compound crimes] nor do they involve an offense being a necessary means to commit another [complex crime proper]. However, just like the regular complex crimes and the present case of aggravated illegal possession of firearms, only a single penalty is imposed for each of such composite crimes although composed of two or more offenses."[44]

Article 266-B of the Revised Penal Code, as amended, provides only a single penalty for the composite acts of rape and the killing committed *by reason* or *on the occasion* of the rape.

ART. 266-B. ***Penalties.*** — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

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[42] *Id.* at 580.

[43] G.R. Nos. 101107-08, June 27, 1995, 245 SCRA 312, 323-332.

[44] *Id.* at 328-329.

x x x x x x x x x

(Emphasis supplied.)

Considering that the prosecution in this case was able to prove both the rape of AAA and the killing of Jennifer both perpetrated by appellant, he is liable for rape with homicide under the above provision. There is no doubt that appellant killed Jennifer to prevent her from aiding AAA or calling for help once she is able to run away, and also to silence her completely so she may not witness the rape of AAA, the original intent of appellant. His carnal desire having been satiated, appellant purposely covered AAA's body with grass, as he did earlier with Jennifer's body, so that it may not be easily noticed or seen by passersby. Appellant indeed thought that the savage blows he had inflicted on AAA were enough to cause her death as with Jennifer. But AAA survived and appellant's barbaric deeds were soon enough discovered.

The facts established showed that the constitutive elements of rape with homicide were consummated, and it is immaterial that the person killed in this case is someone other than the woman victim of the rape. An analogy may be drawn from our rulings in cases of robbery with homicide, where the component acts of homicide, physical injuries and other offenses have been committed by reason or on the occasion of robbery. In *People v. De Leon*,[45] we expounded on the special complex crime of robbery with homicide, as follows:

> In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery with homicide, must be consummated.

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[45] G.R. No. 179943, June 26, 2009, 591 SCRA 178.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed, or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. **Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide.** The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.[46] (Emphasis supplied.)

In the special complex crime of rape with homicide, the term "homicide" is to be understood in its generic sense, and includes murder and slight physical injuries committed by reason or on occasion of the rape.[47] Hence, even if any or all of the circumstances (treachery, abuse of superior strength and evident premeditation) alleged in the information have been duly established by the prosecution, the same would not qualify the killing to murder and the crime committed by appellant is still rape with homicide. As in the case of robbery with homicide, the aggravating circumstance of treachery is to be considered as a generic aggravating circumstance only. Thus we ruled in *People v. Macabales*[48]

Finally, appellants contend that the trial court erred in concluding that the aggravating circumstance of treachery is present. They aver

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[46] *Id.* at 192-193, citing *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA 67; *People v. Abuyen*, G.R. No. 77285, September 4, 1992, 213 SCRA 569, 582; *People v. Ponciano*, G.R. No. 86453, December 5, 1991, 204 SCRA 627, 639; and *People v. Mangulabnan, et al.*, 99 Phil. 992, 999 (1956).

[47] *People v. Nanas*, G.R. No. 137299, August 21, 2001, 363 SCRA 452, 469-470, citing *People v. Penillos*, G.R. No. 65673, January 30, 1992, 205 SCRA 546, 564 and *People v. Sequiño*, G.R. No. 117397, November 13, 1996, 264 SCRA 79, 101.

[48] G.R. No. 111102, December 8, 2000, 347 SCRA 429.

that treachery applies to crimes against persons and not to crimes against property. However, we find that the trial court in this case correctly characterized treachery as a generic aggravating, rather than qualifying, circumstance. Miguel was rendered helpless by appellants in defending himself when his arms were held by two of the attackers before he was stabbed with a knife by appellant Macabales, as their other companions surrounded them. In *People v. Salvatierra,* we ruled that when *alevosia* (treachery) obtains in the special complex crime of robbery with homicide, such treachery is to be regarded as a generic aggravating circumstance. Robbery with homicide is a composite crime with its own definition and special penalty in the Revised Penal Code. **There is no special complex crime of robbery with murder under the Revised Penal Code. Here, treachery forms part of the circumstances proven concerning the actual commission of the complex crime. Logically it could not qualify the homicide to murder but, as generic aggravating circumstance, it helps determine the penalty to be imposed.**[49] (Emphasis supplied.)

The aggravating circumstance of abuse of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressor that is plainly and obviously advantageous to the aggressor and purposely selected or taken advantage of to facilitate the commission of the crime.[50] It is taken into account whenever the aggressor purposely used excessive force that is out of proportion to the means of defense available to the person attacked.[51]

In this case, as personally witnessed by AAA, appellant struck Jennifer in the head with a lead pipe then stabbed her repeatedly until she was dead. Clearly, the manner by which appellant had brutally slain Jennifer with a lethal weapon, by first hitting her in the head with a lead pipe to render her defenseless and vulnerable before stabbing her repeatedly, unmistakably showed

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[49] *Id.* at 442, citing *People v. Salvatierra,* G.R. No. 111124, June 20, 1996, 257 SCRA 489, 507 and *People v. Vivas,* G.R. No. 100914, May 6, 1994, 232 SCRA 238, 242.

[50] See *People v. Beduya,* G.R. No. 175315, August 9, 2010, 627 SCRA 275, 284.

[51] *Id.*

that appellant intentionally used excessive force out of proportion to the means of defense available to his unarmed victim. As aptly observed by the appellate court:

> It has long been established that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. Unlike in treachery, where the victim is not given the opportunity to defend himself or repel the aggression, taking advantage of superior strength does not mean that the victim was completely defenseless. Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the momentary position of both and the employment of means weakening the defense, although not annulling it. By deliberately employing deadly weapons, an ice pick and a lead pipe, [a]ccused-[a]ppellant clearly took advantage of the superiority which his strength, sex and weapon gave him over his unarmed victim. The accused-appellant's sudden attack caught the victim off-guard rendering her defenseless.[52]

Abuse of superior strength in this case therefore is merely a generic aggravating circumstance to be considered in the imposition of the penalty. The penalty provided in Article 266-B of the Revised Penal Code, as amended, is *death*. However, in view of the passage on June 24, 2006 of R.A. No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" the Court is mandated to impose on the appellant the penalty of *reclusion perpetua* without eligibility for parole.[53]

The aggravating/qualifying circumstances of abuse of superior strength and use of deadly weapon have greater relevance insofar as the civil aspect of this case is concerned. While the trial court and CA were correct in holding that both the victim of the killing (Jennifer) and the rape victim (AAA) are entitled to the award of exemplary damages, the basis for such award needs further clarification.

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[52] *Rollo,* pp. 13-14.

[53] *People v. Villarino, supra* note 35 at 389.

Articles 2229 and 2230 of the Civil Code provide:

> Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.
>
> Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

In view of the presence of abuse of superior strength in the killing of Jennifer, her heirs are entitled to exemplary damages pursuant to Article 2230. With respect to the rape committed against AAA, Article 266-B of the Revised Penal Code, as amended, provides that a man who shall have carnal knowledge of a woman through force, threat or intimidation under Article 266-A (a), whenever such rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. Since the use of a deadly weapon raises the penalty for the rape, this circumstance would justify the award of exemplary damages to the offended party (AAA) also in accordance with Article 2230.

Article 266-B likewise provides for the imposition of death penalty if the crime of rape is committed with any of the aggravating/qualifying circumstances enumerated therein. Among these circumstances is minority of the victim and her relationship to the offender:

> 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, **relative by** consanguinity or **affinity within the third civil degree**, or the common law spouse of the parent of the victim. (Emphasis supplied.)

AAA's relationship to appellant, who is his uncle by affinity, was not alleged in the information but admitted by appellant when he testified in court:

DIRECT EXAMINATION OF
CONRADO LAOG By:
Atty. Roque:

x x x x x x x x x

Q Do you know a person by the name of [AAA]?
A Yes, sir.

Q Why do you know her?
A Because she is our neighbor. Her house is just adjacent to ours, sir.

Q **How are you related to [AAA]?**
A **Her mother and my wife are sisters**.

Q **So she is your niece-in-law?**
A **Yes, sir.**

x x x x x x x x x[54]
(Emphasis supplied.)

The failure of the prosecution to allege in the information AAA's relationship to appellant will not bar the consideration of the said circumstance in the determination of his civil liability. In any case, even without the attendance of aggravating circumstances, exemplary damages may still be awarded where the circumstances of the case show the "highly reprehensible or outrageous conduct of the offender." Citing our earlier ruling in the case of *People v. Catubig*,[55] this Court clarified in *People v. Dalisay*:[56]

Prior to the effectivity of the Revised Rules of Criminal Procedure, courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating

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[54] TSN, December 4, 2002, p. 3.

[55] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

[56] G.R. No. 188106, November 25, 2009, 605 SCRA 807.

circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating circumstance has been proven, but was not alleged, courts will not award exemplary damages. Pertinent are the following sections of Rule 110:

x x x x x x x x x

Nevertheless, ***People v. Catubig*** **laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter**. *Catubig* reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.

Thus, we find, in our body of jurisprudence, criminal cases, especially those involving rape, dichotomized: one awarding exemplary damages, even if an aggravating circumstance attending the commission of the crime had not been sufficiently alleged but was consequently proven in the light of *Catubig*; and another awarding exemplary damages only if an aggravating circumstance has both been alleged and proven following the Revised Rules. Among those in the first set are *People v. Laciste*, *People v. Victor*, *People v. Orilla*, *People v. Calongui*, *People v. Magbanua*, *People of the Philippines v. Heracleo Abello y Fortada*, *People of the Philippines v. Jaime Cadag Jimenez*, and *People of the Philippines v. Julio Manalili*. And in the second set are *People v. Llave*, *People of the Philippines v. Dante Gragasin y Par*, and *People of the Philippines v. Edwin Mejia*. Again, the difference between the two sets rests on when the criminal case was instituted, either before or after the effectivity of the Revised Rules.

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Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages—taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. *Catubig* is enlightening on this point, thus—

Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings

and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account **for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted**, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant—associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud—that intensifies the injury. **The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future**.

Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada, People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People of the Philippines v. Dante Gragasin y Par*, "[t]he application of Article 2230 of the Civil Code *strictissimi juris* in such cases, as in the present one, defeats

the underlying public policy behind the award of exemplary damages—to set a public example or correction for the public good."[57] (Emphasis supplied.)

In this case, the brutal manner by which appellant carried out his lustful design against his niece-in-law who never had an inkling that her own uncle would do any harm to her and her friend, justified the award of exemplary damages. Appellant's sudden and fierce attack on AAA — hitting her several times on the head with a lead pipe before stabbing her face until she fell down, hurriedly lifting her bra and blouse and pulling down her undergarments, raping her while she was in such a defenseless position, covering her body with grasses and abandoning her to die in a grassy field — was truly despicable and outrageous. Such vicious assault was made even more reprehensible as it also victimized Jennifer, who sustained more stab wounds and beatings, causing her violent death. Article 2229 of the Civil Code allows the award of exemplary damages in order to deter the commission of similar acts and to allow the courts to forestall behavior that would pose grave and deleterious consequences to society.[58] In line with current jurisprudence, the amount of ₱30,000 each for AAA and the heirs of Jennifer as exemplary damages was correctly awarded by the trial court.

We also affirm the trial court and CA in ordering appellant to pay the heirs of Jennifer Patawaran-Rosal the amounts of ₱50,000 as moral damages. In cases of murder and homicide, the award of moral damages is mandatory, without need of allegation and proof other than the death of the victim.[59] Anent the award of civil indemnity, the same is increased to ₱75,000 to conform with recent jurisprudence.[60] As to expenses incurred for the funeral and burial of Jennifer, the CA correctly awarded

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[57] *Id.* at 817-821.

[58] *People v. Villarino, supra* note 35 at 390.

[59] *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 457.

[60] *People v. Nazareno*, G.R. No. 180915, August 9, 2010, 627 SCRA 383, 393.

her heirs the amount of ₱25,000 as actual damages, said amount having been stipulated by the parties during the trial.

Lastly, we affirm the award of ₱50,000 to AAA as civil indemnity for the crime of rape, as well as the award of ₱50,000 as moral damages. Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape while moral damages are awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[61]

WHEREFORE, the appeal is *DISMISSED* for lack of merit. The March 21, 2007 Decision of the Court of Appeals in CA-G.R. CR HC No. 00234 is *AFFIRMED* with *MODIFICATIONS*. Accused-appellant Conrado Laog *y* Ramin is hereby found GUILTY beyond reasonable doubt of Rape With Homicide under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, and is accordingly sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

Accused-appellant is hereby ordered to pay the heirs of Jennifer Patawaran-Rosal ₱75,000 as civil indemnity *ex delicto,* ₱50,000 as moral damages, ₱25,000 as actual damages and ₱30,000 as exemplary damages. He is further ordered to pay to the victim AAA the sums of ₱50,000 as civil indemnity *ex delicto,* ₱50,000 as moral damages and ₱30,000 as exemplary damages.

With costs against the accused-appellant.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *del Castillo, JJ.,* concur.

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[61] *Supra* note 38 at 475.

FIRST DIVISION

[G.R. No. 180497. October 5, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PATRICIO TAGUIBUYA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; THE ACCUSED IN A PROSECUTION FOR RAPE CAN BE CONVICTED ON THE BASIS OF THE SOLE TESTIMONY OF THE VICTIM PROVIDED THE VICTIM AND HER TESTIMONY ARE CREDIBLE, CONVINCING, AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS; APPLICATION IN CASE AT BAR. — The urging of the accused, that the RTC and the CA should not have accorded faith to the evidence of his guilt because the only witness presented to prove the accusations was the victim herself, is unworthy of consideration. Such urging cannot acquit him, considering that it is already settled that the accused in a prosecution for rape can be convicted on the basis of the sole testimony of the victim provided the victim and her testimony are credible, convincing, and consistent with human nature and the normal course of things. Conviction or acquittal in a prosecution for rape has often depended more often than not almost entirely on the credibility of the victim's testimony, for, by the very nature of the crime, the victim is usually the only one who can testify on its occurrence. At any rate, we also remind that in this jurisdiction the worth of witnesses has been based on their quality, not on their quantity. Accordingly, the RTC correctly considered AAA to be forthright and consistent in her recollection of the details of her ordeals at the hands of her own father.

2. ID.; CIVIL LIABILITY; RAPE; CIVIL INDEMNITY DISTINGUISHED FROM MORAL DAMAGES. — Civil indemnity is mandatory upon a finding of the fact of rape; it is distinct from and should not be denominated as moral damages, which are based on different jural foundations and assessed by the court in the exercise of its discretion. In contrast, moral damages are granted to the victim in rape in such amount

as the court shall deem just and reasonable without the necessity of pleading or proof. Indeed, the fact that the victim suffered the trauma of mental, physical and psychological sufferings that constituted the bases for moral damages is too obvious to still require the recital of such sufferings by the victim at the trial; the trial court itself assumes and acknowledges her agony as a gauge of her credibility. To expect and to require her to still provide the proof of her pains and sufferings is to demand that she render a very superfluous testimonial charade.

3. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF IS PROPER WHEN CRIME IS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES. — Exemplary damages, which are intended to serve as deterrents to serious wrongdoings and as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct, are awarded under Article 2230 of the *Civil Code* when the crime is committed with one or more aggravating circumstances. In *People v. Catubig*, the Court held that the term *aggravating circumstances* as used by the *Civil Code* should be understood in its broad or generic sense, not in the sense of prescribing a heavier punishment on the offender; hence, the ordinary or qualifying nature of an aggravating circumstance should be a distinction that was of consequence only to the criminal, as contrasted from the civil, liability, thereby entitling the offended party or victim to an award of exemplary damages regardless of whether the aggravating circumstance was ordinary or qualifying.

4. ID.; CIVIL LIABILITY; WHEN INTEREST MAY BE ADJUDICATED AS PART OF THE DAMAGES BEING AWARDED; CASE AT BAR. — In crimes, interest may be adjudicated in a proper case as part of the damages in the discretion of the court. The Court considers it proper to now impose interest on the civil indemnities, moral damages and exemplary damages being awarded in this case, considering that there has been delay in the recovery. The imposition is hereby declared to be also a natural and probable consequence of the acts of the accused complained of. The interest imposed is the legal rate of 6% *per annum* reckoned from the finality of this judgment.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BERSAMIN, *J.*:

The accused was charged with two counts of rape and a violation of Republic Act No. 7610,[1] committed against his own daughter, AAA,[2] then a minor. In the first instance of rape (Criminal Case No. 2545), committed in the month of May 1998, the accused allegedly forced AAA to have sexual intercourse when she was cleaning the rice fields; she was then alleged to be "a 15 year old minor and his own daughter."[3] In the second instance of rape (Criminal Case No. 2546), which took place on March 15, 2000 and in "the month of May 1998 up to and including March 2000," he allegedly raped AAA, "a 16 year old minor and his own daughter."[4] As to the charge of child abuse (Criminal Case No. 2386), committed about "the month of May 1998 up to and including March 2000," he allegedly "touch(ed), caress(ed) and forcibly inserted his penis (in)to the private parts (vagina) of AAA, a 17 year old minor, which acts constitute(d) the Violation of Republic Act No. 7610)."[5]

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[1] Entitled *An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties For Its Violation, And Other Purposes.*

[2] Pursuant to Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*), and its implementing rules, the real name of the victim and the real names of her immediate family members are withheld and, instead, fictitious initials are used to represent her to protect her privacy. See also *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] *Rollo*, pp. 3-23; penned by Associate Justice Mariflor P. Castillo, and concurred in by Associate Justice Martin S. Villarama, Jr. (now a Member of the Court) and Associate Justice Rosmari D. Carandang.

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

[5] *Id.*

The accused, pleading not guilty at his arraignment, denied the charges, claiming that AAA had fabricated them in retaliation for his and his wife's refusal to allow her to go with her boyfriend to Baguio and for the subsequent punishments he had inflicted on her. He insisted that it was impossible for him to have accosted AAA in the areas where the rapes were supposedly committed because said areas were visible to others. His wife corroborated his denials.

In its decision promulgated on October 15, 2003,[6] the Regional Trial Court (RTC) accorded credence to the testimony of AAA and found the accused guilty of two counts of qualified rape due to AAA being a minor at the time of the commission of the rapes and because he had admitted being her father. The RTC acquitted him of the violation of Republic Act No. 7610 on the ground that the information did not allege that AAA had been a "child below eighteen years of age but over twelve years." Accordingly, the RTC ruled:

WHEREFORE, the Court finds the accused Patricio Taguibuya:

In Criminal Case No. 2545-Bg., GUILTY beyond reasonable doubt of the crime of qualified rape defined in and penalized by Article 335, Revised Penal Code, as amended and sentences him to suffer the Supreme Penalty of DEATH and to pay the costs. The accused is hereby ordered to pay the victim AAA, the amount of Seventy Five Thousand (₱75,000.00) Pesos as civil indemnity and Fifty Thousand (₱50,000.00) Pesos by way of moral damages.

In Criminal Case No. 2546-Bg., GUILTY beyond reasonable doubt of the crime of qualified rape defined in and penalized by Article 335, Revised Penal Code, as amended and sentences him to suffer the Supreme Penalty of DEATH and to pay the costs. The accused is hereby ordered to pay the victim AAA, the amount of Seventy Five Thousand (₱75,000.00) Pesos as civil indemnity and Fifty Thousand (₱50,000.00) Pesos by way of moral damages.

In Criminal Case No. 2386-Bg., for failure of the prosecution to allege in the information that the victim is a "child" below eighteen years of age but over twelve years which is an essential element of

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[6] CA *rollo*, pp. 21-49.

the crime of Violation of Section 5, Republic Act No. 7610, the accused is hereby acquitted of the charge.

SO ORDERED.[7]

On March 20, 2007, the Court of Appeals (CA) affirmed the findings of the RTC,[8] specially taking note of the credibility of AAA in contrast with the denials by the accused. The CA reduced the penalty of death to *reclusion perpetua* "with no possibility of parole for each of the two (2) counts of consummated rape" pursuant to Republic Act No. 9346,[9] *viz*:

> WHEREFORE, in light of the foregoing, the appealed *Joint Decision* of the Regional Trial Court dated October 15, 2003 is hereby AFFIRMED with MODIFICATION. The Court sentences appellant Patricio Taguibuya to the penalty of *reclusion perpetua* with no possibility of parole for each of the two (2) counts of consummated rape. Appellant is further ORDERED to indemnify the complainant for each of the two counts of consummated rape the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages.
>
> SO ORDERED.[10]

The accused now appeals, assailing the convictions for their being solely based on the testimony of AAA.

We affirm.

To begin with, the accused assails the factual findings of the RTC, including its assessment of the worth of the witnesses who testified in the trial. We cannot, however, contradict the factual findings, especially because the CA, as the reviewing tribunal, affirmed them. Such findings are now entitled to great weight and respect, if not conclusiveness, for we accept that the trial court was in the best position as the original trier of the

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[7] *Id.*, pp. 48-49.

[8] *Supra*, note 3.

[9] Entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines*.

[10] *Supra*, note 3.

facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offenses charged. The direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified.[11] Without the accused persuasively demonstrating that the RTC and the CA overlooked a material fact that otherwise would change the outcome, or misappreciated a circumstance of consequence in their assessment of the credibility of the witnesses and of their respective versions, the Court has no ground by which to reverse their uniform findings as to the facts.

And, secondly, the urging of the accused, that the RTC and the CA should not have accorded faith to the evidence of his guilt because the only witness presented to prove the accusations was the victim herself, is unworthy of consideration. Such urging cannot acquit him, considering that it is already settled that the accused in a prosecution for rape can be convicted on the basis of the sole testimony of the victim provided the victim and her testimony are credible, convincing, and consistent with human nature and the normal course of things.[12] Conviction or acquittal in a prosecution for rape has often depended more often than not almost entirely on the credibility of the victim's testimony, for, by the very nature of the crime, the victim is usually the only one who can testify on its occurrence. At any rate, we also remind that in this jurisdiction the worth of witnesses has been based on their quality, not on their quantity. Accordingly, the RTC correctly considered AAA to be forthright and consistent in her recollection of the details of her ordeals at the hands of her own father.

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[11] *People v. Guanzon*, G.R. No. 187077, February 23, 2011; *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306; *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547; *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Bricenio v. People*, G.R. No. 157804, June 20, 2006, 491 SCRA 489, 496; *People v. Pacheco*,G.R. No. 142889, March 2, 2004, 424 SCRA 164, 174.

[12] *People v. Felan*, G.R. No. 176631, February 2, 2011; *People v. Pascua*, G.R. No. 151858, November 27, 2003, 416 SCRA 548, 552.

Nonetheless, there is a need to rectify the judgment of the CA on the civil liabilities. The CA awarded only the civil indemnity of ₱75,000.00 and moral damages of ₱50,000.00 for each of the two counts of rape, and said nothing about exemplary damages. Its judgment was inadequate in that respect in the face of the prevailing law and jurisprudence.

Civil indemnity is mandatory upon a finding of the fact of rape; it is distinct from and should not be denominated as moral damages, which are based on different jural foundations and assessed by the court in the exercise of its discretion.[13] In contrast, moral damages are granted to the victim in rape in such amount as the court shall deem just and reasonable without the necessity of pleading or proof.[14] Indeed, the fact that the victim suffered the trauma of mental, physical and psychological sufferings that constituted the bases for moral damages is too obvious to still require the recital of such sufferings by the victim at the trial; the trial court itself assumes and acknowledges her agony as a gauge of her credibility.[15] To expect and to require her to still provide the proof of her pains and sufferings is to demand that she render a very superfluous testimonial charade.[16]

Exemplary damages, which are intended to serve as deterrents to serious wrongdoings and as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct,[17] are awarded under Article 2230 of the *Civil Code* when the crime is committed with

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[13] *People v. Bato*, G.R. 134939, February 16, 2000, 325 SCRA 671, 680-681; *People v. Tabion,* G.R. No. 132715, October 20, 1999, 317 SCRA 126, 146; *People v. Prades,* G. R. No. 127569, July 30, 1998; 293 SCRA 411, 430-431; *People v. Pili*, G.R. No. 124739, April 15, 1988, 289 SCRA 118, 141; *People v. Bugayong*, G.R. No. 126518, December 2, 1998, 299 SCRA 528, 548.

[14] *People v. Arizapa*, G.R. 131814, 15 March 2000, 328 SCRA 214, 221.

[15] *People v. Prades*, G.R. No. 127569, July 30, 1998; 293 SCRA 411, 430-431.

[16] *Id.*

[17] *People v. Garbida*, G.R. No. 188569, 13 July 2010, 625 SCRA 98, 106.

one or more aggravating circumstances.[18] In *People v. Catubig,*[19] the Court held that the term *aggravating circumstances* as used by the *Civil Code* should be understood in its broad or generic sense, not in the sense of prescribing a heavier punishment on the offender; hence, the ordinary or qualifying nature of an aggravating circumstance should be a distinction that was of consequence only to the criminal, as contrasted from the civil, liability, thereby entitling the offended party or victim to an award of exemplary damages regardless of whether the aggravating circumstance was ordinary or qualifying.

Being the victim of two counts of qualified rape, AAA, a minor and the daughter of the accused, was entitled to recover for *each* count of rape the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages (due to the attendance of the qualifying circumstances of *minority* of AAA and the *relationship* between her and the accused). The quantifications accord with jurisprudence.[20]

In crimes, interest may be adjudicated in a proper case as part of the damages in the discretion of the court.[21] The Court considers it proper to now impose interest on the civil indemnities, moral damages and exemplary damages being awarded in this case, considering that there has been delay in the recovery. The imposition is hereby declared to be also a natural and probable consequence of the acts of the accused complained of.[22] The

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[18] Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[19] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

[20] *E.g.*, *People v. Soriano*, G.R. Nos. 142779-95, August 29, 2002, 388 SCRA 140, 172.

[21] Article 2211, *Civil Code*.

[22] Article 2202, *Civil Code*, provides:

Article 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.

interest imposed is the legal rate of 6% *per annum* reckoned from the finality of this judgment.

WHEREFORE, the Court *AFFIRMS* the decision promulgated on March 20, 2007, subject to the *MODIFICATION* that accused Patricio Taguibuya is *ORDERED TO PAY* to AAA for each of the two counts of qualified rape the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus interest of 6% *per annum* reckoned from the finality of this judgment.

The accused shall pay the costs of suit.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, and *del Castillo, JJ.,* concur.

Sereno,[*] *J.,* concurs except with the award of interest on indemnity and damages. This is contrary to established practice and policy.

FIRST DIVISION

[G.R. No. 180504. October 5, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN ULAT *y* AGUINALDO @ PUDONG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DEGREE OF PROOF REQUIRED; THE GUILT OF THE ACCUSED MUST BE

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[*] Vice Associate Justice Martin S. Villarama, Jr., per raffle of September 12, 2011.

PROVED BEYOND REASONABLE DOUBT. — The law presumes that an accused in a criminal prosecution is innocent until the contrary is proved. This basic constitutional principle is fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial courts to determine. However, an appeal throws the whole case open for review such that the Court may, and generally does, look into the entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 OR THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; SALE OF DANGEROUS DRUGS; ELEMENTS. — In the crime of sale of dangerous drugs, the prosecution must be able to successfully prove the following elements: "(1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor." Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the "actual commission by someone of the particular crime charged."

3. ID.; ID.; ID.; BUY-BUST OPERATION; THE LAW PRESCRIBES SPECIFIC PROCEDURES ON THE SEIZURE AND CUSTODY OF DRUGS; EFFECT OF FAILURE TO FOLLOW; CASE AT BAR. — [O]wing to the built-in dangers of abuse that a buy-bust operation entails, the law [Section 21 of Republic Act No. 9165] prescribes specific procedures on the seizure and custody of drugs, independently of the general procedures geared to ensure that the rights of people under criminal investigation and of the accused facing a criminal charge are safeguarded. x x x A meticulous review of the records of this case has led us to the conclusion that the prosecution failed to demonstrate with moral certainty that the identity and integrity of the prohibited drug, which constitutes the *corpus delicti*, had been duly preserved. x x x Taking into consideration all the conflicting accounts of Pol-ot and PO1 Santos, the Court believes that any reasonable mind would entertain grave reservations as to the identity and integrity of the confiscated sachet of *shabu* submitted for laboratory

examination. As likewise correctly raised by appellant, apart from the testimony that PO1 Santos turned over the accused to an unnamed duty inspector, the prosecution evidence does not disclose with clarity how the confiscated sachet passed hands until it was received by the chemical analyst at the Philippine National Police (PNP) crime laboratory. In other words, the prosecution could not present an unbroken chain of custody for the seized illegal drug. In *Zaragga v. People*, we held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti.* Thus, the accused were acquitted due to the prosecution's failure to indubitably show the identity of the *shabu.*

4. ID.; ID.; ID.; ID.; ID.; NON COMPLIANCE THEREWITH NOT FATAL IF INTEGRITY AND EVIDENTIARY VALUE OF SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR. — We are not unaware of existing jurisprudence holding that non-compliance by the apprehending/buy-bust team with Section 21 of Republic Act No. 9165 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. x x x [I]n the present case, there were not merely trifling lapses in the handling of the evidence taken from the accused but the prosecution could not even establish what procedure was followed by the arresting team to ensure a proper chain of custody for the confiscated prohibited drug. x x x It is this assurance of evidentiary integrity that is lacking in the case at bar. Thus, as a consequence thereof, appellant's acquittal from the criminal charge against him would be in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal of the Decision[1] dated May 30, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01800 entitled, *People of the Philippines v. Edwin Ulat y Aguinaldo @ Pudong*, which affirmed the Decision[2] dated October 12, 2005 of the Regional Trial Court (RTC) of Makati, Branch 65, in Criminal Case No. 03-597. In said RTC Decision, the trial court found appellant Edwin Ulat *y* Aguinaldo @ Pudong guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and imposed upon him the penalty of life imprisonment as well as a fine of Five Hundred Thousand Pesos (₱500,000.00).

In an Information[3] dated February 11, 2003, appellant was charged with violation of Section 5, Article II of Republic Act No. 9165, as set forth below:

> That on or about the 10th day of February 2003, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute Methylamphetamine Hydrochloride, a dangerous drug, weighing zero point zero two (0.02) gram, in consideration of ₱100.00.

Appellant pleaded "not guilty" to the charge leveled against him when arraigned on March 3, 2003.[4] Thereafter, trial commenced.

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[1] *Rollo*, pp. 2-14; penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Jose C. Mendoza (now a member of this Court) and Ramon M. Bato, Jr., concurring.

[2] CA *rollo*, pp. 12-15.

[3] Records, p. 1.

[4] *Id.* at 13.

The prosecution's version of the events leading to appellant's arrest and his being charged with the above-mentioned offense was summarized as follows:

On February 10, 2003, a confidential informant relayed information regarding the illegal drug pushing activities of one *alias* Pudong along Seabird Street, Barangay Rizal, Makati City to Barangay Chairman Dreu, head of the Makati Anti-Drug Abuse Council (MADAC, for brevity) Cluster 6 (TSN, Aug. 6, 2003, p. 5).

Consequently, the MADAC Cluster 6, in coordination with the Makati Police Drug Enforcement Unit (Makati DEU, for brevity), met and decided to go to the place of *alias* Pudong at Seabird Street, Barangay Rizal, Makati City to verify if *alias* Pudong is indeed selling illegal drugs and to conduct an entrapment operation under the supervision of PO1 Randy Santos. During the briefing, it was agreed that one of the MADAC volunteers, Armando Pol-ot (Pol-ot, for brevity), together with the confidential informant, would act as poseur–buyer and buy illegal drugs from *alias* Pudong that very same day. The pre-arranged signal for the back-up team to know that the transaction was already consummated would be the poseur-buyer's act of lighting a cigarette. The buy-bust money was then marked and was handed to the poseur-buyer (TSN, Aug. 6, 2003, pp. 6-8, 10; TSN, Aug. 10, 2005, p. 9).

Thus, at about 7:15 p.m. of February 10, 2003, Pol-ot and the confidential informant went to Seabird Street, Barangay Rizal, Makati City on foot while the rest of the team rode a tricycle and followed the two. Upon reaching the place, the members of the back-up team positioned themselves 10 to 15 meters from where Pol-ot and the confidential informant were, so they could see the transaction take pace (TSN, Aug. 10, 2005, pp. 10-12).

Meanwhile, Pol-ot, who was then accompanied by the confidential informant, approached *alias* Pudong and was introduced by the informant as a buyer in need of shabu. Alias Pudong asked how much and Pol-ot replied "*Piso lang naman*," meaning One Hundred Pesos only. Thereafter, *alias* Pudong took the marked money and left. Upon his return, he handed Pol-ot a small plastic sachet containing suspected substance. Pol-ot then gave the pre-arranged signal and lighted a cigarette, signifying that the transaction was consummated (TSN, Aug. 6, 2003, pp. 9-10).

Upon seeing the pre-arranged signal, PO1 Santos and Rogelio Patacsil (Patacsil, for brevity) approached *alias* Pudong and apprehended him. Pol-ot then identified himself as member of the MADAC. *Alias* Pudong was then ordered to empty the contents of his pockets and the marked money was recovered. PO1 Santos immediately asked *alias* Pudong his real name. PO1 Santos then informed him of the nature of his arrest and apprised him of his Constitutional rights in Tagalog. Thereafter, *alias* Pudong was brought to the *barangay* hall of Barangay Rizal to have the incident listed in the *barangay* blotter. The confiscated substance contained in the plastic sachet which Pol-ot bought from *alias* Pudong was then marked "EUA" (TSN, Aug. 6, 2003, pp. 23-24; TSN, Aug. 10, 2005, pp. 13-15)

Subsequently, *alias* Pudong was brought to the Makati DEU office for proper investigation. The duty investigator prepared a request for laboratory examination of the specimen (the substance contained in the plastic sachet bought from the accused) marked "EUA" and a drug test for the accused (TSN, Aug. 6, 2005, pp. 15-16).

P/Insp. Richard Allan B. Mangalip conducted the laboratory examination on the contents of the plastic sachet marked "EUA" and it tested positive for Methylamphetamine Hydrochloride (TSN, May 6, 2003, pp. 4-9).

The following day, or on 11 February 2003, PO1 Santos and MADAC volunteers Pol-ot and Patacsil executed a sworn statement entitled "Pinagsanib na Salaysay ng Pag-aresto" in connection to the buy-bust operation which led to the arrest of appellant Edwin Ulat *y* Aguinaldo *alias* Pudong (TSN, Aug. 10, 2005, pp. 16-18; Records, p. 6).[5]

On the other hand, the defense narrated a different version of the incident, to wit:

In the evening of 10 February 2003, at about 7:30 o'clock p.m., the accused, EDWIN ULAT (Ulat for brevity), was at home watching television when he saw five (5) to seven (7) men in front of their door whom he thought were looking for someone. He approached them and asked who they were looking for. Suddenly, a gun was poked at him and he was told to go with them to the *barangay* hall. Ulat then asked who they were but he was told not to ask question or else he might get hurt. Two (2) of the men forced him out of the

[5] CA *rollo*, pp. 59-62.

house. He resisted but he was punched in the stomach and was dragged towards a blue Revo. The accused was likewise asked if he knew a certain Sandy. He denied knowing the said person. He was brought to the *barangay* hall and then to the Criminal Investigation Division (CID).[6]

After due proceedings, the trial court convicted appellant of violation of Section 5, Article II of Republic Act No. 9165 in its Decision dated October 12, 2005. The dispositive portion of said Decision reads:

> THE FOREGOING CONSIDERED, the court is of the opinion and so holds accused Edwin Ulat *y* Aguinaldo guilty beyond reasonable doubt of the offense charged. He is hereby sentenced to life imprisonment and is fined the sum of five hundred thousand pesos (Php500,000.00) without subsidiary imprisonment in case of insolvency.
>
> The period of detention of the accused should be given full credit.
>
> Let the dangerous drug subject matter of this case be disposed of in the manner provided for by law.[7]

On review, the Court of Appeals, in its Decision dated May 30, 2007, affirmed the ruling of the trial court and disposed of the appeal in this wise:

> WHEREFORE, premises considered, appeal is hereby DISMISSED for lack of merit and EDWIN ULAT *y* AGUINALDO should be made to suffer the penalty correctly imposed by the trial court.[8]

Hence, appellant interposed the present appeal with this Court wherein he submits the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY WITH VIOLATION OF SECTION 5, ARTICLE II OF R.A. 9165 DESPITE THE FAILURE OF THE

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

[7] *Id.* at 15.

[8] *Rollo,* p. 14.

PROSECUTION TO PROVE THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT AND CONTRADICTING TESTIMONIES OF THE PROSECUTION WITNESSES.[9]

In the instant petition, appellant's chief argument highlights the fact that the witnesses for the prosecution allegedly presented conflicting testimonies on material points regarding the chain of custody of the illegal drug taken from appellant, resulting in the failure of the prosecution to sufficiently establish the *corpus delicti* and engendering doubt as to appellant's guilt.

In light of the attendant circumstances in the case at bar, the argument is persuasive.

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proved. This basic constitutional principle is fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial courts to determine. However, an appeal throws the whole case open for review such that the Court may, and generally does, look into the entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.[10]

Moreover, owing to the built-in dangers of abuse that a buy-bust operation entails, the law prescribes specific procedures on the seizure and custody of drugs, independently of the general procedures geared to ensure that the rights of people under criminal investigation and of the accused facing a criminal charge are safeguarded.[11]

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[9] CA *rollo*, p. 31.

[10] *Zarraga v. People*, 519 Phil. 614, 620 (2006).

[11] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 208.

In this regard, Section 21, paragraph 1, Article II of Republic Act No. 9165 states:

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

Furthermore, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 expounds on the aforementioned provision of law:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

In the crime of sale of dangerous drugs, the prosecution must be able to successfully prove the following elements: "(1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor."[12] Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in

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[12] *People v. Roble*, G.R. No. 192188, April 11, 2011.

court of evidence of *corpus delicti* which means the "actual commission by someone of the particular crime charged."[13]

A meticulous review of the records of this case has led us to the conclusion that the prosecution failed to demonstrate with moral certainty that the identity and integrity of the prohibited drug, which constitutes the *corpus delicti*, had been duly preserved.

First, the records reveal that the prosecution did not establish the exact location where the confiscated illegal drug was marked and the identity of the person who marked it because of contradicting testimonies from the prosecution's witnesses.

According to witness Armando Pol-ot (Pol-ot), a Makati Anti-Drug Abuse Council (MADAC) civilian volunteer who acted as poseur-buyer in the entrapment operation, it was Police Officer 1 Randy Santos (PO1 Santos), the leader of the buy-bust team, who placed the marking on the confiscated sachet of *shabu* that was obtained from appellant. The relevant portion of the transcript is quoted here:

Q: Why do you say it is the same plastic sachet containing white crystalline substance delivered to you by *alias* Pudong?

A: Because of the markings, sir.

Q: And who placed these markings?

A: PO1 Santos, sir.

Q: Where were you when PO1 Santos placed these markings in this plastic sheet?

A: In front of him.

Q: Now, can you tell us what is that marking placed by PO1 Santos?

A: Name of the accused.

Q: What is that mark, Mr. Witness?

A: Edwin Ulat *Y* Aguinaldo.

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[13] *Id.*

Q: Can you read these markings?

A: E.U.E. (sic)[14]

This testimony contradicts what Pol-ot declared in the *Pinagsanib na Salaysay ng Pag-aresto* or the Joint Affidavit of Arrest[15] which was executed by the members of the buy-bust team on February 11, 2003. The pertinent portion of which reads:

*Na, ang aking (**Madac Armando Pol-ot**) nabiling isang sachet na naglalaman ng pinaghihinalaang shabu mula kay @ **Pudong** ay aking minarkahan sa harapan ng mga akusado ng inisyal na **"EUA"*** (subject of sale) *bago ito isinumite sa* PNP Crime Laboratory Field Office *para sa kaukuilang (sic) pagsisiyasat.*[16]

When confronted by the defense counsel about this discrepancy, Pol-ot merely surmised that it might be the product of typographical error, to wit:

Q: You mentioned that it was Santos who made the markings on the sachet EAU, is that correct?

A: Yes, sir.

Q: You were present when Santos placed these markings?

A: Yes, sir.

Q: Are you sure?

A: Yes, sir.

Q: Very, very sure.

A: Yes, sir.

Q: I am just wondering Mr. Witness, in your *Pinagsanib na Salaysay ng Pag aresto*, the second to the last sentence, and I quote; "*Na, ang aking* (Madac Armando Pol-ot) *nabiling isang sachet na naglalaman ng pinaghihinalaang shabu*

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[14] TSN, August 6, 2003, p. 15.

[15] Records, pp. 6-7.

[16] *Id.* at 7.

mula ka @ Pudong ay aking minarkahan sa harapan ng mga akusado na inisyal na "EUA" (subject of sale). Mr. Witness, your testimony earlier and your affidavit, is conflicting, which is correct, your testimony or your affidavit?

A: PO1 Santos marked, sir.

Q: So your affidavit is not true?

PROS. SALAZAR:

In so far as the marking is concerned, not all affidavit, your Honor.

PROS. SALAZAR:

Q: This paragraph is not true?

THE COURT:

Read your affidavit.

A: Maybe it's just typographical error, sir.

Q: Who prepared this affidavit, Mr. Witness?

A: At the DEU office, sir.

Q: Did you read this affidavit before you sign?

A: Not any more, sir.

THE COURT:

You did not read?

A: No, your honor.

Q: How did you know if it's right?

A: I reviewed it after several days.

THE COURT:

After you signed, you read it after signing?

A: Yes, sir.[17]

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[17] TSN, August 6, 2003, pp. 26-27.

However, when it was PO1 Santos' turn to testify, he discredited Pol-ot's testimony with regard as to who marked the confiscated sachet of *shabu*:

Q: Why do you say this is the same plastic sachet containing white crystalline substance purchased from the accused in this case?

A: Because of the marking EUA, sir.

Q: And who placed this marking, Mr. Witness?

A: Armando Pol-ot, sir.

Q: Where were you when this marking were placed, Mr. Witness?

A: In front of him, sir.

Q: By the way what does that marking EUA represents, Mr. Witness?

A: Edwin Ulat *y* Aguinaldo, sir.[18]

Indubitably, this conspicuous variance in the testimonies for the prosecution casts serious doubt on the arresting team's due care in the custody of the confiscated illegal drug. Worse, the foregoing is not the only instance of conflict between the narrations of Pol-ot and PO1 Santos with regard to the handling of the confiscated sachet of *shabu*.

In his testimony, Pol-ot declared that he was present when an inventory report of the confiscated illegal drug, which is required by Section 21 of Republic Act No. 9165, was prepared by PO1 Santos at the *barangay* hall where they brought appellant immediately after arresting him. The pertinent portion of his testimony reads:

Q: Did you make any inventory report to the item that was allegedly confiscated from the accused?

A: Yes, sir.

Q: Where is your inventory report?

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[18] TSN, August 10, 2005, p. 20.

A: With the police, then brought to the Crime Laboratory for examination?

Q: Inventory report, you examine the inventory report to the crime lab?

A: The item that was confiscated.

Q: Were you present when this police made this inventory report?

A: Yes, sir at the *Barangay*.

Q: Can you tell us the name of the police who made the inventory report?

A: PO1 Santos, sir.

Q: Again, Santos?

A: Yes, sir.[19]

On the other hand, PO1 Santos emphatically denied ever making any inventory report:

Q: Did you make an inventory of those items that were confiscated?

A: None, ma'am.[20]

Furthermore, when Pol-ot was asked by the defense counsel if the confiscated sachet of *shabu* was photographed, as mandated by Section 21 of Republic Act No. 9165, he answered in the affirmative, and, when asked by the trial court if the accused was present when this was being done as required by the law, he likewise answered yes to the query, as can be gleaned from this portion of the transcript:

Q: Did you photograph the item that was confiscated from the accused?

A: Yes, sir.

Q: Who was the photographer?

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[19] TSN, August 6, 2003, p. 24.

[20] TSN, August 10, 2005, p. 27.

A: Our companion, sir.

Q: Who?

A: Mr. Baisa, sir.

Q: When you took the picture of the item, who were present?

PROS. SALAZAR:

Misleading, your Honor. He was not the one who took the pictures.

THE COURT:

When the pictures were taken who were present?

A: My teammates.

THE COURT:

With the accused?

A: He was present, but they photographed only the items confiscated from him, your Honor.

Q: The items only.

A: Yes, your honor.[21]

However, PO1 Santos did not corroborate Pol-ot's claim and instead testified that:

Q: Do you take photos of the items that were recovered, Mr. Witness?

A: None, ma'am.[22]

Taking into consideration all the conflicting accounts of Pol-ot and PO1 Santos, the Court believes that any reasonable mind would entertain grave reservations as to the identity and integrity of the confiscated sachet of *shabu* submitted for laboratory examination. As likewise correctly raised by appellant, apart from the testimony that PO1 Santos turned over the accused to

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[21] TSN, August 6, 2003, pp. 24-25.

[22] TSN, August 10, 2005, p. 27.

an unnamed duty inspector,[23] the prosecution evidence does not disclose with clarity how the confiscated sachet passed hands until it was received by the chemical analyst at the Philippine National Police (PNP) crime laboratory. In other words, the prosecution could not present an unbroken chain of custody for the seized illegal drug.

In *Zaragga v. People*,[24] we held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. Thus, the accused were acquitted due to the prosecution's failure to indubitably show the identity of the *shabu*. In *People v. Sitco*,[25] we enumerated other occasions wherein acquittal was proper for failure of the prosecution to establish a complete chain of custody, such as:

> In a string of cases, we declared that the **failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of shabu, and the irregularity which characterized the handling of the evidence** before it was finally offered in court, **fatally conflicts with every proposition relative to the culpability of the accused**.
>
> As in *People v. Partoza*, this case suffers from the failure of the prosecution witness to provide the details establishing an unbroken chain of custody. In *Partoza*, **the police officer testifying did not relate to whom the custody of the drugs was turned over**. The evidence of the prosecution likewise **did not disclose the identity of the person who had the custody and safekeeping of the drugs after its examination and pending presentation in cour**t.[26] (Emphases supplied; citations omitted.)

We are not unaware of existing jurisprudence holding that non-compliance by the apprehending/buy-bust team with Section

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[23] *Id.* at 15.

[24] *Supra* note 10 at 621.

[25] G.R. No. 178202, May 14, 2010, 620 SCRA 561.

[26] *Id.* at 579.

21 of Republic Act No. 9165 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[27]

It is this assurance of evidentiary integrity that is lacking in the case at bar. Thus, as a consequence thereof, appellant's acquittal from the criminal charge against him would be in order.

Recently, we held that the unjustified failure of the police officers to show that the integrity of the object evidence — *shabu* — was properly preserved negates the presumption of regularity accorded to acts undertaken by them in the pursuit of their official duties.[28] As a rule, the testimony of arresting police officers in drug cases is accorded faith and credit because of the presumption that they have performed their duties regularly.[29] Slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant.[30] However, in the present case, there were not merely trifling lapses in the handling of the evidence taken from the accused but the prosecution could not even establish what procedure was followed by the arresting team to ensure a proper chain of custody for the confiscated prohibited drug.

WHEREFORE, premises considered, the assailed Decision dated May 30, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01800 is *REVERSED* and *SET ASIDE*. For failure of

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[27] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

[28] *People v. Navarrete*, G.R. No. 185211, June 6, 2011.

[29] *People v. Frondozo*, G.R. No. 177164, June 30, 2009, 591 SCRA 407, 419.

[30] *People v. Sultan*, G.R. No. 187737, July 5, 2010, 623 SCRA 542, 552.

the prosecution to prove his guilt beyond reasonable doubt, appellant Edwin Ulat *y* Aguinaldo is *ACQUITTED* of the crime charged.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, who is ORDERED to cause the immediate release of appellant, unless he is being lawfully held for another cause, and to inform this Court of action taken thereon within ten (10) days from notice.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 182848. October 5, 2011]

EMIRATE SECURITY AND MAINTENANCE SYSTEMS, INC. and ROBERTO A. YAN, *petitioners, vs.* **GLENDA M. MENESE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT BY EMPLOYER; CONSTRUCTIVE DISMISSAL; THE PRINCIPLE OF MANAGERIAL PREROGATIVE TO TRANSFER PERSONNEL MUST BE EXERCISED WITHOUT ABUSE OF DISCRETION; VIOLATION IN CASE AT BAR. — In *Blue Dairy Corporation v. NLRC,* the Court stressed as a matter of principle that the managerial prerogative to transfer personnel must be exercised without abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it should

not be used as a subterfuge by the employer to get rid of "an undesirable worker." Measured against this basic precept, the petitioners undoubtedly abused their discretion or authority in transferring Menese to the agency's head office. She had become "undesirable" because she stood in the way of Claro's entry into the PGH detachment. Menese had to go, thus the need for a pretext to get rid of her. The request of a client for the transfer became the overriding command that prevailed over the lack of basis for the transfer. x x x In these lights, Menese's transfer constituted a constructive dismissal as it had no justifiable basis and entailed a demotion in rank and a diminution in pay for her. For a transfer not to be considered a constructive dismissal, the employer must be able to show that the transfer is for a valid reason, entails no diminution in the terms and conditions of employment, and must be unreasonably inconvenient or prejudicial to the employee. If the employer fails to meet these standards, the employee's transfer shall amount, at the very least, to constructive dismissal. The petitioners, unfortunately for them, failed to come up to these standards. In declaring Menese's transfer to be in the valid exercise of the petitioners' management prerogative, the NLRC grossly misappreciated the evidence and, therefore, gravely abused its discretion in closing its eyes to the patent injustice committed on Menese. It completely disregarded the obvious presence of bad faith in Menese's transfer. Labor justice demands that Menese be awarded moral and exemplary damages and, for having been constrained to litigate in order to protect her rights, attorney's fees.

2. ID.; ID.; ID.; CLAIM FOR OVERTIME PAY SHALL BE GRANTED ONLY UPON SHOWING OF FACTUAL AND LEGAL BASIS; NOT PRESENT IN CASE AT BAR. — In *Global Incorporated v. Commissioner Atienza*, a claim for overtime pay will not be granted for want of factual and legal basis. In this respect, the records indicate that the labor arbiter granted Menese's claim for holiday pay, rest day and premium pay on the basis of payrolls. There is no such proof in support of Menese's claim for overtime pay other than her contention that she worked from 8:00 a.m. up to 5:00 p.m. She presented no evidence to show that she was working during the entire one hour meal break. We thus find the NLRC's deletion of the overtime pay award in order. Also, the NLRC noted that the award of ₱2,600.00 for the refund of the cash bond deposit

is overstated and should be adjusted to ₱600.00 only, as indicated by the payrolls. We likewise find the adjustment in order.

APPEARANCES OF COUNSEL

Edward P. Buenaflor for petitioners.
Joselito R. Rance for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is the petition for review on *certiorari*[1] which assails the decision[2] and the resolution[3] of the Court of Appeals (*CA*) rendered on February 28, 2008 and May 14, 2008, respectively, in CA-G.R. SP. No. 100073.[4]

The Antecedents

The facts of the case are summarized below.

On June 5, 2001, respondent Glenda M. Menese (*Menese*) filed a complaint for constructive dismissal; illegal reduction of salaries and allowances; separation pay; refund of contribution to cash bond; overtime, holiday, rest day and premium pay; damages; and attorney's fees against the petitioners, Emirate Security and Maintenance Systems, Inc. (*agency*) and its General Manager, Robert A. Yan (*Yan*).

Menese alleged in the compulsory arbitration proceedings that on April 1, 1999, the agency engaged her services as payroll and billing clerk. She was assigned to the agency's security

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[1] *Rollo*, pp. 3-44; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 45-62; penned by Associate Justice Arturo G. Tayag, and concurred in by Associate Justices Hakim S. Abdulwahid and Jose C. Reyes, Jr.

[3] *Id.* at 64-68.

[4] Entitled "*Glenda M. Menese v. National Labor Relations Commission, Second Division, Emirate Security and Maintenance Systems, Inc. and Roberto A. Yan.*"

detachment at the Philippine General Hospital (*PGH*). She was given a monthly salary of ₱9,200.00 and an allowance of ₱2,500.00, for a total of ₱11,700.00 in compensation. Effective May 2001, her allowance was allegedly reduced to ₱1,500.00 without notice, and ₱100.00 was deducted from her salary every month as her contribution to a cash bond which lasted throughout her employment. She was required to work seven (7) days a week, from 8:00 a.m. to 5:00 p.m. She was also required to report for work on holidays, except on New Year's Day and Christmas. She claimed that she was never given overtime, holiday, rest day and premium pay.

Menese further alleged that on May 4, 2001, she started getting pressures from the agency for her to resign from her position because it had been committed to a certain Amy Claro, a protégée of Mrs. Violeta G. Dapula (*Dapula*) the new chief of the Security Division of the University of the Philippines (UP) Manila and PGH. Menese raised the matter with Yan who told her that the agency was in the process of establishing goodwill with Dapula, so it had to sacrifice her position to accommodate Dapula's request to hire Claro.

Menese claimed that she was told not to worry because if she was still interested in working with the agency, she could still be retained as a lady guard with a salary equivalent to the minimum wage. She would then be detailed to another detachment because Dapula did not like to see her around anymore. If the offer was acceptable to her, she should report to the agency's personnel officer for the issuance of the necessary duty detail order. Menese thought about the offer and soon realized that she was actually being demoted in rank and salary. She eventually decided to decline the offer. She continued reporting to the PGH detachment and performed her usual functions as if nothing happened.

Menese alleged that at this juncture, Claro reported at the agency's PGH detachment and performed the functions she was doing. She bewailed that thereafter she continuously received harassment calls and letters. She was also publicly humiliated and badly treated at the detachment. The agency, through Security Officer Alton Acab, prohibited her from using the office computer.

On May 18, 2001, Jose Dante Chan, the agency's PGH detachment commander, arrogantly told her to leave PGH. Again on May 25, 2001, Chan shouted at her and told her to pack her things and to leave immediately, and not to return to the detachment anymore; otherwise, she would be physically driven out of the office.

Still not satisfied with what they did, the petitioners allegedly withheld her salary for May 16-31, 2001. She claimed that the petitioners dismissed her from the service without just cause and due process.

The petitioners, for their part, denied liability. They alleged that on May 8, 2001, Dapula informed the agency in writing,[5] through Yan, that she had been receiving numerous complaints from security guards and other agency employees about Menese's unprofessional conduct. She told the petitioners that she was not tolerating Menese's negative work attitude despite the fact that she is the wife of Special Police Major Divino Menese who is a member of the UP Manila police force, and that as a matter of policy and out of delicadeza, she does not condone nepotism in her division.

On the basis of Dapula's letter, Yan sent Menese a memorandum dated May 16, 2001,[6] instructing her to report to the agency's head office and, there and then, discussed with her Dapula's letter. Yan informed Menese that upon Dapula's request, she would be transferred to another assignment which would not involve any demotion in rank or diminution in her salary and other benefits. Although Menese said that she would think about the matter, the petitioners were surprised to receive summons from the labor arbiter regarding the complaint.

The Compulsory Arbitration Rulings

In a decision dated March 14, 2002,[7] Labor Arbiter Jovencio LL. Mayor, Jr. declared Menese to have been constructively dismissed. He found the petitioners wanting in good faith in

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[5] *Rollo*, p. 117; Petition, Annex "F".

[6] *Id.* at 118; Petition, Annex "G".

[7] *Id.* at 100-116; Petition, Annex "E".

transferring Menese to another detachment as she would be suffering a demotion in rank and a diminution in pay. Accordingly, he ordered the petitioners to immediately reinstate Menese and, solidarily, to pay her full backwages of ₱83,443.75 (latest computation); ₱66,924.00 in monetary benefits; ₱50,000.00 and ₱20,000.00 in moral and exemplary damages, respectively; and attorney's fees of ₱15,036.74.

The petitioners appealed to the National Labor Relations Commission (*NLRC*). On September 30, 2003, the NLRC Second Division issued a resolution[8] granting the appeal and reversing the labor arbiter's decision. It ruled that Menese was not constructively dismissed but was merely transferred to another detachment. It opined that the transfer was a valid exercise of the petitioners' management prerogative. However, it ruled that despite Menese's refusal to accept the transfer, she cannot be made liable for abandonment as her refusal was based on her honest belief that she was being constructively dismissed. The NLRC ordered Menese, at her option, to immediately report to the agency's head office and the agency to accept her back to work. It absolved Yan from liability, and deleted the award of backwages, overtime pay and damages.

On October 28, 2003, Menese filed a partial motion for reconsideration[9] of the NLRC resolution and later (on June 17, 2005), a motion to recall the entry of judgment of October 31, 2003. On June 1, 2007, the NLRC rendered a resolution[10] setting aside the entry of judgment and denying Menese's partial motion for reconsideration.

The Petition for *Certiorari*

Menese elevated her case to the CA through a petition for *certiorari*[11] under Rule 65 of the Rules of Court. In the main,

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[8] *Id.* at 70-91; Petition, Annex "C", penned by Commissioner Victoriano R. Calaycay, and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[9] *Id.* at 158-160; Petition, Annex "N".

[10] *Id.* at 92-99; Petition, Annex "D".

[11] *Id.* at 161-167; Petition, Annex "O".

she argued that the agency was in bad faith when it issued the memoranda dated May 16, 2001,[12] May 22, 2001[13] and May 28, 2001,[14] ordering her transfer from the PGH detachment to the agency's head office. She posited that it was a ploy to create a vacancy in the detachment to accommodate the entry of Claro, Dapula's protégée. She regarded the transfer as a removal from her position at PGH — a constructive dismissal.

The agency, in rebuttal, posited that Menese was not illegally dismissed, but was merely transferred to its head office in response to the request of the new head of the UP-PGH security division for the transfer. The action, it maintained, was a valid exercise of its management prerogative. Thus, Menese was guilty of abandoning her employment when she refused to report for work at her new posting.

The CA Decision

The CA granted the petition in its decision of February 28, 2008.[15] It set aside the assailed resolutions of the NLRC and reinstated the March 14, 2002 decision of the labor arbiter.

As the labor arbiter did, the CA found Menese to have been constructively, and therefore illegally, dismissed. It noted that the memoranda[16] on Menese's transfer were prompted by Dacula's letter, dated May 8, 2001,[17] to Yan, which contained allegations on Menese's supposed unprofessional conduct and involvement in nepotism. It further noted that when Yan asked Dapula in writing[18] to provide the agency with documents/evidence that would support her allegations, she failed to do so. The CA thus

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[12] *Supra* note 6.

[13] *Rollo*, p. 119; Petition, Annex "H".

[14] *Id.* at 120; Petition, Annex "I".

[15] *Supra* note 2.

[16] *Supra* notes 12, 13 and 14.

[17] *Supra* note 5.

[18] *Rollo*, p. 237; Menese's Rejoinder before the Labor Arbiter, Annex "F".

concluded that the reasons for Menese's transfer did not exist or that no substantial evidence was presented in that regard.

The CA brushed aside the petitioners' argument that it was their prerogative to transfer Menese from the agency's PGH detachment to its head office at Ortigas Avenue, Mandaluyong City. Relying on applicable jurisprudence, the appellate court pointed out that while it is the management's prerogative to transfer an employee from one office to another within the business establishment, it is not without limitation. It must be exercised in such a way that there is no demotion in rank or diminution in pay, benefits and other privileges. Otherwise, the transfer amounts to a constructive dismissal, as correctly pointed out by the labor arbiter in his decision of March 14, 2002.[19] In this light, the CA held that the petitioners failed to prove that Menese abandoned her employment.

The CA sustained all the other findings of the labor arbiter. On the whole, it ruled that the NLRC misappreciated the evidence in the case. The petitioners moved for reconsideration, but the CA denied the motion in its resolution of May 14, 2008.[20]

The Petitioners' Case

Aside from the petition itself,[21] the petitioners filed a reply to Menese's comment[22] and a memorandum[23] where they asked for a reversal of the assailed CA rulings on the ground that the CA gravely erred in:

(1) Affirming the labor arbiter's findings that Menese was constructively dismissed;

(2) Holding Yan solidarily liable with the agency for damages; and

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[19] *Supra* note 7.

[20] *Supra* note 3.

[21] *Supra* note 1.

[22] *Rollo*, pp. 242-269.

[23] *Id.* at 272-310.

(3) Sustaining the award of backwages, damages and attorney's fees, as well as overtime pay.

The petitioners insist that Menese was not illegally dismissed. They argue that it was Menese who deliberately and unjustifiably refused to work despite several notices[24] to her after she was validly relieved from her current work assignment due to a client's request. They maintain that since Menese chose not to return to work, she must be considered either to have resigned from or to have abandoned her employment. They further maintain that nothing on record shows any positive or overt act of the agency in dismissing Menese.

Moreover, the petitioners regard Menese's continued refusal to report to the agency's head office as an act of gross insubordination constituting a just cause for termination under Article 282(a) of the Labor Code. They argue that under this law, an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or his representative in connection with his work.

The petitioners posit that she is not entitled to reinstatement and backwages since she failed to comply with the reinstatement option stated in the NLRC resolution. Neither is she entitled to overtime pay because she did not work beyond the eight (8)-hour working period; her one (1) hour time off from twelve noon to 1:00 p.m. is not compensable. Neither is Menese entitled to moral and exemplary damages because the evidence on record does not show any malice or bad faith on their part to justify the award.

The petitioners likewise take exception to the award of attorney's fees as the labor arbiter's decision and the NLRC's resolution failed to state the justification for the award. They further contend that the CA gravely erred in upholding the labor arbiter's ruling that Yan is solidarily liable with the agency, as Yan was merely acting in his capacity as the agency's general manager, and that there is no showing that Yan acted maliciously

[24] *Supra* notes 12, 13 and 14.

or in bad faith when he ordered Menese's transfer. They also point out that Menese did not challenge before the CA the NLRC ruling absolving Yan from any liability.

The Case for Menese

By way of her comment[25] and memorandum,[26] Menese asks that the appeal be denied for lack of merit.

She claims that at the arbitration stage, the petitioners readily admitted the fact of her removal, manifesting in open session their lack of interest to settle the case amicably as they have a strong evidence to support their defense of her dismissal for cause. She observed during the hearing that the petitioners were very confident about their case, because according to them, they had Dapula's letter asking for her immediate removal.[27]

Menese further claims that the petitioners realized that they did not have the necessary evidence, so Yan wrote Dapula a letter asking her for proof of the complaints or grievances of the security guards against Menese.[28] Dapula did not produce or present the evidence they asked for resulting in their failure to substantiate their defense of dismissal for cause. Menese contends that the petitioners then revised their theory of the case and made it appear that she was not actually dismissed but was merely transferred, purportedly in the exercise of their management prerogative.

She posits that her transfer was motivated by ill will and bad faith, as it was done to facilitate the entry of a favored applicant to the PGH detachment. She intimates that the labor arbiter resolved the case correctly when he found her to have been constructively or illegally dismissed. She bewails the NLRC's surprising reversal of the labor arbiter's decision, but feels vindicated when the CA set aside the NLRC ruling.

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[25] *Rollo*, pp. 221-230; filed on July 23, 2008.

[26] *Id.* at 313-324; filed on March 23, 2009.

[27] *Supra* note 5.

[28] *Supra* note 18.

Menese submits that the CA is correct in nullifying the NLRC's reversal of her illegal dismissal case because the labor tribunal closed its eyes to the fact that bad faith attended her transfer. She points out that the petitioners' twin directives, *vis-à-vis* her transfer upon which the NLRC based its ruling, "were both issued for a selfish and immoral purpose;"[29] the first, dated May 16, 2001,[30] was issued for the purpose of creating a vacancy, and the second, dated May 22, 2001,[31] was intended to cover up the wrongdoing that was earlier committed. In other words, the directives were tainted with malice and ill will. On the matter of Yan's liability, Menese maintains that the NLRC committed a serious error in allowing him to get away with his wrongdoing considering the injustice done to her as a result of her unceremonious dismissal.

In a different vein, Menese assails the NLRC's exclusion of the one-hour meal break as overtime work, for it erroneously assumed that her employer had been giving its employees a 60 minute time-off for regular meals and that she was not performing work during the period. She argues that this was not the actual practice in the workplace, contending that she continued working even during the one-hour meal break.

Finally, Menese maintains that the CA correctly reinstated the labor arbiter's award of attorney's fees and the imposition of solidary liability on Yan and the agency. She posits that in her quest for justice because of her unceremonious dismissal, she was constrained to engage the services of a counsel to handle her case.

The Court's Ruling

We deny the petition for lack of merit. The evidence of Menese's unwarranted, unjustified and, in her own language, "unceremonious" dismissal is so glaring that to ignore it is to commit, as the NLRC did, grave abuse of discretion.

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[29] *Rollo,* pp. 320-321; Menese's Memorandum, pp. 8-9, par. 29.

[30] *Supra* note 6.

[31] *Supra* note 13.

We note as a starting point that at the time material to the case, Menese ceased to be the agency's payroll and billing clerk at its PGH detachment. The position was taken away from her as she had been transferred to the agency's main office on Ortigas Avenue, Mandaluyong City, upon the request of Dapula, the new chief of the UP-PGH Security Division. The transfer was to be carried out through a memorandum dated May 16, 2001[32] issued by Yan; a second memorandum dated May 22, 2001[33] issued by Personnel Officer Edwin J. Yabes, reminding Menese of Yan's instruction for her to report to the main office; and a third memorandum dated May 28, 2001,[34] also issued by Yabes informing Menese that it was her second notice to assume her work detail at the main office. Yabes instructed her to report for work on May 30, 2001.

Citing *Mendoza v. Rural Bank of Lucban*,[35] the petitioners argue that the transfer was undertaken in the exercise of management prerogative in the pursuit of their legitimate interests. They submit that Menese refused to comply with the valid transfer orders they issued, making her liable for abandonment and insubordination. They argue that nothing on record shows that she was illegally dismissed as no dismissal had been imposed on her.

On a superficial consideration, the petitioners' position looks unassailable as indeed an employer can regulate, generally without restraint and according to its own discretion and judgment, every aspect of its business, including work assignments and transfer of employees, subject only to limitations imposed by law.[36] This submission, however, glossed over or suppressed a crucial factor in the present labor controversy. We refer to Dapula's letter to Yan in early May 2001,[37] asking for Menese's transfer allegedly

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[32] *Supra* note 6.

[33] *Supra* note 13.

[34] *Supra* note 14.

[35] G.R. No. 155421, July 7, 2004, 433 SCRA 756.

[36] *OSS Security and Allied Services, Inc. v. NLRC*, 382 Phil. 35 (2000).

[37] *Supra* note 5.

due to numerous complaints from security guards and co-workers regarding her unprofessionalism and because of nepotism; Menese is the wife of a member of the UP Manila police force.

Had Yan inquired into Dapula's claim of Menese's alleged unprofessionalism, ideally through an administrative investigation, he could have been provided with a genuine reason — assuming proof of Dapula's accusation existed — for Menese's transfer or even for her dismissal, if warranted. That the agency did not get into the bottom of Dapula's letter before it implemented Menese's transfer is indicative of the sheer absence of an objective justification for the transfer. The most that the agency did was to write Dapula a letter, through Yan, asking her to provide documents/evidence in support of her request for Menese's transfer.[38] Significantly, Yan's request came after the labor arbiter's summons to Yan regarding Menese's complaint. Dapula never responded to Yan's letter and neither did she provide the evidence needed for the agency's defense in the complaint.

As Menese noted, the petitioners did not submit as annex to the petition Yan's letter to Dapula, and the reason appears to be obvious — they were trying to avoid calling attention to the absence of proof of Menese's alleged unprofessionalism and her involvement in nepotism. Evidently, the basis for Dapula's request did not exist. We thus find credible Menese's contention that her transfer was a ploy to remove her from the PGH detachment to accommodate the entry of Dapula's protégée. In short, the agency wanted to create a vacancy for Claro, the protégée. Confronted with this clear intent of the petitioners, we cannot see how Menese's transfer could be considered a valid exercise of management prerogative. As Menese rightly put it, her transfer was arbitrarily done, motivated no less by ill will and bad faith.

In *Blue Dairy Corporation v. NLRC*,[39] the Court stressed as a matter of principle that the managerial prerogative to transfer personnel must be exercised without abuse of discretion, bearing

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[38] *Supra* note 18.

[39] 373 Phil. 179 (1999).

in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it should not be used as a subterfuge by the employer to get rid of "an undesirable worker." Measured against this basic precept, the petitioners undoubtedly abused their discretion or authority in transferring Menese to the agency's head office. She had become "undesirable" because she stood in the way of Claro's entry into the PGH detachment. Menese had to go, thus the need for a pretext to get rid of her. The request of a client for the transfer became the overriding command that prevailed over the lack of basis for the transfer.

We cannot blame Menese for refusing Yan's offer to be transferred. Not only was the transfer arbitrary and done in bad faith, it would also result, as Menese feared, in a demotion in rank and a diminution in pay. Although Yan informed Menese that "based on the request of the client, she will be transferred to another assignment which however will not involve any demotion in rank nor diminution in her salaries and other benefits,"[40] the offer was such as to invite reluctance and suspicion as it was couched in a very general manner. We find credible Menese's submission on this point, *i.e.*, that under the offered transfer: (1) she would hold the position of lady guard and (2) she would be paid in accordance with the statutory minimum wage, or from ₱11,720.00 to ₱7,500.00.

In these lights, Menese's transfer constituted a constructive dismissal as it had no justifiable basis and entailed a demotion in rank and a diminution in pay for her. For a transfer not to be considered a constructive dismissal, the employer must be able to show that the transfer is for a valid reason, entails no diminution in the terms and conditions of employment, and must be unreasonably inconvenient or prejudicial to the employee. If the employer fails to meet these standards, the employee's transfer shall amount, at the very least, to constructive dismissal.[41] The

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[40] *Supra* note 1, at 14; Petition, p. 12, par. 17.

[41] *Aguilar v. Burger Machine Holdings Corporation*, G.R. No. 172062, October 30, 2006, 506 SCRA 266.

petitioners, unfortunately for them, failed to come up to these standards.

In declaring Menese's transfer to be in the valid exercise of the petitioners' management prerogative, the NLRC grossly misappreciated the evidence and, therefore, gravely abused its discretion in closing its eyes to the patent injustice committed on Menese. It completely disregarded the obvious presence of bad faith in Menese's transfer. Labor justice demands that Menese be awarded moral and exemplary damages[42] and, for having been constrained to litigate in order to protect her rights, attorney's fees.[43]

Yan's solidary liability

Yan had been aware all the time of the utter lack of a valid reason for Menese's transfer. He had been aware all the time that Dapula's charges against Menese — the ostensible reason for the transfer — were nonexistent as Dapula failed to substantiate the charges. He was very much a part of the flagrant and duplicitous move to get rid of Menese to give way to Claro, Dapula's protégée.

Based on the facts, Yan is as guilty as the agency in causing the transfer that was undertaken in bad faith and in a wanton and oppressive manner. Thus, he should be solidarily liable with the agency for Menese's monetary awards.

The overtime pay award

While the labor arbiter declared that Menese's claim for overtime pay is unrebutted[44] and, indeed, nowhere in the petitioners' position paper did they controvert Menese's claim, we hold that the claim must still be substantiated. In *Global Incorporated v. Commissioner Atienza*,[45] a claim for overtime

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[42] *Id.* at 278.

[43] LABOR CODE, Article III; Implementing Rules & Regulations, Book III, Rule VIII; and CIVIL CODE, Article 2208, (1) and (7).

[44] *Supra* note 7, at 114.

[45] 227 Phil. 64 (1986).

pay will not be granted for want of factual and legal basis. In this respect, the records indicate that the labor arbiter granted Menese's claim for holiday pay, rest day and premium pay on the basis of payrolls.[46] There is no such proof in support of Menese's claim for overtime pay other than her contention that she worked from 8:00 a.m. up to 5:00 p.m. She presented no evidence to show that she was working during the entire one hour meal break. We thus find the NLRC's deletion of the overtime pay award in order.

Also, the NLRC noted that the award of ₱2,600.00 for the refund of the cash bond deposit is overstated and should be adjusted to ₱600.00 only, as indicated by the payrolls. We likewise find the adjustment in order.

All told, except for the above clarifications on the overtime pay award and the refund of the cash bond deposit, we reiterate and so declare **the petition to be devoid of merit**.

WHEREFORE, premises considered, except for the overtime pay award and the refund of deposit for the cash bond, the petition is *DENIED* for lack of merit. The assailed decision and resolution of the Court of Appeals are *AFFIRMED*, with the following modifications:

1) The deletion of the overtime pay award; and

2) Adjustment of the refund of the cash or surety bond deposit award from ₱2,500.00 to ₱600.00.

Costs against the petitioners.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

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[46] *Supra* note 8, at 89.

SECOND DIVISION

[G.R. No. 182902. October 5, 2011]

VIRRA MALL TENANTS ASSOCIATION, INC., *petitioner, vs.* **VIRRA MALL GREENHILLS ASSOCIATION, INC., LOLITA C. REGALADO, ANNIE L. TRIAS, WILSON GO, PABLO OCHOA, JR., BILL OBAG and GEORGE V. WINTERNITZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; EXPLAINED. — In *Executive Secretary v. Northeast Freight*, this Court explained intervention in this wise: "Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, ***what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof***. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that ***the intervenor will either gain or lose by the direct legal operation of the judgment***. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."

2. ID.; ID.; ACTIONS; CAUSE OF ACTION; EXPOUNDED; ESTABLISHED IN THE CASE AT BAR. — A cause of action is defined as "the act or omission by which a party violates a right of another." In *Shell Philippines v. Jalos,* this

Court expounded on what constitutes a cause of action, to wit: "A cause of action is the wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff. Its elements consist of: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the defendant in violation of such right. To sustain a motion to dismiss for lack of cause of action, however, the complaint must show that the claim for relief does not exist and not only that the claim was defectively stated or is ambiguous, indefinite or uncertain." In the case at bar, VMTA, in its Complaint-in-Intervention, explicitly laid down its cause of action as follows: Pursuant to and by virtue of such claim, defendant VMGA and defendant VMGA Board Members, impleaded as party defendants herein, received, at various times, from their insurance broker, and it is in their custody, the insurance proceeds arising out of such claim which, as of January 8, 2003, aggregated ₱48.6-Million. ***Having failed to deliver the said proceeds to the real beneficiary inspite of due notice and demand, plaintiff Ortigas herein instituted the present action against all the defendants to compel delivery of the said insurance proceeds which are being unlawfully and illegally withheld by all the defendant VMGA and defendant VMGA Board Members inspite of written demands made therefor.*** Worse, a portion of said insurance proceeds, aggregating ₱8.6-Million had already been disbursed and misappropriated in breach of trust and fiduciary duty.

3. ID.; ID.; INTERVENTION; PURPOSE; CASE AT BAR.— [A]llowing VMTA to intervene in Civil Case No. 69312 finds support in *Heirs of Medrano v. De Vera*, to wit: "The purpose of intervention is to enable a stranger to an action to become a party in order for him to protect his interest and for the court to settle all conflicting claims. Intervention is allowed to avoid multiplicity of suits more than on due process considerations." Thus, although the CA was correct in stating that VMTA could always file a separate case against Ortigas, allowing VMTA to intervene will facilitate the orderly administration of justice and avoid a multiplicity of suits. We do not see how delay will be inordinately occasioned by the intervention of VMTA, contrary to the fear of the CA.

APPEARANCES OF COUNSEL

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Guevarra Law Office for G. Winternitz.
Jorge Roito N. Hirang, Jr. for P. Ochoa, Jr.
Herrera Teehankee & Cabrera for L. Yaranon.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for Review of the 21 May 2007 Decision[1] and 14 May 2008 Resolution[2] of the Court of Appeals (CA) dismissing the Complaint-in-Intervention and denying the Motion for Reconsideration both filed by petitioner.

Ortigas & Company, Limited Partnership (Ortigas) is the owner of the Greenhills Shopping Center (GSC). On 5 November 1975, Ortigas and Virra Realty Development Corporation (Virra Realty) entered into a Contract of Lease (First Contract of Lease) over a portion of the GSC. The 25-year lease was to expire on 15 November 2000. Pursuant thereto, Virra Realty constructed a commercial building, the Virra Mall Shopping Center (Virra Mall), which was divided into either units for lease or units whose leasehold rights were sold.[3]

Thereafter, Virra Realty organized respondent Virra Mall Greenhills Association (VMGA), an association of all the tenants and leasehold right holders, who managed and operated Virra Mall. In the First Contract of Lease, VMGA assumed and was subrogated to all the rights, obligations and liabilities of Virra Realty.[4]

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[1] *Rollo*, pp. 104-143; Penned by former Court of Appeals Associate Justice, now Supreme Court Associate Justice, Bienvenido L. Reyes, concurred in by Court of Appeals Associate Justices Santiago Lagman and Bruselas, Jr.

[2] *Rollo,* pp. 16-23.

[3] CA Decision p. 2; *rollo,* p. 105.

[4] *Id*.

On 22 November 2000, VMGA, through its president, William Uy (Uy), requested from Ortigas the renewal of the First Contract of Lease.[5]

VMGA secured two insurance policies to protect Virra Mall against damage by fire and other causes. However, these insurance coverages expired simultaneously with the First Contract of Lease on 15 November 2000.[6] Subsequently, on 13 March 2001, VMGA acquired new sets of insurance policies effective 10 January 2001 to 31 December 2001.[7]

On 5 May 2001, Virra Mall was gutted by fire, requiring substantial repair and restoration. VMGA thus filed an insurance claim through the insurance broker, respondent Winternitz Associates Insurance Company, Inc. (Winternitz). Thereafter, the proceeds of the insurance were released to VMGA.[8]

On 3 September 2001, Ortigas entered into a Contract of Lease (Second Contract of Lease) with Uy effective 2 November 2001 to 31 December 2004. On 11 September 2001, the latter assigned and transferred to petitioner Virra Mall Tenants Association (VMTA) all his rights and interests over the property.[9]

On 7 February 2003, Ortigas filed a Complaint for Specific Performance with Damages and Prayer for Issuance of a Writ of Preliminary Attachment against several defendants, including herein respondents. It accused them of fraud, misappropriation and conversion of substantial portions of the insurance proceeds for their own personal use unrelated to the repair and restoration of Virra Mall. To secure the subject insurance proceeds, Ortigas also sought the issuance of a writ of preliminary attachment against herein respondents. The case was docketed as Civil

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[5] *Id*.

[6] CA Decision pp. 2-3; *rollo,* pp. 105-106.

[7] Comment/Opposition pp. 9-10; *rollo,* pp. 219-220; Complaint p. 6; *rollo,* p. 300.

[8] CA Decision p. 3; *rollo,* p. 106.

[9] Petition, p. 9; *rollo,* p. 75; Decision, p. 4; *rollo,* p. 107; Agreement (To Assignment of Right to, and Interest in, Contract of Lease), *rollo,* pp. 180-183.

Case No. 69312, and raffled to the Regional Trial Court, National Capital Judicial Region, Pasig City, Branch 67 (RTC Br. 67), which issued a Writ of Preliminary Attachment on 12 February 2003.[10]

On 17 February 2003, VMTA filed a Complaint-in-Intervention.[11] It claimed that as the assignee or transferee of the rights and obligations of Uy in the Second Contract of Lease, and upon the order of Ortigas, it had engaged the services of various contractors. These contractors undertook the restoration of the damaged area of Virra Mall amounting to ₱18,902,497.75. Thus, VMTA sought the reimbursement of the expenses it had incurred in relation thereto.[12] RTC Br. 67 admitted the Complaint-in-Intervention in its Order dated 8 January 2004.[13]

On 5 March 2004, herein respondents moved for the dismissal of the Complaint-in-Intervention on the ground that it stated no cause of action.[14] In its Omnibus Order dated 2 August 2005, RTC Br. 67 denied this Motion to Dismiss.[15] The trial court based its Decision on the grounds that (a) by filing the said motion, herein respondents hypothetically admitted the truth of the facts alleged in the Complaint-in-Intervention, and (b) the test of sufficiency of the facts alleged was whether or not the court could render a valid judgment as prayed for, accepting as true the exclusive facts set forth in the Complaint.[16] Thus, RTC Br. 67 held that if there are doubts as to the truth of the facts averred, then the court must not dismiss the Complaint, but instead require an answer and proceed to trial on the merits.[17]

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[10] CA Decision p. 3; *rollo,* p. 106.

[11] Petition, p. 8; *rollo,* p. 74.

[12] Petition, pp. 20-21; *rollo,* pp. 86-87; Complaint-in-Intervention, pp. 2-3, *rollo,* pp. 162-163.

[13] *Rollo,* p. 184.

[14] Petition, p. 9; *rollo,* p. 75.

[15] *Rollo,* pp. 185-188; Petition, p. 10; *rollo,* p. 76.

[16] Petition, p. 12; *rollo,* p. 78.

[17] *Id*.

On a Rule 65 Petition for *Certiorari* alleging grave abuse of discretion, the CA reversed the ruling of RTC Br. 67 and dismissed the Complaint-in-Intervention on the following grounds: (a) VMTA failed to state a cause of action; (b) VMTA has no legal interest in the matter in litigation; and (c) the Complaint-in-Intervention would cause a delay in the trial of the action, make the issues more complicated, prejudice the adjudication of the rights of the parties, stretch the issues, and increase the breadth of the remedies and relief.[18] The relevant portions of the Decision read:

> Section 2, Rule 2 of the Rules of Court defines a cause of action as the act or omission by which a party violates the right of another. Its essential elements are as follows:
>
> 1. A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;
>
> 2. An obligation on the part of the named defendant to respect or not to violate such right; and
>
> 3. Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.
>
> It is, thus, only upon the occurrence of the last element that a cause of action arises, giving the plaintiff the right to maintain an action in court for recovery of damages or other appropriate relief. (*Swagman Hotels and Travel, Inc. v. Court of Appeals*, G.R. No. 161135, April 8, 2005, 455 SCRA 175, 183). If these elements are absent, the complaint is dismissible on the ground of failure to state a cause of action.
>
> What VMTA actually seeks in filing a complaint-in-intervention is the reimbursement of the cost of the restoration and rehabilitation of the burned area of the Virra Mall building. And VMTA believes that such reimbursement must be made from the fire insurance proceeds released to VMGA. Such position cannot be sustained.
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> . . . . . .

[18] Decision, pp. 37-38; *rollo,* pp. 140-141.

Firstly, We find that the complaint-in-intervention fails to state a cause of action against the petitioners. The material averments of the complaint-in-intervention belie any correlative obligation on the part of herein petitioners *vis-à-vis* the legal right of VMTA for reimbursement. The petitioners are not the proper parties against whom the subject action for reimbursement must be directed to. On the contrary, since "x x x plaintiff Ortigas, as owner of the building, has ordered intervenor VMTA to undertake with dispatch the restoration and rehabilitation of the burned area or section of the Virra Mall buiding x x x" (par. 7 of Complaint-in-Intervention), VMTA's recourse would be to file and direct its claim against ORTIGAS who has the obligation to pay for the same. The complaint-in-intervention is not the proper action for VMTA to enforce its right of reimbursement. At any rate, VMTA's rights, if any, can be ventilated and protected in a separate action. The complaint-in-intervention is therefore dismissible for failure to state a cause of action against the petitioners.

Secondly, VMTA has no legal interest in the matter in litigation. It is not privy to the Contract of Lease between ORTIGAS and VMGA. It came into the picture only after the expiration of the said contract.

Finally, Section 1, Rule 19 of the 1997 Rules of Civil Procedure provides:

> Section 1. Who may intervene. A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of the property in the custody of the court or of an offices thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

As a general guide in determining whether a party may intervene, the court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding (Sec. 2(b), Rule 12; *Balane, et al. vs. De Guzman, et al.,* 20 SCRA 177 [1967]).

The complaint below is primarily on the issue of specific performance. The relief being sought by the VMTA in its complaint-in-intervention is the reimbursement of expenses incurred by it for the repair/restoration of the Virra Mall Building. VMTA's cause of action has a standpoint which is unique to itself. New, unrelated, and conflicting issues would be raised which do not concern the petitioners herein, or VMTA as intervenor. Inevitably, the allowance of the intervention will not only cause delay in the trial of the action, make the issues even more complicated, and stretch the issues in the action as well as amplify the breadth of the remedies and relief.

Thereafter, VMTA filed a Motion for Reconsideration, which the CA denied in the assailed Resolution dated 14 May 2008.[19] Hence, the instant Petition raising the following issues:

I.

With due respect, the Honorable Court of Appeals committed grave error in declaring that the complaint in intervention failed to state a cause of action against private respondents when it declared that the complaint in intervention belies any correlative obligation on the part of private respondents *vis-à-vis* the legal right of petitioner for reimbursement.

II.

With due respect, the Honorable Court of Appeals committed grave error in holding that private respondents are not the proper parties against whom the subject action for reimbursement must be directed to but recourse would be for petitioner VMTA to file and direct its claim against OCLP who has the obligation to pay petitioner VMTA since it was OCLP who has (sic) ordered to undertake the restoration and rehabilitation of the burned area or section of the Virra Mall Building.

III.

With due respect, the Honorable Court of Appeals similarly committed grave error when it ruled that the complaint-in-intervention is not the proper action to enforce its right in the controversy between OCLP and private respondents since the proper remedy is for petitioner VMTA to ventilate and protect its right in a separate action.[20]

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[19] *Rollo*, pp. 16-23.

[20] Petition, p. 18; *rollo*, p. 84.

The determination of whether the CA committed reversible error in dismissing the Complaint-in-Intervention filed by VMTA boils down to the sole issue of the propriety of this remedy in enforcing the latter's rights.

According to VMTA, it has a legal interest in Civil Case No. 69312, which is rooted in the alleged failure of VMGA to turn over the insurance proceeds for the restoration and rehabilitation of Virra Mall, in breach of the latter's contractual obligation to Ortigas. However, the CA ruled against this position taken by VMTA not only because, in the CA's view, VMTA's Complaint-in-Intervention failed to state a cause of action, but also because it has no legal interest in the matter in litigation. We rule in favor of VMTA.

Section 1, Rule 19 of the Rules of Court provides:

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

In *Executive Secretary v. Northeast Freight*,[21] this Court explained intervention in this wise:

> Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, ***what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof***. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character

[21] G.R. No. 179516, 17 March 2009, 581 SCRA 736.

so that ***the intervenor will either gain or lose by the direct legal operation of the judgment***. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."[22] (Emphasis supplied.)

Applying the foregoing points to the case at bar, **VMTA may be allowed to intervene**, and the ruling of RTC Br. 67 allowing intervention was wrongly reversed by the CA because such a ruling does not constitute grave abuse of discretion.

VMTA has a cause of action

A cause of action is defined as "the act or omission by which a party violates a right of another."[23] In *Shell Philippines v. Jalos,*[24] this Court expounded on what constitutes a cause of action, to wit:

> A cause of action is the wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff. Its elements consist of: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the defendant in violation of such right. To sustain a motion to dismiss for lack of cause of action, however, the complaint must show that the claim for relief does not exist and not only that the claim was defectively stated or is ambiguous, indefinite or uncertain.[25]

In the case at bar, VMTA, in its Complaint-in-Intervention, explicitly laid down its cause of action as follows:[26]

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[22] *Id*. at 743.

[23] Section 2, Rule 2 of the Rules of Court.

[24] G.R. No. 179918, 8 September 2010, 630 SCRA 399.

[25] *Id*. at 408.

[26] Complaint-in-Intervention, p. 4; *rollo*, p. 164.

Pursuant to and by virtue of such claim, defendant VMGA and defendant VMGA Board Members, impleaded as party defendants herein, received, at various times, from their insurance broker, and it is in their custody, the insurance proceeds arising out of such claim which, as of January 8, 2003, aggregated ₱48.6-Million. ***Having failed to deliver the said proceeds to the real beneficiary inspite of due notice and demand, plaintiff Ortigas herein instituted the present action against all the defendants to compel delivery of the said insurance proceeds which are being unlawfully and illegally withheld by all the defendant VMGA and defendant VMGA Board Members inspite of written demands made therefor.*** Worse, a portion of said insurance proceeds, aggregating ₱8.6-Million had already been disbursed and misappropriated in breach of trust and fiduciary duty. (Emphasis supplied.)

It is clear from the foregoing allegations that VMTA's purported right is rooted in its claim that it is the real beneficiary of the insurance proceeds, on the grounds that it had (a) facilitated the repair and restoration of the insured infrastructure upon the orders of Ortigas, and (b) advanced the costs thereof. Corollarily, respondents have a duty to reimburse it for its expenses since the insurance proceeds had already been issued in favor of respondent VMGA, even if the latter was not rightfully entitled thereto. Finally, the imputed act or omission on the part of respondents that supposedly violated the right of VMTA was respondent VMGA's refusal, despite demand, to release the insurance proceeds it received to reimburse the former for the expenses it had incurred in relation to the restoration and repair of Virra Mall. Clearly, then, VMTA was able to establish its cause of action.

VMTA has a legal interest in the matter in litigation

VMTA was also able to show its legal interest in the matter in litigation — VMGA's insurance proceeds — considering that it had already advanced the substantial amount of ₱18,902,497.75 for the repair and restoration of Virra Mall. That VMTA seeks reimbursement from Ortigas is precisely the reason why intervention is proper. The main issue in Civil Case No. 69312 is whether Ortigas has a contractual right to the insurance proceeds

received by VMGA. Thus, the recoupment by VMTA of the expenses it incurred in the repair of Virra Mall depends on the success of either party in the main case. VMTA therefore has an undeniable stake in Civil Case No. 69312 that would warrant its intervention therein.

Further, the issuance to Ortigas of a Writ of Preliminary Attachment against VMGA puts VMTA in a situation in which it will be adversely affected by a distribution or other disposition of the property in the custody of the court, pursuant to the said writ. The prospect of any distribution or disposition of the attached property will likewise affect VMTA's claim for reimbursement.

VMTA's intervention in Civil Case No. 69312 will avoid a multiplicity of suits

Lastly, allowing VMTA to intervene in Civil Case No. 69312 finds support in *Heirs of Medrano v. De Vera*,[27] to wit:

> The purpose of intervention is to enable a stranger to an action to become a party in order for him to protect his interest and for the court to settle all conflicting claims. Intervention is allowed to avoid multiplicity of suits more than on due process considerations.[28]

Thus, although the CA was correct in stating that VMTA could always file a separate case against Ortigas, allowing VMTA to intervene will facilitate the orderly administration of justice and avoid a multiplicity of suits. We do not see how delay will be inordinately occasioned by the intervention of VMTA, contrary to the fear of the CA.

WHEREFORE, the instant petition is *GRANTED*. The Decision dated 21 May 2007 and Resolution dated 14 May 2008 of the CA are hereby *REVERSED* and *SET ASIDE* insofar as the dismissal of the Complaint-in-Intervention filed by VMTA is concerned. The Complaint-in-Intervention of VMTA in Civil Case No. 69312 is allowed to proceed before RTC Br. 67.

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[27] G.R. No. 165770, 9 August 2010, 627 SCRA 109.

[28] *Id*. at 122.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182946. October 5, 2011]

ALCATEL PHILIPPINES, INC., *petitioner, vs.* **I.M. BONGAR & CO., INC. and STRONGHOLD INSURANCE CO., INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; REASON FOR THE AWARD THEREOF MUST BE STATED IN THE BODY OF THE DECISION; EXCEPTION. — Although attorney's fees are not allowed in the absence of stipulation, the court can award the same when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just, and demandable claim. Still, the award of attorney's fees to the winning party lies within the discretion of the court, taking into account the circumstances of each case. This means that such an award should have factual, legal, and equitable basis, not founded on pure speculation and conjecture. Further, the court should state the reason for the award of attorney's fees in the body of the decision. Its unheralded appearance in the dispositive portion is, as a rule, not allowed. Here, however, although the RTC did not specifically discuss in the body of its decision its basis for awarding attorney's fees, its findings

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[*] Raffle dated 19 September 2011.

of fact clearly support such an award. For instance, the RTC found, based on the record, that Bongar persistently and clearly violated the terms of its contract with Alcatel. It failed to finish the works by October 29, 1991, the stipulated date. It sought on December 1, 1991, more than a month after it was in violation, to finish its job by May 31, 1992, an extra seven months for just a three-month project. Worse, when Alcatel had to take over the job to save its own undertaking to PLDT, Bongar refused to return to Alcatel the uninstalled materials that it provided for the works. Alcatel was forced to litigate to protect its interest.

2. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT AND THE APPELLATE COURT, UPHELD IN THE CASE AT BAR. — With respect, however, to Alcatel's claims for refund of what it overpaid Bongar and for recovery of the costs incurred in procuring needed materials anew, the Court sees no reason to deviate from the findings of the RTC and the CA. Alcatel mainly asserts that, since Bongar failed to specifically deny those claims, it should be deemed to admit them. But, as the CA aptly held, Bongar vehemently disputed and rejected such claims in its answer to the complaint. Notably, Alcatel averred that it paid Bongar ₱7,056,449.31 when the value of its work amounted to only ₱6,555,966.92, showing an excess payment of ₱500,482.41. But, in its Answer, Bongar said that it received only ₱6,505,049.61. Besides, the receipts that Alcatel presented were only for ₱2,409,481.40, ₱1,300,000.00, and ₱2,795,568.71. It adduced no receipts for the amounts of ₱315,790.00 and ₱234,609.70. The same is true of Alcatel's claim for re-procurement costs. It adduced no evidence to substantiate such claim. Indeed, Alcatel expressed the belief that it did not have to prove its two claims since Bongar did not specifically deny them, an unfounded belief.

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Salonga Hernandez & Mendoza for I.M. Bongar & Co., Inc.

D E C I S I O N

ABAD, *J.*:

This case is about a trial court's award of attorney's fees in the dispositive portion of its decision but with no discussion of its entitlement in the body of that decision.

The Facts and the Case

Philippine Long Distance Telephone Company (PLDT) engaged the services of Alcatel Philippines, Inc. (Alcatel) to do the civil works needed for its Fast Track Project in North Parañaque. To carry out these works, on June 20, 1991 Alcatel entered into a ₱12,047,407.00 subcontract with I.M. Bongar and Co., Inc. (Bongar) for the construction of needed manholes and conduits. Alcatel gave Bongar a down payment of 20% of the contract price or ₱2,409,481.40.

Two of the requirements of their agreement were that Bongar was to post 1) a performance bond equivalent to 25% of the total value of the subcontract and 2) an advance payment bond guarantee. Complying with these requirements, on June 27, 1991 Bongar and Stronghold Insurance Co., Inc. (SIC) executed a Surety Bond and a Performance Bond, binding themselves jointly and severally to pay Alcatel ₱2,409,481.40 and ₱3,011,851.75, respectively, in the event of Bongar's failure to perform faithfully and within the agreed time, its obligations under its contract.

The contract with Bongar took effect on July 29, 1991. The parties agreed to have the project completed within 90 days from July 29 or by October 29. In the course of periodic inspection of the progress of the works, however, Alcatel noted that Bongar had fallen behind schedule. Alcatel also received reports of inferior work from the homeowners association in Parañaque. As it turned out, Bongar failed to finish the required works by October 29.

After several meetings between the parties, on December 1, 1991 Bongar wrote Alcatel submitting an adjusted work schedule that set a new completion target by May 31, 1992. On April 20, 1992, however, Bongar altogether stopped further construction

activities, forcing Alcatel to take over the works. In a letter dated June 1, 1992, Alcatel cancelled Bongar's contract, demanded that it vacate and turn over possession of the construction area, and hand over all uninstalled Alcatel-supplied materials within 24 hours from receipt of the letter.

Since Bongar ignored the letter, Alcatel sent it another one dated August 7, 1992, this time with notice to SIC, demanding payment of their liabilities under their bonds. Both Bongar and SIC refused to comply, thus prompting Alcatel to file an action for damages against them before the Makati Regional Trial Court (RTC).

On September 24, 2001 the RTC rendered judgment, ordering Bongar and SIC to pay Alcatel, jointly and severally, the value of the uninstalled materials given to Bongar worth ₱919,471.10 and attorney's fees and costs of ₱500,000.00. But the RTC denied for lack of evidence Alcatel's claims for ₱500,482.41 in overpayment and ₱1,098,208.02 in additional costs spent for completing the subject works. Alcatel appealed to the Court of Appeals (CA).

On August 31, 2007 the CA affirmed the RTC Decision but deleted the award of attorney's fees and costs for the reason that, while these are stated in the dispositive portion, they are not mentioned in the body of the decision. Alcatel seeks the review of the CA decision.

The Issues Presented

The issues in this case are whether or not the CA erred in ruling that Alcatel is not entitled to a) an award of attorney's fees; b) a refund of overpayment; and c) payment of additional costs for completion.

The Rulings of the Court

Although attorney's fees are not allowed in the absence of stipulation, the court can award the same when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest or where the defendant acted in gross and

evident bad faith in refusing to satisfy the plaintiff's plainly valid, just, and demandable claim.[1]

Still, the award of attorney's fees to the winning party lies within the discretion of the court, taking into account the circumstances of each case. This means that such an award should have factual, legal, and equitable basis, not founded on pure speculation and conjecture. Further, the court should state the reason for the award of attorney's fees in the body of the decision. Its unheralded appearance in the dispositive portion is, as a rule, not allowed.[2]

Here, however, although the RTC did not specifically discuss in the body of its decision its basis for awarding attorney's fees, its findings of fact clearly support such an award. For instance, the RTC found, based on the record, that Bongar persistently and clearly violated the terms of its contract with Alcatel. It failed to finish the works by October 29, 1991, the stipulated date. It sought on December 1, 1991, more than a month after it was in violation, to finish its job by May 31, 1992, an extra seven months for just a three-month project. Worse, when Alcatel had to take over the job to save its own undertaking to PLDT, Bongar refused to return to Alcatel the uninstalled materials that it provided for the works.[3] Alcatel was forced to litigate to protect its interest.[4]

With respect, however, to Alcatel's claims for refund of what it overpaid Bongar and for recovery of the costs incurred in

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[1] CIVIL CODE OF THE PHILIPPINES, Article 2208.

[2] *Pagsibigan v. People*, G.R. No. 163868, June 4, 2009, 588 SCRA 249, 258.

[3] Exhibits "R", "S", "T", "U", "V", "V-1", "W", and "W-1", records, Vol. III, pp. 96-113 and 117-118.

[4] CIVIL CODE OF THE PHILIPPINES, Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs cannot be recovered except:

x x x x x x x x x

2. When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.

procuring needed materials anew, the Court sees no reason to deviate from the findings of the RTC and the CA. Alcatel mainly asserts that, since Bongar failed to specifically deny those claims, it should be deemed to admit them. But, as the CA aptly held, Bongar vehemently disputed and rejected such claims in its answer to the complaint.[5]

Notably, Alcatel averred that it paid Bongar ₱7,056,449.31 when the value of its work amounted to only ₱6,555,966.92, showing an excess payment of ₱500,482.41. But, in its Answer, Bongar said that it received only ₱6,505,049.61.[6] Besides, the receipts that Alcatel presented were only for ₱2,409,481.40,[7] ₱1,300,000.00,[8] and ₱2,795,568.71.[9] It adduced no receipts for the amounts of ₱315,790.00 and ₱234,609.70.[10] The same is true of Alcatel's claim for re-procurement costs. It adduced no evidence to substantiate such claim. Indeed, Alcatel expressed the belief that it did not have to prove its two claims since Bongar did not specifically deny them,[11] an unfounded belief.

WHEREFORE, the Court *PARTLY GRANTS* the petition, *SETS ASIDE* the decision of the Court of Appeals in CA-G.R. CV 74652 dated August 31, 2007, and *REINSTATES* the decision of the Regional Trial Court of Makati, Branch 66, in Civil Case 93-2323 dated September 24, 2001.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[5] See paragraphs 21 and 22 of the Answer to the Complaint, records, Vol. I, p. 273.

[6] *Id.* at 270.

[7] Exhibit "N", records, Vol. III, p. 62.

[8] Exhibit "O", *id.* at 63.

[9] Exhibits "P" to "P-29", *id.* at 64-93.

[10] TSN, April 20, 1998, pp. 52-53.

[11] *Rollo,* p. 25.

FIRST DIVISION

[G.R. No. 184757. October 5, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANICETO BULAGAO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RECANTATION; UNRELIABLE AND LOOKED UPON WITH DISFAVOR BY THE COURTS; DISCUSSED. — We have recently held that "[c]ourts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary considerations. Hence, a retraction does not necessarily negate an earlier declaration. They are generally unreliable and looked upon with considerable disfavor by the courts. Moreover, it would be a dangerous rule to reject the testimony taken before a court of justice, simply because the witness who has given it later on changes his mind for one reason or another." We have, in the past, also declared that the recantation, even of a lone eyewitness, does not necessarily render the prosecution's evidence inconclusive. In the often-cited *Molina v. People*, we specified how a recanted testimony should be examined: Mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. **The rule is settled that in cases where previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence.** A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, **both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons or motives for the change, discriminatingly analyzed. x x x.** These rules find applicability even in rape cases, where the complainant is usually the lone eyewitness.

2. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; EXEMPTING CIRCUMSTANCES; INSANITY; WHEN MAY BE CONSIDERED. — Accused-appellant, in his appeal, did not insist on the allegation in the trial court that he was suffering from mental retardation. Nevertheless, we agree with the finding of the trial court that there was no proof that the mental condition accused-appellant allegedly exhibited when he was examined by Yolanda Palma was already present at the time of the rape incidents. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. Besides, this Court observes that neither the acts of the accused-appellant proven before the court, nor his answers in his testimony, show a complete deprivation of intelligence or free will. Insanity presupposes that the accused was completely deprived of reason or discernment and freedom of will at the time of the commission of the crime. Only when there is a complete deprivation of intelligence at the time of the commission of the crime should the exempting circumstance of insanity be considered.

3. ID.; CRIMES AGAINST PERSONS; QUALIFIED RAPE; PENALTY. — Under Article 266-B of the Revised Penal Code, the crime of rape under paragraph 1 of Article 266-A when committed with the use of a deadly weapon is punishable by *reclusion perpetua* to death. This crime was proven as charged in Crim. Case No. 198-M-2001, which was alleged to have occurred on June 17, 2000. Since no other qualifying or aggravating circumstance was alleged in the Information, the proper penalty is *reclusion perpetua.*

4. ID.; ID.; SIMPLE RAPE; PENALTY. — [W]hile AAA had testified that the accused-appellant used a knife on June 17, 2000, she said that she hid said knife before June 29, 2000, the date of Crim. Case No. 197-M-2001. As such, the crime that was proven in Crim. Case No. 197-M-2001 is simple rape not qualified by any circumstance affecting criminal liability. However, simple rape is also punishable by *reclusion perpetua* under Article 266-B.

5. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES, AWARDED IN THE CASE AT BAR. — In both cases, since the death penalty would not have been imposed even without the enactment

of Republic Act No. 9346, this Court affirms the award of civil indemnity in the amount of ₱50,000.00, as well as moral damages in the amount of ₱50,000.00, both for each count of rape. In addition, we have held that since exemplary damages are corrective in nature, the same can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. This Court believes that the conduct of accused-appellant herein, who raped his minor adoptive sister twice, falls under this category and is therefore liable for exemplary damages in the amount of ₱30,000.00 for each count of rape, in line with existing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 01955 dated April 14, 2008 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Malolos, Bulacan in Crim. Case No. 197-M-2001 and Crim. Case No. 198-M-2001 dated January 23, 2006.

Accused-appellant Aniceto Bulagao was charged with two counts of rape in separate Informations both dated December 21, 2000. The Informations read as follows:

CRIMINAL CASE NO. 197-M-2001

That on or about the 29th day of June, 2000, in the municipality of Bocaue, Province of Bulacan, Philippines, and within the jurisdiction

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[1] *Rollo*, pp. 2-20; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid, concurring.

[2] CA *rollo*, pp. 44-54.

of this Honorable Court, the above-named accused, armed with a knife, with force and intimidation, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of [AAA],[3] 14 years old, against the latter's will and consent.[4]

CRIMINAL CASE NO. 198-M-2001

That on or about the 17th day of June, 2000, in the municipality of Bocaue, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with force and intimidation, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of [AAA], 14 years old, against the latter's will and consent.[5]

Upon arraignment on February 26, 2001, accused-appellant pleaded not guilty on both counts. Thereafter, trial on the merits ensued.

Only private complainant AAA took the witness stand for the prosecution. AAA was born on April 13, 1986. According to her late-registered birth certificate, her parents are BBB (mother) and CCC (father). AAA, however, testified that BBB and CCC are not her biological parents, as she was only adopted when she was very young.[6] CCC died in December 1999.[7]

In April 2000, AAA arrived from the province and settled in the house of her brother DDD (son of BBB and CCC) and his wife in Lolomboy, Bocaue, Bulacan. With AAA in the house were two other brothers, EEE and accused-appellant Aniceto Bulagao, and her younger sister, then six-year-old FFF (who were also the children of BBB and CCC).[8]

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[3] The real names of the victim and her family, with the exception of accused-appellant, are withheld per Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Records, Volume 1, p. 1.

[5] *Id.*, Volume 2, p. 1.

[6] TSN, August 7, 2001, p. 3.

[7] TSN, May 8, 2001, p. 5.

[8] *Id.* at 6-7.

On June 17, 2000, at around 8:00 p.m., AAA and FFF were sleeping in a room which had no door. AAA was suddenly awakened when she felt somebody enter the room. She recognized the accused-appellant as the intruder, and saw that he was holding a knife. Accused-appellant poked the knife at AAA's neck, causing her to freeze in fear. Accused-appellant removed AAA's clothes, and then his own. Both AAA and accused-appellant were wearing t-shirt and shorts before the undressing. Accused-appellant kissed her neck and inserted his penis into her vagina. FFF woke up at this moment, but accused-appellant did not stop and continued raping AAA for one hour.[9]

On June 29, 2000, AAA was residing in the house of her sister, also located in Lolomboy, Bocaue, Bulacan. At around 11:00 p.m. on that day, AAA was sleeping in the second floor of the house, where there are no rooms. AAA was roused from her sleep when accused-appellant was already undressing her. Accused-appellant removed his shorts and inserted his penis into her vagina. AAA tried to resist, but accused-appellant held her hands. Accused-appellant then touched her breasts and kissed her. Accused-appellant remained on top of her for half an hour.[10]

AAA told her mother, BBB, and her brother, EEE, about the rape incidents. Upon learning of the same, BBB did not believe AAA and whipped her.[11]

During cross-examination, the defense, in trying to establish the character and chastity of AAA, asked AAA about an alleged sexual intercourse between her and the now deceased CCC. AAA affirmed her statement in her affidavit that CCC took advantage (*pinagsamantalahan*) of her when he was still alive. This allegedly happened five times, the first of which was when she was only seven years old.[12] Answering a query from the

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[9] *Id.* at 7-11; TSN, June 15, 2001, pp. 2-3.

[10] TSN, June 15, 2001, pp. 3-9.

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

[12] TSN, August 7, 2001, pp. 3-7.

court, AAA testified that she was currently in the custody of the Department of Social Welfare and Development (DSWD).[13]

The prosecution was supposed to present medico-legal officer Dr. Ivan Richard Viray as its second witness. However, the latter's testimony was dispensed with upon the stipulation of the parties on the fact of examination of AAA by Dr. Viray on September 5, 2000, and the contents of the examination report,[14] which includes the finding that AAA was in a "non-virgin state."

When it was time for the defense to present their evidence more than a year later, it also presented as its witness AAA, who recanted her testimony for the prosecution. This time, she testified that the sexual encounters between her and the accused-appellant were consensual. She fabricated the charge of rape against the accused-appellant because she was supposedly angry with him. She also claimed that she was instructed by the police officer who investigated the incident to say that the accused-appellant used a knife. She also testified that she was raped by her father CCC when she was seven years old. She was recanting her previous testimony because she purportedly was no longer angry with accused-appellant.[15]

On cross-examination, AAA clarified that she fabricated the charge of rape because she was angry with the accused-appellant for making her do laundry work for him. However, when asked if she "consented and voluntarily submitted" herself to the accused-appellant when she had sexual intercourse with him, she answered in the negative. She had been released from the custody of the DSWD and was alone by herself for some time, but she now lives with the family of accused-appellant. [16]

On redirect examination, AAA testified that accused-appellant did not force himself upon her. She affirmed that accused-

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[13] TSN, October 15, 2001, p. 5.

[14] TSN, January 29, 2002, p. 6.

[15] TSN, March 5, 2003, pp. 3-5.

[16] *Id.* at 5-8.

appellant had a little defect in his mind. On re-cross examination, AAA testified that accused-appellant was not her sweetheart.[17]

Another witness for the defense was Yolanda Palma, a clinical psychologist. She conducted a mental examination on accused-appellant on September 12, 2002, and found that accused-appellant was suffering from mental retardation as he had an IQ of below 50.[18]

Accused-appellant, who was 40 years old when he testified on June 15, 2005, claimed that AAA seduced him by removing her clothes. He asserted that they ended up merely kissing each other and did not have sexual intercourse. He denied pointing a knife at AAA. AAA accused him of rape because she was asking for ₱300 from him after they kissed. Accused-appellant also testified that there was no legal proceeding for the adoption of AAA ("*ampun-ampunan lang*").[19]

On January 23, 2006, the RTC rendered its joint Decision in Crim. Case No. 197-M-2001 and 198-M-2001, decreeing as follows:

> WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime as charged, and hereby sentences him to suffer:
>
> (a) In Crim. Case No. 197-M-01, the penalty of DEATH. The accused is likewise directed to indemnify the private complainant in the amount of ₱50,000.00;
>
> (b) In Crim. Case No. 198-M-01, the penalty of DEATH. The accused is likewise directed to indemnify the private complainant in the amount of ₱50,000.00.[20]

The RTC observed that AAA was in the custody of the DSWD when she testified for the prosecution, and was returned to the

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[17] *Id.* at 9-10.

[18] TSN, April 26, 2004, pp. 2-4.

[19] TSN, June 15, 2005, p. 5.

[20] CA *rollo*, pp. 16-17.

family of the accused-appellant after her original testimony. It was during the time when she was back in the custody of the accused-appellant's family that she recanted her testimony for the prosecution. According to the RTC, it is clear that she had no other place to go to as she was completely orphaned and was dependent on the family of the accused, and it was understandable that she may have recanted in order to remain in the good graces of the accused-appellant's family.[21]

As regards the defense of accused-appellant that he was suffering from mental retardation, the RTC noted that the psychological examination of accused-appellant was conducted more than a couple of years after the dates of the complained of incidents. There was no showing from the findings of the psychologist that accused-appellant had the same mental or psychological condition at the time of the said incidents. Even assuming that accused-appellant was of such mental state at the time of the incidents, the psychologist testified that accused-appellant had the capacity to discern right from wrong.[22]

On April 14, 2008, the Court of Appeals rendered its Decision affirming that of the RTC, except with a modification on the penalty in view of the enactment of Republic Act No. 9346 prohibiting the imposition of death penalty. The dispositive portion of the Decision reads:

> WHEREFORE, the instant appeal is DISMISSED. The decision of the Regional Trial Court of Malolos, Bulacan, Branch 13, dated 23 January 2006, is AFFIRMED with MODIFICATION on the penalty imposed and damages awarded. Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, in each of the two (2) counts of rape. He is further directed to pay private complainant the sum of ₱50,000.00 as moral damages, for each count of rape, in addition to the civil indemnity awarded by the court *a quo*.[23]

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[21] *Id.*

[22] *Id.*

[23] *Rollo*, p. 19.

Hence, accused-appellant interposed the present appeal. Both parties manifested that they are waiving their rights to file a supplemental brief, as the same would only contain a reiteration of the arguments presented in their appellant's and appellee's briefs.[24]

In seeking to overturn his conviction, accused-appellant asserted that the prosecution evidence was insufficient, particularly in view of AAA's withdrawal of her original testimony.

We have recently held that "[c]ourts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary considerations. Hence, a retraction does not necessarily negate an earlier declaration. They are generally unreliable and looked upon with considerable disfavor by the courts. Moreover, it would be a dangerous rule to reject the testimony taken before a court of justice, simply because the witness who has given it later on changes his mind for one reason or another."[25] We have, in the past, also declared that the recantation, even of a lone eyewitness, does not necessarily render the prosecution's evidence inconclusive.[26] In the often-cited *Molina v. People*,[27] we specified how a recanted testimony should be examined:

> Mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. **The rule is settled that in cases where previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence.** A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, **both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made,**

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[24] *Id.* at 27-29, 38-40.

[25] *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 607-608.

[26] *Baldeo v. People*, 466 Phil. 845-857 (2004).

[27] 328 Phil. 445 (1996).

carefully and keenly scrutinized, and the reasons or motives for the change, discriminatingly analyzed. x x x.[28] (Emphases supplied.)

These rules find applicability even in rape cases, where the complainant is usually the lone eyewitness. Thus, in *People v. Sumingwa*,[29] where the rape victim later disavowed her testimony that she was raped by her father, this Court held:

> In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. When a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.
>
> A retraction is looked upon with considerable disfavor by the courts. It is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[30]

In the case at bar, the determination by the trial court of the credibility of AAA's accusation and recantation is facilitated by the fact that her recantation was made in open court, by testifying for the defense. Unlike in cases where recantations were made in affidavits, the trial court in this case had the opportunity to see the demeanor of AAA not only when she narrated the sordid details of the alleged rape by her "adoptive" brother, but also when she claimed that she made up her previous rape charges out of anger. As such, it is difficult to overlook

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[28] *Id.* at 468.

[29] G.R. No. 183619, October 13, 2009, 603 SCRA 638.

[30] *Id.* at 649-650.

the fact that the trial court convicted accused-appellant even after examining the young witness as she made a complete turnaround and admitted to perjury. The legal adage that the trial court is in the best position to assess the credibility of witnesses thus finds an entirely new significance in this case where AAA was subjected to grueling cross examinations, redirect examinations, and re-cross examinations both as a prosecution and defense witness. Still, the trial court found that the private complainant's testimony for the prosecution was the one that was worthy of belief.

However, even if we disregard the elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, it is clear to this Court which of the narrations of AAA was sincere and which was concocted. AAA's testimony for the prosecution, which was taken when she was in the custody of the DSWD, was clear, candid, and bereft of material discrepancies. All accused-appellant can harp on in his appellant's brief was AAA's failure to recall the length of the knife used in the assaults, a minor and insignificant detail not material to the elements of the crime of rape. She remained steadfast on cross-examination even as defense counsel tried to discredit her by bringing up her dark past of being sexually molested by the accused-appellant's father when she was seven years old. This is in stark contrast to her testimony for the defense, where AAA, now living with accused-appellant's family, claimed that she fabricated a revolting tale of rape simply because accused-appellant made her do laundry. AAA's recantation even contradicts the testimony of accused-appellant himself. While AAA claims in her retraction that she had consensual sex with her brother, accused-appellant testified that they merely kissed and that AAA's purported motive for the rape charges was monetary.

As furthermore observed by both the trial court and the Court of Appeals, the cross-examination of AAA as a defense witness revealed that it was taken at a time when AAA had nowhere to go and was forced to stay with the family of accused-appellant and upon a reliance on the family's implied commitment to send accused-appellant to Mindanao:

PROS. JOSON:

Q: Where are you staying at present?
A: In our house, sir.

Q: And your house where you were staying is the house of the parents of the accused?
A: Yes, sir.

Q: And you don't have any relatives where you can go and stay except from that house?
A: None, sir.

Q: Where [are] your parents?
A: I do not know, sir.

Q: Are they all dead or still alive?
A: They are deceased, sir.

Q: All?
A: Both are deceased, sir.

Q: Do you mean to say that do you have full blood brother and sister?
A: They all separated, sir.

Q: Do you know where they were living?
A: No, sir.

Q: From the time you were released from the DSWD you are alone by yourself?
A: Yes, sir.

Q: And the person[s] who are now taking care of you are giving you shelter and everyday foods [sic] from the family of the accused, is that correct?
A: Yes, sir.

x x x x x x x x x

Q: Ms. Witness, if ever the case of Aniceto will be dismissed because you testify today[, would] you admit for a fact that he [was] also staying in the house where you are staying now?
A: No, sir.

Q: Where will he stay?
A: In Mindanao, sir.

Q: Because that was one of the promise or commitment of the family of the accused, is it not?
A: No, sir.

Q: And how did you know he will stay in Mindanao?
A: Because my other *Kuya* will not allow him to stay in the house, sir.

Q: Because your other *Kuya* does not like Aniceto Bulagao to do the things that you have complaint [sic] against him, is it not?
A: Yes, sir.

Q: And what you are "*isinusumbong*" is the case today against him, is it not?
A: Yes, sir.[31]

Accused-appellant, in his appeal, did not insist on the allegation in the trial court that he was suffering from mental retardation. Nevertheless, we agree with the finding of the trial court that there was no proof that the mental condition accused-appellant allegedly exhibited when he was examined by Yolanda Palma was already present at the time of the rape incidents. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence.[32] Besides, this Court observes that neither the acts of the accused-appellant proven before the court, nor his answers in his testimony, show a complete deprivation of intelligence or free will. Insanity presupposes that the accused was completely deprived of reason or discernment and freedom of will at the time of the commission of the crime.[33] Only when there is a complete deprivation of intelligence at the time of the commission of the crime should the exempting circumstance of insanity be considered.[34]

As previously stated, the RTC imposed upon accused-appellant the penalty of death for each count of rape. The Court of Appeals

[31] TSN, March 5, 2003, pp. 5-8.

[32] *People v. Tibon*, G.R. No. 188320, June 29, 2010, 622 SCRA 510, 519.

[33] *People v. Danao*, G.R. No. 96832, November 19, 1992, 215 SCRA 795, 801.

[34] *People v. Condino*, 421 Phil. 213, 221 (2001).

modified the penalty to *reclusion perpetua* in view of the enactment of Republic Act No. 9346. It should be noted at this point that while Republic Act No. 9346 prohibits the imposition of death penalty, the presence of a qualifying circumstance which would have warranted the imposition of the death penalty would still cause the award of moral damages and civil indemnity to be increased each from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00) under prevailing jurisprudence.[35]

In the case at bar, both Informations charge a crime of rape qualified by the use of a deadly weapon. Under Article 266-B of the Revised Penal Code, the crime of rape under paragraph 1 of Article 266-A when committed with the use of a deadly weapon is punishable by *reclusion perpetua* to death. This crime was proven as charged in Crim. Case No. 198-M-2001, which was alleged to have occurred on June 17, 2000. Since no other qualifying or aggravating circumstance was alleged in the Information, the proper penalty is *reclusion perpetua.*

On the other hand, while AAA had testified that the accused-appellant used a knife on June 17, 2000, she said that she hid said knife before June 29, 2000, the date of Crim. Case No. 197-M-2001.[36] As such, the crime that was proven in Crim. Case No. 197-M-2001 is simple rape not qualified by any circumstance affecting criminal liability. However, simple rape is also punishable by *reclusion perpetua* under Article 266-B.

In both cases, since the death penalty would not have been imposed even without the enactment of Republic Act No. 9346, this Court affirms the award of civil indemnity in the amount of ₱50,000.00, as well as moral damages in the amount of ₱50,000.00, both for each count of rape.[37] In addition, we have held that since exemplary damages are corrective in nature, the

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[35] *People v. Manulit*, G.R. No. 192581, November 17, 2010, 635 SCRA 426, 439.

[36] TSN, June 15, 2001, p. 16.

[37] *People v. Manulit*, *supra* note 35.

same can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.[38] This Court believes that the conduct of accused-appellant herein, who raped his minor adoptive sister twice, falls under this category and is therefore liable for exemplary damages in the amount of ₱30,000.00 for each count of rape, in line with existing jurisprudence.[39]

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01955 dated April 14, 2008 finding accused-appellant Aniceto Bulagao guilty beyond reasonable doubt of two (2) counts of rape and sentencing him to suffer the penalty of *reclusion perpetua*, without eligibility for parole, for each count of rape is hereby *AFFIRMED* with the following *MODIFICATIONS*:

1) Accused-appellant Aniceto Bulagao is hereby ordered to pay AAA the amount of ₱30,000.00 as exemplary damages for each count of rape, in addition to the amounts awarded by the Court of Appeals, namely: civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00, both for each count of rape; and

2) All damages awarded in this case should 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), Bersamin, del Castillo, and *Villarama, Jr., JJ.,* concur.

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[38] *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807, 820.

[39] *Id.* at 821.

EN BANC

[A.C. No. 6655. October 11, 2011]

PACITA CAALIM-VERZONILLA, *complainant, vs.* **ATTY. VICTORIANO G. PASCUA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 1.02 CANON 1, THEREOF, VIOLATED IN THE CASE AT BAR. — With his admission that he drafted and notarized another instrument that did not state the true consideration of the sale so as to reduce the capital gains and other taxes due on the transaction, respondent cannot escape liability for making an untruthful statement in a public document for an unlawful purpose. As the second deed indicated an amount much lower than the actual price paid for the property sold, respondent abetted in depriving the Government of the right to collect the correct taxes due. His act clearly violated Rule 1.02, Canon 1 of the Code of Professional Responsibility which reads: CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES. x x x Rule 1.02. — A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system. Not only did respondent assist the contracting parties in an activity aimed at defiance of the law, he likewise displayed lack of respect for and made a mockery of the solemnity of the oath in an Acknowledgment. By notarizing such illegal and fraudulent document, he is entitling it full faith and credit upon its face, which it obviously does not deserve considering its nature and purpose.

2. ID.; ID.; NOTARIES PUBLIC; IMPORTANCE AND SACROSANCTITY OF NOTARIAL ACT; ELUCIDATED. — In *Gonzales v. Ramos*, we elucidated on how important and sacrosanct the notarial act is: By affixing his notarial seal on the instrument, the respondent converted the Deed of Absolute Sale, from a private document into a public document. Such act is no empty gesture. The principal function of a notary public is to authenticate documents. When a notary public

certifies to the due execution and delivery of a document under his hand and seal, he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgement executed before a notary public and appended to a private instrument. Hence, a notary public must discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity.

3. ID.; ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE; VIOLATED IN THE CASE AT BAR. — [W]hile respondent's duty as a notary public is principally to ascertain the identity of the affiant and the voluntariness of the declaration, it is nevertheless incumbent upon him to guard against any illegal or immoral arrangement or at least refrain from being a party to its consummation. Rule IV, Section 4 of the 2004 Rules on Notarial Practice in fact proscribes notaries public from performing any notarial act for transactions similar to the herein document of sale, to wit: SEC. 4. *Refusal to Notarize*. — A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if: (a) the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral; x x x In this case, respondent proceeded to notarize the second deed despite knowledge of its illegal purpose. His purported desire to accommodate the request of his client will not absolve respondent who, as a member of the legal profession, should have stood his ground and not yielded to the importunings of his clients. Respondent should have been more prudent and remained steadfast in his solemn oath not to commit falsehood nor consent to the doing of any. As a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the integrity of the legal profession. Respondent also failed to comply with Section 2, Rule VI of the 2004 Rules on Notarial Practice when he gave the second document the same document number, page

number and book number as the first: SEC. 2. *Entries in the Notarial Register*. — x x x (e) The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries. x x x Respondent admitted having given the second deed the same document number, page number and book number as in the first deed, reasoning that the second deed was intended to supplant and cancel the first deed. He therefore knowingly violated the above rule, in furtherance of his client's intention of concealing the actual purchase price so as to avoid paying the taxes rightly due to the Government.

4. ID.; ID.; DISBARMENT OR SUSPENSION OF ATTORNEYS; A LAWYER MAY BE SUSPENDED OR DISBARRED FOR ANY MISCONDUCT SHOWING ANY FAULT OR DEFICIENCY IN HIS MORAL CHARACTER, HONESTY, PROBITY OR GOOD DEMEANOR. — A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor. Section 27, Rule 138 of the Revised Rules of Court provides: SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds herefore*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for **any deceit**, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, of for **any violation of the oath** which he is required to take before admission to practice, or for a willful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

5. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE RULES ON NOTARIAL PRACTICE AND VIOLATION OF LAWYER'S OATH, A CASE OF; PENALTY. — In the instant case, we hold that respondent should similarly be meted the penalty of suspension and revocation of his notarial commission for having violated the 2004 Rules on Notarial Practice. In line with current jurisprudence, and as recommended

by the IBP Board of Governors, the revocation of his notarial commission and disqualification from re-appointment as notary public for two years is in order. With respect, however, to his suspension from the practice of law, we hold that the one-year suspension imposed in *Gonzales* and the other cases is not applicable considering that respondent not only failed to faithfully comply with the rules on notarial practice, he also violated his oath when he prepared and notarized the second deed for the purpose of avoiding the payment of correct amount of taxes, thus abetting an activity aimed at defiance of the law. Under these circumstances, we find the two-year suspension recommended by the IBP Board of Governors as proper and commensurate to the infraction committed by respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court is the verified affidavit-complaint[1] of Pacita Caalim-Verzonilla seeking the disbarment of respondent Atty. Victoriano G. Pascua for allegedly falsifying a public document and evading the payment of correct taxes through the use of falsified documents.

Complainant alleges that on September 15, 2001, respondent prepared and notarized two Deeds of Extra-Judicial Settlement of the Estate of Deceased Lope Caalim with Sale. The first deed[2] was for a consideration of ₱250,000 and appears to have been executed and signed by Lope's surviving spouse, Caridad Tabarrejos, and her children (complainant, Virginia Caalim-Inong and Marivinia Caalim) in favor of spouses Madki and Shirley Mipanga. The second deed[3] was for a consideration of ₱1,000,000 and appears to have been executed by and for the benefit of the same parties as the first deed. The two deeds

[1] *Rollo,* pp. 4-7.

[2] *Id.* at 8.

[3] *Id.* at 10.

have identical registration numbers, page numbers and book numbers in the notarial portion.

Complainant avers that both deeds are spurious because all the heirs' signatures were falsified. She contends that her sister Marivinia does not know how to sign her name and was confined at the Cagayan Valley Medical Center, Tuguegarao City, at the time the deeds were allegedly signed by her, as shown by a certification[4] from said hospital. The certification, dated February 6, 2004 and signed by Dr. Alice Anghad, Medical Officer IV, attested that Marivinia has been confined at the Psychiatry Ward of the Cagayan Valley Medical Center since May 3, 1999 after being diagnosed of "Substance Induced Psychosis" and "Schizophrenia, Undifferentiated Type."

Complainant further alleges that the two deeds were not presented to any of them and they came to know of their existence only recently. She further claims that the Community Tax Certificates[5] (CTCs) in her name and in the names of her mother and her sister Marivinia were procured only by the vendee Shirley and not by them. Complainant submits the affidavit[6] executed by Edwin Gawayon, Barangay Treasurer of C-8, Claveria, Cagayan, on August 3, 2002, attesting that the CTCs were procured at the instance of Shirley and were paid without the complainant and her co-heirs personally appearing before him. Gawayon stated that the signatures and thumbmarks appearing on the CTCs are not genuine and authentic because it can be seen with the naked eyes that the signatures are similar in all three CTCs.

Lastly, complainant alleges that the two deeds were used by respondent and Shirley to annul a previously simulated deed of sale[7] dated June 20, 1979 purportedly executed by Lope in favor of the spouses Madki and Shirley Mipanga. Said deed was likewise

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[4] *Id.* at 20.

[5] *Id.* at 11.

[6] *Id.* at 23.

[7] *Id.* at 44.

a complete nullity because at that time Shirley Mipanga was only sixteen years old and still single.

In his comment,[8] respondent admits having prepared and notarized the two disputed Deeds of Extra-Judicial Settlement of the Estate with Sale (subject deeds), but denies any irregularity in their execution. He claims that the preparation and notarization of the subject deeds were made under the following circumstances:

In the morning of September 15, 2001, complainant, Caridad, Virginia and Shirley Mipanga went to his house and requested him to prepare a deed of sale of a residential lot located in Claveria, Cagayan. He was informed by the parties that the agreed purchase price is ₱1,000,000 and was presented the certificate of title to the property. Upon finding that the registered owner is "Lope Caalim, married to Caridad Tabarrejos" and knowing that Lope already died sometime in the 1980s, he asked for, and was given, the names and personal circumstances of Lope's surviving children. He asked where Marivinia was, but Caridad told him that Marivinia remained home as she was not feeling well. As Caridad assured him that they will fetch Marivinia after the deed of conveyance is prepared, he proceeded to ask the parties to present their CTCs. Caridad and Pacita, however, told him that they have not secured their CTCs while Virginia forgot to bring hers. So he instructed them to get CTCs from Claveria.

An hour later, Caridad and Shirley came back with the CTCs of Caridad, Virginia, complainant and Marivinia. After he finished typing the deed and the details of the CTCs, Caridad said that she will bring the deed with her to Claveria for her daughters to sign. He then told them that it was necessary for him to meet them all in one place for them to acknowledge the deed before him as notary public. It was agreed upon that they will all meet at the house of the Mipangas between 11:00 a.m. and 12:00 noon on that same day.

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[8] *Id.* at 113-130.

Respondent arrived at the Mipanga residence shortly before 12:00 noon. There he saw Shirley, Caridad, complainant, Pacita and Marivinia with two other persons whom he later learned were the instrumental witnesses to the execution of the document. Upon being informed that the parties have already affixed their signatures on the deed, he examined the document then inquired from the heirs if the signatures appearing therein were theirs and if they were truly selling the property for ₱1,000,000. The heirs answered in the affirmative, thereby ratifying and acknowledging the instrument and its contents as their own free and voluntary act and deed. Thus, he notarized the document and then gave the original and two carbon copies to Shirley while leaving two in his possession.

Respondent adds that Shirley thereafter asked him what steps were needed to effect registration of the deed and transfer of the title in her and her husband's name. He replied that all the unpaid land taxes should be paid including the capital gains tax, documentary stamp taxes and estate tax to the Bureau of Internal Revenue (BIR) which will then issue the necessary clearance for registration. When asked how much taxes are payable, he replied that it depends on the assessment of the BIR examiner which will be based on the zonal value or selling price stated in the deed of sale. He added that the estate taxes due, with interests and surcharges, would also have to be paid. Since the consideration for the sale is ₱1,000,000, the taxes payable was quite enormous. Shirley asked him who between the vendor and the vendee should pay the taxes, and he replied that under the law, it is the obligation of the vendors to pay said taxes but it still depends upon the agreement of the parties. He asked if there was already an agreement on the matter, but the parties replied in the negative.

Shirley then told the vendors that they should shoulder the payment of taxes. Caridad and her co-vendors, however, refused and said that a big portion of the ₱1,000,000 paid to them was already used by them to pay and settle their other obligations. Shirley then offered to pay one-half of whatever amount the BIR will assess, but Caridad insisted that another document be prepared stating a reduced selling price of only ₱250,000 so

that they need not contribute to the payment of taxes since Shirley was anyway already willing to pay one-half of the taxes based on the selling price stated in the first deed. This resulted in a heated discussion between the parties, which was, however, later resolved by an agreement to execute a second deed. The prospect of preparing an additional deed, however, irritated respondent as it meant additional work for him. Thus, respondent went home.

Later, the parties visited respondent at his house and pleaded with him to prepare the second deed with the reduced selling price. Moved by his humane and compassionate disposition, respondent gave in to the parties' plea.

In the presence of all the heirs, the vendees and the instrumental witnesses, respondent prepared and notarized the second deed providing for the lower consideration of only ₱250,000. He used the same document number, page number and book number in the notarial portion as the first deed because according to him, the second deed was intended by the parties to supplant the first.

Respondent denies complainant's assertions that the two deeds are simulated and falsified, averring that as stated above, all the parties acknowledged the same before him. Likewise, he and his clients, the spouses Madki and Shirley Mipanga, presented the subject deeds as exhibits in Civil Case No. 2761-S also pending before the Regional Trial Court (RTC), Branch 12, of Sanchez Mira, Cagayan.

As to the allegation that Marivinia did not appear before him as she was allegedly under confinement at the Cagayan Valley Medical Center on September 15, 2001, respondent cites a medical certificate[9] stating that Marivinia was confined in said hospital from May 3, 1999 to August 10, 1999. He also points out that Marivinia is one of the plaintiffs in Civil Case No. 2836-S pending before the RTC, Branch 12, Sanchez Mira, Cagayan, for the annulment of the subject deeds, and nothing in the complaint states that she is mentally or physically incapacitated. Otherwise, her co-plaintiffs would have asked the appointment of a guardian for her.

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[9] *Id.* at 131.

By Resolution[10] dated August 10, 2005, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In a Report and Recommendation[11] dated May 3, 2007, Commissioner Jose Roderick F. Fernando found respondent administratively liable on account of his indispensable participation in an act designed to defraud the government. He recommended that respondent be suspended from the practice of law for three months and that his notarial commission, if still existing, be revoked and that respondent be prohibited from being commissioned as a notary public for two years.

According to Commissioner Fernando, respondent did not offer any tenable defense to justify his actions. As a notary, it was his responsibility to ensure that the solemnities of the act of notarization were followed. As a lawyer, it was likewise incumbent upon him that the document he drafted and subsequently notarized was neither unlawful nor fraudulent. Commissioner Fernando ruled that respondent failed on both counts since he drafted a document that reflected an untruthful consideration that served to reduce unlawfully the tax due to the government. Then he completed the act by likewise notarizing and thus converting the document into a public document.

On June 26, 2007, the IBP Board of Governors adopted and approved Commissioner Fernando's report and recommendation but imposed a higher penalty on respondent. Its Resolution No. XVII-2007-285 reads:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Notarial Law and for his participation to a transaction that effectively defrauded the government, Atty. Victoriano G. Pascua is hereby **SUSPENDED**

[10] *Id.* at 133.

[11] *Id.* at 158-169.

from the practice of law for two (2) years and **SUSPENSION** of his Notarial Commission for two (2) years with ***Warning*** that a similar violation in the future will be dealt with severely.[12]

The above resolution is well taken.

By respondent's own account of the circumstances surrounding the execution and notarization of the subject deeds of sale, there is a clear basis for disciplining him as a member of the bar and as notary public.

Respondent did not deny preparing and notarizing the subject deeds. He avers that the true consideration for the transaction is ₱1,000,000 as allegedly agreed upon by the parties when they appeared before him for the preparation of the first document as well as the notarization thereof. He then claimed to have been "moved by his humane and compassionate disposition" when he acceded to the parties' plea that he prepare and notarize the second deed with a lower consideration of ₱250,000 in order to reduce the corresponding tax liability. However, as noted by Commissioner Fernando, the two deeds were used by respondent and his client as evidence in a judicial proceeding (Civil Case No. 2671-S), which only meant that both documents still subsist and hence contrary to respondent's contention that the second deed reflecting a lower consideration was intended to supersede the first deed.

As to the charge of falsification, the Court finds that the documents annexed to the present complaint are insufficient for us to conclude that the subject deeds were indeed falsified and absolutely simulated. We have previously ruled that a deed of sale that allegedly states a price lower than the true consideration is nonetheless binding between the parties and their successors in interest.[13] Complainant, however, firmly maintains that she and her co-heirs had no participation whatsoever in the execution of the subject deeds. In any event, the issues of forgery, simulation and fraud raised by the complainant in this proceeding apparently

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[12] *Id.* at 157.

[13] *Heirs of the Late Spouses Aurelio and Esperanza Balite v. Lim,* G.R. No. 152168, December 10, 2004, 446 SCRA 56, 58.

are still to be resolved in the pending suit filed by the complainant and her co-heirs for annulment of the said documents (Civil Case No. 2836-S).

With his admission that he drafted and notarized another instrument that did not state the true consideration of the sale so as to reduce the capital gains and other taxes due on the transaction, respondent cannot escape liability for making an untruthful statement in a public document for an unlawful purpose. As the second deed indicated an amount much lower than the actual price paid for the property sold, respondent abetted in depriving the Government of the right to collect the correct taxes due. His act clearly violated Rule 1.02, Canon 1 of the Code of Professional Responsibility which reads:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

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Rule 1.02. – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Not only did respondent assist the contracting parties in an activity aimed at defiance of the law, he likewise displayed lack of respect for and made a mockery of the solemnity of the oath in an Acknowledgment. By notarizing such illegal and fraudulent document, he is entitling it full faith and credit upon its face, which it obviously does not deserve considering its nature and purpose.

In *Gonzales v. Ramos*,[14] we elucidated on how important and sacrosanct the notarial act is:

By affixing his notarial seal on the instrument, the respondent converted the Deed of Absolute Sale, from a private document into a public document. Such act is no empty gesture. The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of a document under his hand and seal, he gives the document the force of evidence.

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[14] A.C. No. 6649, June 21, 2005, 460 SCRA 352.

Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgement executed before a notary public and appended to a private instrument. Hence, a notary public must discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity.[15]

Moreover, while respondent's duty as a notary public is principally to ascertain the identity of the affiant and the voluntariness of the declaration, it is nevertheless incumbent upon him to guard against any illegal or immoral arrangement or at least refrain from being a party to its consummation.[16] Rule IV, Section 4 of the 2004 Rules on Notarial Practice in fact proscribes notaries public from performing any notarial act for transactions similar to the herein document of sale, to wit:

SEC. 4. *Refusal to Notarize*. — A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:

(a) the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral;

x x x x x x x x x

In this case, respondent proceeded to notarize the second deed despite knowledge of its illegal purpose. His purported desire to accommodate the request of his client will not absolve respondent who, as a member of the legal profession, should have stood his ground and not yielded to the importunings of his clients. Respondent should have been more prudent and remained steadfast in his solemn oath not to commit falsehood

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[15] *Id.* at 357-358, citing *Vda. de Bernardo v. Restauro*, A.C. No. 3849, June 25, 2003, 404 SCRA 599, 603.

[16] *Balinon v. De Leon, et al.*, 94 Phil. 277, 282 (1954).

nor consent to the doing of any.[17] As a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the integrity of the legal profession.[18]

Respondent also failed to comply with Section 2, Rule VI of the 2004 Rules on Notarial Practice when he gave the second document the same document number, page number and book number as the first:

> SEC. 2. *Entries in the Notarial Register*. — x x x
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> x x x x x x x x x
>
> (e) The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.
>
> x x x x x x x x x

Respondent admitted having given the second deed the same document number, page number and book number as in the first deed, reasoning that the second deed was intended to supplant and cancel the first deed. He therefore knowingly violated the above rule, in furtherance of his client's intention of concealing the actual purchase price so as to avoid paying the taxes rightly due to the Government.

Even assuming that the second deed was really intended to reflect the true agreement of the parties and hence superseding the first deed they had executed, respondent remains liable under the afore-cited Section 2(e) which requires that each instrument or document, executed, sworn to, or acknowledged before the

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[17] Canon 10, Rule 10.01, Code of Professional Responsibility.

> Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[18] *Donato v. Asuncion, Sr.*, A.C. No. 4914, March 3, 2004, 424 SCRA 199, 205.

notary public shall be given a number corresponding to the one in his register. Said rule is not concerned with the validity or efficacy of the document or instrument recorded but merely to ensure the accuracy and integrity of the entries in the notarial register.

A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor.[19] Section 27, Rule 138 of the Revised Rules of Court provides:

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

In *Gonzales*, the notary public who notarized the document despite the non-appearance of one of the signatories was meted the penalties of revocation of his notarial commission and disqualification from re-appointment for two years. The notary in *Gonzales* was likewise suspended from the practice of law for one year. Said penalty was in accord with the cases of *Bon v. Ziga*,[20] *Serzo v. Flores*,[21] *Zaballero v. Montalvan*[22] and *Tabas v. Mangibin*.[23] The Court found that by notarizing the questioned deed, the respondent in *Gonzales* engaged in unlawful, dishonest, immoral or deceitful conduct.[24]

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[19] *Id.* at 203.

[20] A.C. No. 5436, May 27, 2004, 429 SCRA 177, 186.

[21] A.C. No. 6040, July 30, 2004, 435 SCRA 412, 416.

[22] A.C. No. 4370, May 25, 2004, 429 SCRA 74, 80.

[23] A.C. No. 5602, February 3, 2004, 421 SCRA 511, 515-516.

[24] *Supra* note 14 at 359.

In the instant case, we hold that respondent should similarly be meted the penalty of suspension and revocation of his notarial commission for having violated the 2004 Rules on Notarial Practice. In line with current jurisprudence, and as recommended by the IBP Board of Governors, the revocation of his notarial commission and disqualification from re-appointment as notary public for two years is in order.

With respect, however, to his suspension from the practice of law, we hold that the one-year suspension imposed in *Gonzales* and the other cases is not applicable considering that respondent not only failed to faithfully comply with the rules on notarial practice, he also violated his oath when he prepared and notarized the second deed for the purpose of avoiding the payment of correct amount of taxes, thus abetting an activity aimed at defiance of the law. Under these circumstances, we find the two-year suspension recommended by the IBP Board of Governors as proper and commensurate to the infraction committed by respondent.

WHEREFORE, respondent *ATTY. VICTORIANO G. PASCUA* is hereby *SUSPENDED* from the practice of law for a period of two (2) years. In addition, his present notarial commission, if any, is hereby *REVOKED*, and he is *DISQUALIFIED* from reappointment as a notary public for a period of two (2) years. He is further *WARNED* that any similar act or infraction in the future shall be dealt with more severely.

Let copies of this Decision be furnished all the courts of the land through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines, and the Office of the Bar Confidant, and recorded in the personal records of the respondent.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Abad, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Bersamin and *Perez, JJ.,* on official leave.

Del Castillo, J., on leave.

EN BANC

[A.M. No. P-09-2716. October 11, 2011]

TERESITA GUERRERO-BOYLON, *complainant, vs.* **ANICETO BOYLES, Sheriff III, Municipal Trial Court in Cities, Branch 2, Cebu City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; DUTIES; COMPLIANCE WITH THE RULES IS MANDATORY; VIOLATED IN CASE AT BAR. — The duties of the sheriff in implementing writs of execution are explicitly laid down in the Rules of Court (*Rules*). Paragraphs (c) and (d) of Section 10, Rule 39 of the Rules provide for the manner a writ for the delivery or restitution of real property shall be enforced by the sheriff x x x: After the implementation of the writ, Section 14, Rule 39 of the Rules requires sheriffs to execute and make a return on the writ of execution x x x: The above provisions enumerate the following duties of a sheriff: **first,** to give notice of the writ and demand that the judgment obligor and all persons claiming under him vacate the property within three (3) days; **second,** to enforce the writ by removing the judgment obligor and all persons claiming under the latter; **third,** to remove the latter's personal belongings in the property as well as destroy, demolish or remove the improvements constructed thereon upon special court order; and **fourth,** to execute and make a return on the writ within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or until its effectivity expires. Clearly, these provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance with the Rules is not merely directory but mandatory. A sheriff is expected to know the rules of procedure pertaining to his functions as an officer of the court. In this case, we find that the respondent was remiss in performing his mandated duties. In the first place, the respondent failed to implement and enforce the writ within the prescribed period provided under the Rules. As the records

show, the respondent failed to serve the writ and the notices to vacate to the occupants of the property within three (3) days. Moreover, the respondent failed to evict the occupants of the subject property, and to remove their personal belongings, and the structures and improvements they introduced. Aside from these, the respondent failed to make periodic reports, thus depriving the court of the opportunity to know and ensure the speedy execution of its decision.

2. ID.; ID.; ID.; ID.; ID.; IMPORTANCE OF SHERIFFS AND THE EFFICIENT PERFORMANCE OF THEIR FUNCTIONS IN THE ADMINISTRATION OF JUSTICE; EMPHASIZED. — In *Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab,* the Court emphasized the importance of sheriffs and the efficient performance of their functions in the administration of justice, to wit: [Sheriffs] are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must therefore comply with their mandated ministerial duty to implement writs promptly and expeditiously. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.

3. ID.; ID.; ID.; ID.; ID.; DUTY THEREOF IN THE EXECUTION OF THE WRIT IS PURELY MINISTERIAL. — We have held time and again that the sheriff's duty in the execution of a writ is purely ministerial. Once the writ is placed in his or her hands, a sheriff is obligated to execute the order of the court strictly to the letter and with reasonable promptness, taking heed of the prescribed period required by the Rules. The respondent is presumed to know all these and he cannot be excused from compliance regardless of his personal views and busy schedule. Any kind of doubt in the proper implementation of the writ would have been addressed if the respondent seasonably asked for a clarification from the court. Regrettably, he only made such request after a considerable time and after he had given the complainant excuses that only delayed the implementation of the writ.

4. ID.; ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY; EXPLAINED. — Gross neglect of duty refers to negligence

that is characterized by glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. Gross inefficiency is closely related to gross neglect as both involve specific acts of omission on the part of the employee resulting in damage to the employer or to the latter's business.

5. ID.; ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GROSS NEGLECT OF DUTY AND GROSS INEFFICIENCY ARE CLASSIFIED AS GRAVE OFFENSES; PENALTY. — Under the Revised Uniform Rules on Administrative Cases in the Civil Service (*Civil Service Rules*), gross neglect of duty and gross inefficiency are classified as grave offenses. Gross neglect of duty is punishable with dismissal from the service for the first offense, while gross inefficiency is punishable with suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. The Civil Service Rules also provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be the penalty corresponding to the most serious charge or count while the other proven charges shall be considered as aggravating circumstances. Thus, for the infractions committed, the respondent is meted the penalty of dismissal from the service with the accessory penalties of forfeiture of all his retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

6. ID.; ID.; ID.; ID.; REQUIRED NORM OF CONDUCT. — [C]ourt personnel should be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. Those who work in the Judiciary must adhere to high ethical standards to preserve the courts' good name and standing. They should be examples of responsibility, competence and efficiency, and they

must discharge their duties with due care and utmost diligence, since they are officers of the Court and agents of the law. Indeed, any conduct, act or omission violative of the norms of public accountability and that may diminish the faith of the people in the Judiciary should not be allowed.

D E C I S I O N

***PER CURIAM*:**

In a letter-complaint dated February 13, 2007, Teresita Guerrero-Boylon (*complainant*) charges Aniceto Boyles (*respondent*), Sheriff III, Municipal Trial Court in Cities, Branch 2, Cebu City, with neglect of duty in connection with his delay and refusal to implement the writ of execution/demolition (*writ*) issued in a forcible entry case docketed as Civil Case No. R-75.

The complainant is the daughter of Asuncion T. Guerrero, the plaintiff in Civil Case No. R-75. In behalf of her mother, the complainant moved to implement the final and executory decision in Civil Case No. R-75 in July 2005. The court in due course issued a writ and assigned the respondent to implement it. At the respondent's request, two (2) sheriffs from the Regional Trial Court, Branch 9, Cebu City, were assigned to assist him in the writ's implementation; a schedule for the demolition of the offending structures in the litigated property was set; and proper arrangements were made between the complainant and the respondent's group.

According to the complainant, the scheduled demolition did not take place as the respondent did not show up on time and could not be reached. In another planned demolition scheduled for the last quarter of 2005, the respondent also failed to show up. The respondent offered varied excuses[1] to the complainant to justify his non-appearances and his failure to implement the writ.

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[1] The respondent reasoned that he was "on another assignment; leave of absence; demolition crew and/or police or security force are scared; or coming up with a technicality or another to render the demolition unimplementable[.]" *Rollo*, p. 8.

By December 16, 2006, the writ remained unserved despite the complainant's entreaties to the respondent for its immediate service. The respondent also failed to comply with his representations to the complainant that he would serve the notices to vacate on the occupants of the property within the period of January 3, 2007 to January 8, 2007. At the intervention of Hon. Anatalio S. Necesario, the judge who issued the writ, the respondent, on January 18, 2007, served a notice to vacate on Manuel Tipgos. The respondent designated Tipgos to deliver the notices to the other occupants in the property. The notices, however, failed to reach the intended recipients.

On April 10, 2007, then Court Administrator Christopher O. Lock required the respondent to file his comment to the letter-complaint.[2]

In his comment dated April 27, 2007,[3] the respondent clarified that the forcible entry case was docketed as Civil Case No. R-46168, not Civil Case No. R-75. The respondent denied the accusations in the letter-complaint and prayed for the dismissal of the complaint. He explained that immediately after the issuance of the writ, he went to serve the writ to the occupants of the property. The respondent claimed that he failed to implement the writ because none of the defendants in the civil case were then occupying the property. The respondent also claimed that he refused to implement the writ because the structures to be demolished were located at a different parcel of land. He further claimed that Tipgos was not a party to the forcible entry case.

The respondent insisted that he and his team tried to serve the notices to vacate sometime in January 2007. However, he could not immediately serve them as he had other court processes to attend to. The respondent also explained that service of the notices to vacate could not be made either because the gates of the property were locked or because no one answered their calls. The last attempt of the respondent's team to serve the notices

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[2] *Id.* at 12.

[3] *Id.* at 15-18.

and writ was on January 18, 2007 when they chanced upon Tipgos. The respondent and his team requested Tipgos to serve the court processes on his neighbors.

In a Resolution dated November 18, 2009, the Court resolved to: (1) note the letter-complaint of the complainant and the comment of the respondent; (2) re-docket the letter-complaint as a regular administrative matter; and (3) require the parties to manifest whether they were willing to submit the matter for resolution on the basis of the pleadings filed, within ten (10) days from notice.

Only the respondent manifested his intention to file additional pleadings and documents. In this regard, the respondent filed his answer together with supporting documents.[4] He additionally averred that he had filed a motion for clarification before the issuing court to clarify the party against whom the writ should be implemented. He also averred that he inhibited himself from continuing with the implementation of the writ as he was convinced that the plaintiffs no longer trusted him. After his inhibition, another sheriff continued to implement the writ and succeeded in evicting defendant spouses Nicolas and Natalia Babao from the property.

Thereafter, we referred the administrative matter to the Office of the Court Administrator (*OCA*) for evaluation, report and recommendation.[5]

The Findings and Recommendations of the OCA

In its Report dated July 6, 2010, the OCA[6] found the respondent liable for simple neglect of duty:

> It has been said that the sheriff's duty to execute a judgment is ministerial. A purely ministerial act is one "which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to

[4] *Id.* at 47-69.

[5] *Id.* at 73; Resolution dated March 10, 2010.

[6] Through Court Administrator Jose Midas P. Marquez.

the exercise of his own judgment upon the propriety of the act done." Otherwise stated, a sheriff need not look outside the plain meaning of the writ. In this case, it was respondent Sheriff's duty to use reasonable and necessary force to see that judgment debtors vacate the premises. Any exercise of discretion may be used only when a sheriff is faced with an ambiguous execution order, in which case prudence and reasonableness dictate that he seeks clarification from the judge.

The non-implementation of the writ for almost two years cannot be justified by the allegation that the property is not properly identified and that the persons are not parties to the civil case. To exercise compassion and discretion to the extent that the sheriff substitutes his own standard of justice which has been properly determined in contentious proceedings is to encroach upon the power of a judge, which amounts to grave abuse of authority. He should have acted promptly to clarify the court order.

The explanations offered by the respondent are hollow and undeserving of merit. Evidently, respondent was not only remiss in his implementation of the writ, but likewise derelict in his submission of the returns thereof.[7]

The OCA recommended that the respondent be suspended without pay for one (1) month, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

The Court's Ruling

We agree with the findings of the OCA that the respondent is administratively liable, but we differ on the characterization of the offense and the recommended penalty.

The duties of the sheriff in implementing writs of execution are explicitly laid down in the Rules of Court (*Rules*). Paragraphs (c) and (d) of Section 10, Rule 39 of the Rules provide for the manner a writ for the delivery or restitution of real property shall be enforced by the sheriff:

Section 10. *Execution of judgments for specific act. —*

x x x x x x x x x

[7] *Rollo*, pp. 77-78.

(c) *Delivery or restitution of real property*. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust and such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

(d) *Removal of improvements on property subject of execution.* –When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

After the implementation of the writ, Section 14, Rule 39 of the Rules requires sheriffs to execute and make a return on the writ of execution:

SEC. 14. *Return of writ of execution.* — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

The above provisions enumerate the following duties of a sheriff: **first,** to give notice of the writ and demand that the judgment obligor and all persons claiming under him vacate the property within three (3) days; **second,** to enforce the writ by removing the judgment obligor and all persons claiming under

the latter; **third,** to remove the latter's personal belongings in the property as well as destroy, demolish or remove the improvements constructed thereon upon special court order; and **fourth,** to execute and make a return on the writ within 30 days from receipt of the writ and every 30 days thereafter until it is satisfied in full or until its effectivity expires.

Clearly, these provisions leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance with the Rules is not merely directory but mandatory.[8] A sheriff is expected to know the rules of procedure pertaining to his functions as an officer of the court.[9]

In this case, we find that the respondent was remiss in performing his mandated duties. In the first place, the respondent failed to implement and enforce the writ within the prescribed period provided under the Rules. As the records show, the respondent failed to serve the writ and the notices to vacate to the occupants of the property within three (3) days. Moreover, the respondent failed to evict the occupants of the subject property, and to remove their personal belongings, and the structures and improvements they introduced. Aside from these, the respondent failed to make periodic reports, thus depriving the court of the opportunity to know and ensure the speedy execution of its decision.[10]

We are not unmindful that the respondent had been given several opportunities over a long period of time — almost two (2) years — to comply with his duties in implementing the writ. The records show that the respondent imputed the delay in executing the writ to his hectic work schedule. We also note that his half-hearted attempts and refusal to execute the writ were due to his misgivings and doubts on the soundness and

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[8] *Office of the Court Administrator v. Efren E. Tolosa, etc.*, A.M. No. P-09-2715, June 13, 2011.

[9] *Ibid.*

[10] *Proserpina V. Anico v. Emerson B. Pilipiña, etc.*, A.M. No. P-11-2896, August 2, 2011.

propriety of the writ. The records also show that the respondent only acted on the writ when the complainant sought the intervention of Judge Necesario. Even then, the respondent's insincere efforts to comply with his duties were obvious; it particularly stood out when he carelessly designated Tipgos to do his court duties for him. The extent of his indifference and carelessness totally emerged after his inhibition when another sheriff acted in his place and immediately served the writ on, and promptly evicted, the occupants of the property.

The Code of Conduct for Court Personnel mandates that court employees act properly and with due diligence in the performance of their duties. The same Code also demands that court employees implement the orders of the court within the limits of their authority.[11] In *Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab*,[12] the Court emphasized the importance of sheriffs and the efficient performance of their functions in the administration of justice, to wit:

> [Sheriffs] are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must therefore comply with their mandated ministerial duty to implement writs promptly and expeditiously. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice.[13]

The respondent failed to observe these standards. The lapse of time it took for the respondent to unsuccessfully execute the writ demonstrates his utter lack of diligence in performing his duties.

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[11] Code of Conduct for Court Personnel, Canon IV, Sections 1 and 6.

[12] 386 Phil. 88 (2000), cited in *Gonzales v. Cerenio*, A.M. No. P-07-2396, December 4, 2007, 539 SCRA 320.

[13] *Teresa T. Gonzales La'O & Co., Inc. v. Sheriff Hatab*, *supra*, at 92-93.

We have held time and again that the sheriff's duty in the execution of a writ is purely ministerial.[14] Once the writ is placed in his or her hands, a sheriff is obligated to execute the order of the court strictly to the letter and with reasonable promptness, taking heed of the prescribed period required by the Rules.[15] The respondent is presumed to know all these and he cannot be excused from compliance regardless of his personal views and busy schedule. Any kind of doubt in the proper implementation of the writ would have been addressed if the respondent seasonably asked for a clarification from the court. Regrettably, he only made such request after a considerable time and after he had given the complainant excuses that only delayed the implementation of the writ.

In the recent case of *Proserpina V. Anico v. Emerson B. Pilipiña, etc.*,[16] we held that the failure of the sheriff to carry out what is a purely ministerial duty, to follow well-established rules in the implementation of court orders and writs, to promptly undertake the execution of judgments, and to accomplish the required periodic reports, constitute gross neglect and gross inefficiency in the performance of official duties.

Gross neglect of duty refers to negligence that is characterized by glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.[17] It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property.[18] In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[19] Gross inefficiency is closely related

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[14] *Proserpina V. Anico v. Emerson B. Pilipiña, etc., supra* note 10.

[15] *Ibid.*

[16] *Ibid.*

[17] *Brucal v. Desierto*, G.R. No. 152188, July 8, 2005, 463 SCRA 151.

[18] *Id.* at 166.

[19] *Ibid.*

to gross neglect as both involve specific acts of omission on the part of the employee resulting in damage to the employer or to the latter's business.[20]

We find that the circumstances in *Anico* have been duly established in the present case to make the respondent liable for gross neglect of duty and gross inefficiency. Under the circumstances, the records show several infractions committed by the respondent in the performance of his official duties, namely: (1) the failure to implement the writ; (2) the failure to make periodic reports; (3) the failure to execute the writ within the prescribed period; and (4) the utter disregard of the rules on execution and the well-established jurisprudence relating to the ministerial duty of sheriffs in the execution and implementation of a writ.

Under the Revised Uniform Rules on Administrative Cases in the Civil Service (*Civil Service Rules*), gross neglect of duty and gross inefficiency are classified as grave offenses. Gross neglect of duty is punishable with dismissal from the service for the first offense, while gross inefficiency is punishable with suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense.[21] The Civil Service Rules also provides that if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be the penalty corresponding to the most serious charge or count while the other proven charges shall be considered as aggravating circumstances.[22] Thus, for the infractions committed, the respondent is meted the penalty of dismissal from the service with the accessory penalties of forfeiture of all his retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

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[20] *St. Luke's Medical Center, Incorporated v. Fadrigo*, G.R. No. 185933, November 25, 2009, 605 SCRA 728, insofar as the principle applies *mutatis mutandis*.

[21] Civil Service Rules, Rule IV, Section 52(A)(2) and (16).

[22] *Id.,* Rule IV, Section 55.

As a final note, court personnel should be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided.[23] Those who work in the Judiciary must adhere to high ethical standards to preserve the courts' good name and standing.[24] They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence, since they are officers of the Court and agents of the law.[25] Indeed, any conduct, act or omission violative of the norms of public accountability and that may diminish the faith of the people in the Judiciary should not be allowed.[26]

WHEREFORE, premises considered, we find *ANICETO BOYLES,* Sheriff III, Municipal Trial Court in Cities, Branch 2, Cebu City, *GUILTY* of gross neglect of duty and gross inefficiency in the performance of his duties, and hereby *DISMISS* him from the service. This penalty shall carry with it the accessory penalties of forfeiture of all his retirement benefits, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Abad, Villarama, Jr., Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Bersamin and *Perez, JJ.,* on official leave.

Del Castillo, J., on leave.

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[23] *Proserpina V. Anico v. Emerson B. Pilipiña, etc., supra* note 10.

[24] *Ibid.*

[25] *Ibid.*

[26] *Ibid.*

EN BANC

[G.R. No. 162372. October 11, 2011]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), HERMOGENES D. CONCEPCION, JR., WINSTON F. GARCIA, REYNALDO P. PALMIERY, LEOVIGILDO P. ARRELLANO, ELMER T. BAUTISTA, LEONORA V. DE JESUS, FULGENCIO S. FACTORAN, FLORINO O. IBAÑEZ, AIDA C. NOCETE, AURORA P. MATHAY, ENRIQUETA DISUANCO, AMALIO MALLARI, LOURDES PATAG, RICHARD M. MARTINEZ, ASUNCION C. SINDAC, GLORIA D. CAEDO, ROMEO C. QUILATAN, ESPERANZA FALLORINA, LOLITA BACANI, ARNULFO MADRIAGA, LEOCADIA S. FAJARDO, BENIGNO BULAONG, SHIRLEY D. FLORENTINO, and LEA M. MENDIOLA, *petitioners, vs.* **COMMISSION ON AUDIT (COA), AMORSONIA B. ESCARDA, MA. CRISTINA D. DIMAGIBA, and REYNALDO P. VENTURA,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; RETIREMENT LAWS; REPUBLIC ACT NO. 4968 (TEVES RETIREMENT LAW); NOT EXPRESSLY REPEALED; DISCUSSED. — We do not subscribe to petitioner's interpretation of [Republic Act No. 8291]. This is because, unless the intention to revoke is clear and manifest, the abrogation or repeal of a law cannot be assumed. The repealing clause contained in Republic Act No. 8291 is not an express repealing clause because it fails to identify or designate the statutes that are intended to be repealed. It is actually a clause, which predicated the intended repeal upon the condition that a substantial conflict must be found in existing and prior laws. Since Republic Act No. 8291 made no express repeal or abrogation of the provisions of Commonwealth Act No. 186 as amended by the Teves Retirement Law, the reliance of the petitioners on its general repealing clause is erroneous. The failure to add a specific

repealing clause in Republic Act No. 8291 indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.

2. ID.; ID.; ID.; REPEAL BY IMPLICATION; NOT A CASE OF; EXPLAINED. — We are likewise not convinced by petitioners' claim of repeal by implication. It is a well-settled rule that to bring about an implied repeal, the two laws must be absolutely incompatible and clearly repugnant that the later law cannot exist without nullifying the prior law. As this Court held in *Recaña, Jr. v. Court of Appeals*: Repeal of laws should be made clear and expressed. Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. Such repeals are not favored for a law cannot be deemed repealed unless it is clearly manifest that the legislature so intended it. x x x. This Court sees no incompatibility between the two laws being discussed here. In reconciling Section 41(n) of Republic Act No. 8291 with the Teves Retirement Law, we are guided by this Court's pronouncement in *Philippine International Trading Corporation v. Commission on Audit:* In reconciling Section 6 of Executive Order No. 756 with Section 28, Subsection (b) of Commonwealth Act No. 186, as amended, uppermost in the mind of the Court is the fact that the best method of interpretation is that which makes laws consistent with other laws which are to be harmonized rather than having one considered repealed in favor of the other. Time and again, it has been held that every statute must be so interpreted and brought in accord with other laws as to form a uniform system of jurisprudence — *interpretere et concordare legibus est optimus interpretendi*. Thus, if diverse statutes relate to the same thing, they ought to be taken into consideration in construing any one of them, as it is an established rule of law that all acts in *pari materia* are to be taken together, as if they were one law. x x x. While Republic Act No. 8291 speaks of an **early retirement incentive plan or financial assistance** for the GSIS employees, Commonwealth Act No. 186 as amended by the Teves Retirement Law talks about **insurance or retirement plans other than our existing retirement laws**. In other words, what the Teves Retirement Law contemplates and prohibits are **separate** retirement or insurance plans. In

fact, the very same provision declared inoperative or abolished all supplementary retirement or pension plans.

3. ID.; ID.; REPUBLIC ACT NO. 8291 (THE GOVERNMENT SERVICE INSURANCE SYSTEM ACT OF 1997); POWER OF GSIS TO ADOPT A RETIREMENT PLAN AND/OR FINANCIAL ASSISTANCE FOR ITS EMPLOYEES; EXPLAINED. — It is true that under Section 41(n) of Republic Act No. 8291, GSIS is expressly granted the power to adopt a retirement plan and/or financial assistance for its employees, but a closer look at the provision readily shows that this power is not absolute. It is qualified by the words "early," "incentive," and "for the purpose of retirement." The retirement plan must be an **early** retirement **incentive** plan and such early retirement incentive plan or financial assistance must be **for the purpose of retirement**. According to Webster's Third New International Dictionary, "early" means "occurring before the expected or usual time," while "incentive" means "serving to encourage, rouse, or move to action," or "something that constitutes a motive or spur." It is clear from the foregoing that Section 41(n) of Republic Act No. 8291 contemplates a situation wherein GSIS, due to a reorganization, a streamlining of its organization, or some other circumstance, which calls for the termination of some of its employees, must design a plan to encourage, induce, or motivate these employees, who are **not yet qualified** for either optional or compulsory retirement under our laws, to instead voluntarily retire. This is the very reason why under the law, the retirement plan to be adopted is in reality an incentive scheme to encourage the employees to retire before their retirement age. The above interpretation applies equally to the phrase "financial assistance," which, contrary to the petitioners' assertion, should not be read independently of the purpose of an early retirement incentive plan. Under the doctrine of *noscitur a sociis*, the construction of a particular word or phrase, which is in itself ambiguous, or is equally susceptible of various meanings, may be made clear and specific by considering the company of words in which it is found or with which it is associated. In other words, the obscurity or doubt of the word or phrase may be reviewed by reference to associated words. Thus, the phrase "financial assistance," in light of the preceding words with which it is associated, should also be construed as an incentive scheme to induce employees to retire

early or as an assistance plan to be given to employees retiring earlier than their retirement age.

4. ID.; ID.; ID.; GSIS RETIREMENT/FINANCIAL PLAN (GSIS RFP) IS NULL AND VOID; ELUCIDATED. — Such is not the case with the GSIS RFP. Its very objective, "[t]o motivate and reward employees for meritorious, faithful, and satisfactory service," contradicts the nature of an **early retirement incentive plan, or a financial assistance plan**, which involves a substantial amount that is given to motivate employees to retire *early*. Instead, it falls exactly within the purpose of a **retirement benefit**, which is a form of reward for an employee's loyalty and *lengthy* service, in order to help him or her enjoy the remaining years of his life. Furthermore, to be able to apply for the GSIS RFP, one must be qualified to retire under Republic Act No. 660 or Republic Act No. 8291, or must have previously retired under our existing retirement laws. This only means that the employees covered by the GSIS RFP were those who were already eligible to retire or had already retired. Certainly, this is not included in the scope of "an early retirement incentive plan or financial assistance for the purpose of retirement." The fact that GSIS changed the name from "Employees Loyalty Incentive Plan" to "Retirement/Financial Plan" does not change its essential nature. A perusal of the plan shows that its purpose is not to encourage GSIS's employees to retire before their retirement age, but to augment the retirement benefits they would receive under our present laws. **Without a doubt, the GSIS RFP is a supplementary retirement plan, which is prohibited by the Teves Retirement Law. x x x** Another compelling reason to nullify the GSIS RFP is that it allows, and in fact mandates, the inclusion of the years in government service of previously retired employees. x x x To credit the years of service of GSIS retirees in their previous government office into the computation of their retirement benefits under the GSIS RFP, notwithstanding the fact that they had received or had been receiving the retirement benefits under the applicable retirement law they retired in, would be to countenance double compensation for exactly the same services.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT ESTABLISHED IN THE CASE AT BAR. — [W]e can hardly impute grave

abuse of discretion amounting to lack or excess of jurisdiction on the part of respondents COA, Escarda, and Dimagiba, for disallowing in audit the portion of retirement benefits in excess of what is allowed under our existing retirement laws. On the contrary, they acted with caution, diligence, and vigilance in the exercise of their duties, especially since what was involved were huge amounts of money imbued with public interest, since GSIS's funds come from the contributions of its members. Thus, GSIS's business is to keep in trust the money belonging to its members, who are not limited to its own employees.

6. LABOR AND SOCIAL LEGISLATION; RETIREMENT LAWS; REPUBLIC ACT NO. 8291 (THE GOVERNMENT SERVICE INSURANCE SYSTEM ACT OF 1997); GSIS RETIREMENT/FINANCIAL PLAN (GSIS RFP); PAYEES ARE LIABLE FOR THE RETURN OF THE DISALLOWED BENEFITS UNDER THE GSIS RFP. — This Court agrees that only the payees should be held liable for the return of the disallowed amounts under the GSIS RFP. Although it is true that as early as December 2000, Dimagiba already questioned the legality of the GSIS RFP, it was only in August 2001 when GSIS received COA's opinion on the matter. Moreover, COA first decided the issue only in 2002. While the Board of Trustees believed they had the authority and power to adopt the GSIS RFP, the officers on the other hand believed that they were implementing a valid resolution. As we said in *Buscaino v. Commission on Audit*, the resolution of the Board of Trustees was sufficient basis for the disbursement, and it is beyond these officers' competence to pass upon the validity of such board resolutions. On account of the GSIS RFP's doubtful validity, the petitioners should have exercised prudence and held in abeyance the disbursement of the portion of retirement benefits under the GSIS RFP until the issue of its legality had been resolved. However, the Board of Trustees and the officers held accountable under the Notices of Disallowance should not be held liable as they are entitled to the presumption of having exercised their functions with regularity and in good faith.

APPEARANCES OF COUNSEL

Alfredo D. Pineda for petitioners.
Chief Legal Counsel (GSIS) for GSIS.
The Solicitor General for public respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on c*ertiorari* under Rule 64 in relation to Rule 65 of the 1997 Rules of Court to annul and set aside the **Commission on Audit's Decision Nos. 2003-062** and **2004-004** dated March 18, 2003 and January 27, 2004, respectively, for having been made without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Government Service Insurance System (GSIS) is joined by its Board of Trustees and officials, namely: Chairman Hermogenes D. Concepcion, Jr.; Vice-Chairman and President and General Manager Winston F. Garcia (Garcia); Executive Vice President and Chief Operating Officer Reynaldo P. Palmiery; Trustees Leovigildo P. Arrellano, Elmer T. Bautista, Leonora V. de Jesus, Fulgencio S. Factoran, Florino O. Ibañez, and Aida C. Nocete; Senior Vice Presidents Aurora Mathay, Enriqueta Disuangco, Amalio Mallari, Lourdes Patag, and Asuncion C. Sindac; Vice Presidents Richard Martinez, Romeo C. Quilatan, and Gloria D. Caedo; and Managers Esperanza Fallorina, Lolita Bacani, Arnulfo Madriaga, Leocadia S. Fajardo, Benigno Bulaong, Shirley D. Florentino, and Lea M. Mendiola, together with all other officials and employees held liable by the Commission on Audit (COA) as petitioners in this case.[1]

The respondents in this petition are: the COA; its Director of Corporate Audit Office (CAO) I, Amorsonia B. Escarda (Escarda), who rendered CAO I Decision No. 2002-009 dated

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[1] *Rollo*, pp. 3-4.

May 27, 2002; the former Corporate Auditor of GSIS, Ma. Cristina D. Dimagiba (Dimagiba), who issued the Notices of Disallowance subject of CAO I Decision No. 2002-009; and the incumbent GSIS Corporate Auditor Reynaldo P. Ventura (Ventura).[2]

The facts are as follows:

On May 30, 1997, Republic Act No. 8291, otherwise known as "The Government Service Insurance System Act of 1997" (the GSIS Act) was enacted and approved, amending Presidential Decree No. 1146, as amended, expanding and increasing the coverage and benefits of the GSIS, and instituting reforms therein.

On October 17, 2000, pursuant to the powers granted to it under Section 41(n) of the said law, the GSIS Board of Trustees, upon the recommendation of the Management-Employee Relations Committee (MERCOM), approved **Board Resolution No. 326** wherein they adopted the **GSIS Employees Loyalty Incentive Plan (ELIP)**,[3] to wit:

GSIS EMPLOYEES LOYALTY INCENTIVE PLAN
(Pursuant to Sec. 41(n) of R.A. No. 8291)

I OBJECTIVE : ***To motivate and reward employees for meritorious, faithful and satisfactory service***

II COVERAGE : ***The GSIS Employees Loyalty Incentive Plan shall cover all present permanent employees and members of the Board and those who may hereafter be appointed.***

III SPECIFIC BENEFIT : **LI = TGS* MULTIPLIED BY HS MINUS 5yLS/BPRCP**

Where : LI = loyalty incentive
TGS = total government service
HS = highest monthly salary/benefit received
5yLS = 5 year lump sum under RA 660, RA 910, PD 1146 or RA 8291

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[2] *Id.* at 4.

[3] *Id.* at 73-76.

BPRCP = retirement benefit previously received plus cash payment for employees no longer qualified to 5yLS

*Determined as follows:

**For positions salary grade 1-26	For positions SG 27 up
1 - 20 yrs x 1.5	1 - 20 yrs x 1.25
21 - 30 yrs x 2.0	21 - 30 yrs x 1.75
31 yrs above x 2.5	31 yrs above x 2.00

**Subject to review. Applicable only to present salary structure.

IV IMPLEMENTING POLICIES:

1. To be entitled to the plan, the employee must be qualified to retire with 5 year lump sum under RA 660 or RA 8291 or had previously retired under applicable retirement laws

2. The loyalty incentive benefit shall be computed based on both total government service and highest monthly salary/benefit received from GSIS

3. Employees with pending administrative and/or criminal case may apply but processing and payment of loyalty incentive shall be held in abeyance until final decision on their cases

4. GSIS loyalty incentive plan can only be availed once and employees who retired under GERSIP'97 are no longer qualified

5. There shall be no refund of retirement premiums in all cases

6. Application is subject to approval by the President and General Manager

PROCEDURE:

1. Employees availing of the Employee Loyalty Incentive Plan must file his/her application under RA 660[4] or RA 8291 for the five (5) year lump sum, with HRS for indorsement to SIG

[4] Republic Act No. 660, An Act to Amend Commonwealth Act Numbered One Hundred and Eighty-Six Entitled "An Act to Create and Establish a Government Service Insurance System, to Provide for its Administration, and

2. Option 2 under RA 8291 may be allowed but the loyalty incentive shall be computed based on 5 year lump sum

3. The loyalty incentive shall only be paid after deducting the lump sum under RA 660, RA 910,[5] PD 1146[6] or RA 8291 or retirement benefit previously received plus cash payment

4. Government service of previously retired employees shall be considered in computing the loyalty incentive

5. For expediency, the processing of the plan shall be done by the Social Insurance Group

EFFECTIVITY DATE: The Plan shall take effect August, 2000. (Emphases supplied.)

On November 21, 2000, Board Resolution No. 326 was amended by **Board Resolution No. 360**,[7] which provided for a single rate for all positions, regardless of salary grade, in the computation of creditable service, *viz*:

1-20 years	x	1.5
21-30 years	x	2.0
31 years above	x	2.5

Except as herein amended, Resolution No. 326 dated October 17, 2000 shall remain to have full force and effect.

Dimagiba, the corporate auditor of GSIS, communicated to the President and General Manager of GSIS that the GSIS RFP was contrary to law. However, the GSIS Legal Services Group

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to Appropriate the Necessary Funds Therefor," and to Provide Retirement Insurance and For Other Purposes.

[5] Republic Act No. 910, An Act to Provide for the Retirement of Justices of the Supreme Court and of the Court of Appeals, for the Enforcement of the Provisions Hereof by the Government Service Insurance System, and to Repeal Commonwealth Act Numbered Five Hundred and Thirty-Six.

[6] Presidential Decree No. 1146, Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, As Amended, and For Other Purposes.

[7] *Rollo*, pp. 77-78.

opined that the GSIS Board was legally authorized to adopt the plan since Section 28(b) of Commonwealth Act No. 186 as amended by Republic Act No. 4968 has been repealed by Sections 3 and 41(n) of Republic Act No. 8291.[8]

On January 16, 2001, **Board Resolution No. 6**[9] was approved, wherein **ELIP** was renamed **GSIS Retirement/Financial Plan** (RFP) to conform strictly to the wordings of Section 41(n) of Republic Act No. 8291.

Upon Garcia's assumption of office as President and General Manager, Dimagiba requested to again review the GSIS RFP. This was denied by Garcia.[10] Believing that the GSIS RFP was "morally indefensible,"[11] Dimagiba sought the assistance of COA "in determining the legality and/or morality of the said Plan in so far as it has 'adopted the best features of the two retirement schemes, the 5-year lump sum payment under [Republic Act No.] 1616 and the monthly pension of [Republic Act No.] 660 based on the creditable service computed at 150%.'"[12]

On August 7, 2001, COA's General Counsel Santos M. Alquizalas (Alquizalas) issued a Memorandum to COA Commissioner Raul C. Flores regarding the GSIS RFP. Alquizalas opined that the GSIS RFP is a supplementary retirement plan, which is prohibited under **Republic Act No. 4968**, or the "**Teves Retirement Law**." He also said that since there is no provision in the new Republic Act No. 8291 expressly repealing the Teves Retirement Law, the two laws must be harmonized absent an irreconcilable inconsistency. **Alquizalas pronounced that Board Resolution Nos. 360 and 6 are null and void for being violative of Section 28(b) of Commonwealth Act No. 186 as amended by Republic Act No. 4968**, which bars the creation of a supplemental retirement scheme; **and**

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[8] *Id.* at 57.

[9] *Id.* at 79-80.

[10] *Id.* at 57.

[11] *Id.* at 87.

[12] *Id.* at 83.

Section 41(n) of Republic Act No. 8291, which speaks of an early retirement plan or financial assistance.[13]

On August 14, 2001,[14] Commissioner Flores forwarded this Memorandum to Dimagiba, who in turn forwarded it to Garcia on August 23, 2001. Dimagiba, in her letter attached to Alquizalas's Memorandum, added that for lack of legal basis, her office was **disallowing in audit the portion of retirement benefits granted under the GSIS RFP, or the excess of the benefits due the retirees**. She also said that GSIS could avail of the appeal process provided for under Sections 48 to 50 of Presidential Decree No. 1445 and Section 37.1 of the Manual on Certificate of Settlement and Balances.[15]

On August 27, 2001, Garcia responded[16] to Dimagiba, taking exception to the notice of disallowance for being "highly irregular and precipitate" as it was based on a mere opinion of COA's counsel who had no authority to declare the resolution of the GSIS Board of Trustees as null and void. Moreover, Garcia asseverated that COA had neither power nor authority to declare as null and void certain resolutions approved by the Board of Government Corporations, as the power to do so was exclusively lodged before the courts. He also argued that the notice of disallowance was premature, and was tantamount to a pre-audit activity, as it should refer only to a particular or specific disbursement of public funds and not against a general activity or transaction. Garcia averred that the GSIS RFP was part and parcel of the compensation package that GSIS may provide for its personnel, by virtue of the powers granted to its Board of Trustees under Section 41(m) and (n) of Republic Act No. 8291. Garcia said that the appeal process would commence only upon GSIS's receipt of the particulars of the disallowances.[17] Finally,

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[13] *Id.* at 84-86.

[14] *Id.* at 82.

[15] *Id.* at 81.

[16] *Id.* at 88-90.

[17] *Id.* at 88-89.

Garcia requested Dimagiba to withdraw the notices of disallowance "in the interest of industrial peace in the GSIS."[18]

Without responding to Garcia's August 27, 2001 Memorandum, Dimagiba issued the following Notices of Disallowance on the grounds that:

Pursuant to legal opinion of the General Counsel dated August 7, 2001, Board Resolution No. 360 dated Nov. 21, 2000 as amended by No. 6 dated Jan. 16, 2001 approving the Employees Loyalty Incentive Plan (ELIP) is null and void for being directly in conflict with Section 28(b) of CA No. 186 as amended by RA 4968 which bars the creation of supplemental retirement scheme and of Section 41 (n) of RA 8291 which speaks of an early retirement plan or financial assistance.[19]

Notices of Disallowance dated September 19, 2001[20]

Notice of Disallowance No./Period covered:	**Payee**	**Amount Disallowed**	**Persons Liable:** Board of Trustees; Lourdes Patag (SVP), Gloria Caedo (VP-SIAMS II), the payee, and the following officers:
2001-01-412/ December 2000	Marina Santamaria	₱6,895,545.84	Richard Martinez Lea M. Mendiola
2001-02-412/ December 2000	Rosita N. Lim	₱2,281,005.52	
2001-03-412/ January 2001	Manuel G. Ojeda	₱1,201,581.29	Daniel Mijares Romeo Quilatan Richard Martinez Benigno Bulaong
2001-04-412/ March 2001	Federico Pascual	₱11,444,957.32	Winston F. Garcia Esperanza Fallorina Lea M. Mendiola
2001-05-412/ March 2001	Juanito Gamier, Sr.	₱332,035.79	Winston F. Garcia Esperanza Fallorina Lea M. Mendiola Shirley Florentino

[18] *Id.* at 90.

[19] *Id.* at 91-111.

[20] *Id.* at 91-96.

2001-06-412/ May 2001	Vicente Villegas	₱4,792,260.17	Enriqueta Disuanco Aurora P. Mathay Lea M. Mendiola

Notices of Disallowance dated October 22, 2001[21]

Notice of Disallowance No./Period covered: July 24, 2001	**Payee**	**Amount Disallowed**	**Persons Liable:** Board of Trustees; Gloria Caedo (VP-SIAMS II); Asuncion Sindac (VP); Richard M. Martinez (VP & Controller); Lea M. Mendiola (Manager, HRSD); the payee; and the following officers:
2001-07-412	Rustico G. Delos Angeles	₱1,968,516.01	Reynaldo Palmiery
2001-08-412	Lourdes Delos Angeles	₱4,320,567.99	Reynaldo Palmiery Amalio A. Mallari
2001-09-412	Gloria L. Anonuevo	₱1,308,705.75	Lolita B. Bacani
2001-10-412	Elvira J. Agcaoili	₱2,313,729.41	Reynaldo Palmiery Amalio A. Mallari
2001-11-412	Segundina S. Dionisio	₱ 743,877.21	(except Richard Martinez and Lea M. Mendiola)

Notices of Disallowance dated October 23, 2001[22]

Notice of Disallowance No./Period covered: July 24, 2001	**Payee**	**Amount Disallowed**	**Persons Liable:** Board of Trustees; Gloria Caedo (VP-SIAMS II); Asuncion Sindac (VP); Lea M. Mendiola (Manager, HRSD); the payee; and the following officers:

[21] *Id.* at 97-101.

[22] *Id.* at 102-105.

2001-12-412	Daniel N. Mijares	₱7,148,031.17	Reynaldo Palmiery Richard Martinez
2001-13-412	Melinda A. Flores	₱1,459,974.12	Reynaldo Palmiery Richard Martinez Manuel P. Bausa
2001-14-412	Democrito M. Silang	₱532,869.65	Enriqueta Disuanco Arnulfo Madriaga
2001-15-412	Manuel P. Bausa	₱1,955,561.67	Reynaldo Palmiery Richard Martinez Lourdes A. Delos Angeles

Notices of Disallowance dated November 9, 2001[23]

Notice of Disallowance No./Period covered:	**Payee**	**Amount Disallowed**	**Persons Liable:** Board of Trustees; Winston F. Garcia (PGM); Asuncion Sindac (SVP); Gloria Caedo (VP); the payee; and the following officers:
2001-16-412/ June 28, 2001	Lourdes G. Patag	₱7,883,629.28	Enriquita Disuanco Lea M. Mendiola
2001-17-412/ July 17, 2001	Elvira U. Geronimo	₱5,648,739.26	Richard Martinez

Notices of Disallowance dated November 13, 2001[24]

Notice of Disallowance No./Period covered:	**Payee**	**Amount Disallowed**	**Persons Liable:** Board of Trustees; Asuncion Sindac (SVP); Gloria Caedo (VP); Lea M. Mendiola (Manager, HRSD) the payee; and the following officers:

[23] *Id.* at 106-107.

[24] *Id.* at 108-111.

2001-20-412/ August 28, 2001	Modesto A. De Leon	₱2,887,056.75	Daniel N. Mijares Romeo Quilatan
2001-21-412/ July 20, 2001	Antonio S. De Castro	₱931,583.11	Reynaldo Palmiery Richard Martinez
2001-22-412/ August 27, 2001	Teresa O. Loyola	₱485,184.27	Leocadia S. Fajardo
2001-23-412/ August 27, 2001	Pablito B. Galvez	₱93,487.54	Reynaldo Palmiery Shirley Florentino

On January 30, 2002, GSIS, together with some of the petitioners herein, gave notice[25] to the COA CAO I that it was appealing the 21 Notices of Disallowance it had received from Dimagiba on various dates. It amended[26] this Notice of Appeal the following day, to include all GSIS officials and employees held liable and accountable under the said disallowances.[27]

In their Memorandum of Appeal,[28] the petitioners mainly argued that GSIS had the power, under its charter, to adopt and implement the GSIS RFP. They alleged that their plan was not unique to GSIS as other government agencies also have their own retirement or financial assistance plans. They claimed that to then disallow their retirement plan would be tantamount to a violation of their constitutional right to be equally protected by our laws.[29] The petitioners also argued that Republic Act No. 8291 had modified or repealed all provisions of the Teves Retirement Law that were inconsistent with it and that GSIS's officials could not be held liable or accountable for implementing the GSIS RFP since this was done in the performance of their duties.[30]

On May 27, 2002, the **COA, through Escarda**, in **CAO I Decision No. 2002-009,**[31] **affirmed the disallowances made**

[25] *Id.* at 112-113.

[26] *Id.* at 116-118.

[27] *Id.* at 114.

[28] *Id.* at 119-144.

[29] *Id.* at 139-140.

[30] *Id.* at 124-131.

[31] *Id.* at 147-150.

by Dimagiba. Escarda sustained the COA general counsel's opinion and said that while the GSIS may have the power to adopt an early retirement or a financial assistance plan under its charter, it cannot supplement a retirement plan already existing under the law. Escarda said that the purpose of an early retirement plan is generally to streamline the organization by encouraging those who would not be qualified for compulsory retirement to retire early under the plan. However, Escarda claimed, the availees of the plan were employees whose supposed monthly pensions under the GSIS RFP included services they had already earned in other government agencies. Thus, Escarda held that the GSIS RFP was in reality a supplementary retirement plan for these GSIS employees. Finally, Escarda disagreed with GSIS's assertion that the Teves Retirement Law had been modified or repealed as the repealing clause in Republic Act No. 8291 is a general repealing clause, which is frowned upon and is generally not effective to repeal a specific law like the Teves Retirement Law.[32]

Undaunted, the petitioners filed before the COA a Petition for Review[33] of CAO I's decision, raising the exact same issues it raised in its Memorandum of Appeal dated February 14, 2002, to wit:

I

Whether or not petitioners/appellants GSIS and GSIS Board of Trustees have the power and authority to design and adopt the questioned *GSIS Retirement Financial Plan*.

II

Whether or not petitioners/appellant GSIS officials who are merely implementing the *GSIS Act of 1997* and duly adopted Board Resolutions must be held responsible and accountable for the implementation of the *GSIS Retirement Financial Plan.*

III

Whether or not the adoption of the *GSIS Retirement Financial Plan* violated Section 28 (b) of *CA No. 186* as amended by *Republic Act*

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[32] *Id.* at 148-150.

[33] *Id.* at 154-183.

No. 4968, and Section 41(n) of *Republic Act No. 8291*, otherwise known as the *GSIS Act of 1997.*

IV

Whether or not the COA disallowance of the *GSIS Retirement Financial Plan* is lawful, and the *CAO I Decision No. 2002-009* and the *Notices of Disallowance* issued by GSIS Corporate Auditor Dimagiba are proper.[34]

On March 18, 2003, COA issued **Decision No. 2003-062**,[35] wherein the issue was narrowed down to "whether or not the GSIS Board can reward themselves with unusually large benefits in the face of an unusually large actuarial deficit which will result in the denial of benefits of future retirees in other government agencies for whom the fund is principally intended."[36]

COA zeroed in on the fact that to be entitled to the GSIS RFP, the employee "must be qualified to retire with 5-year lump sum under R.A. No. 660 or R.A. No. 8291 or [must have] previously retired under the applicable retirement laws."[37] They affirmed Escarda's ruling and contended that what the "still valid"[38] Teves Retirement Law permits is the creation of an **early retirement** or financial assistance plan, and the above requirement imposed under the GSIS RFP does not apply to either plans. COA added:

Unmistakably, the Plan being a supplementary pension/retirement plan, it contravenes the Teves law. Not even the renaming of [the] Employees Loyalty Incentive Plan (ELIP) to Retirement Financial Plan (RFP), purportedly to conform with the wording of the law, could conceal its true nature or character as a supplementary pension/ retirement plan which incorporates the best features of R.A. Nos. 660 and 8291, creating in effect a third retirement plan for GSIS personnel only. This is all the more made manifest by the fact that

[34] *Id.* at 160.

[35] *Id.* at 56-69.

[36] *Id.* at 62. Emphasis in the original.

[37] *Id.* at 63.

[38] *Id.* at 67.

even Board members who are not qualified at all to retire under *any* existing retirement laws could retire under the RFP. Strikingly, by promulgating another regular retirement scheme, the GSIS Board enlarged the field of its authority and regulation as provided in the statute it is supposed to administer.[39]

COA said that the power of GSIS in applying the law must not be abused. COA averred that GSIS was found to be deficient actuarially by Fifteen Billion Pesos, and for it to reward its employees, who were already enjoying salaries higher than their counterparts in other government agencies, meant that it would have to dip into its principal fund to the prejudice of its members, who were the very *raison d'etre* for its establishment.[40]

Addressing petitioners' claim of discrimination, COA said that each of the government agencies that had adopted its own retirement plans did so pursuant to a valid law and under factual circumstances that were not present in the case of GSIS. COA also affirmed the liability of the petitioners who were held accountable under the disallowances as they had failed to exercise the diligence of a good father of a family in the performance of their functions.[41] Finally, COA averred that while its general counsel's opinion boosted its position, such was not the basis of the disallowance.[42]

The petitioners sought reconsideration[43] of this decision and even asked to be heard in oral arguments,[44] but COA, in its **Decision No. 2004-004** dated January 27, 2004,[45] denied both motions and affirmed its Decision No. 2003-062 dated March 18, 2003 with finality.

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[39] *Id.* at 64.

[40] *Id.* at 66-67.

[41] *Id.* at 69.

[42] *Id.* at 67.

[43] *Id.* at 189-204.

[44] *Id.* at 209-211.

[45] *Id.* at 70-72.

The petitioners are now before us, asking us to nullify COA's March 18, 2003 and January 27, 2004 decisions, on the ground that they were made with grave abuse of discretion amounting to lack or excess of jurisdiction.[46]

The petitioners posit the following arguments to support their cause:

RESPONDENTS ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION, WHEN IN THE FOLLOWING MANNER:

I

Respondents sought to interpret clear provisions of *Republic Act No. 8291,* otherwise known as the *GSIS Act of 1997,* and declare null and void duly adopted resolutions of petitioner GSIS which has the power and authority to design and adopt the questioned *GSIS Retirement Financial Plan* (RFP).

II

Respondents ruled that petitioners GSIS officials who are merely implementing the *GSIS Act of 1997* and duly adopted Board Resolutions could be held responsible and accountable for the implementation of the *GSIS Retirement Financial Plan* (RFP).

III

Respondents held that the adoption of the *GSIS Retirement Financial Plan* (RFP) violated Section 28 (b) of *CA No. 186,* as amended by *Republic Act No. 4968,* and Section 41(n) of *Republic Act No. 8291,* otherwise known as the *GSIS Act of 1997.*

IV

Respondent[s] disallowed the *GSIS Retirement Financial Plan* (RFP), and erroneously affirmed the *Notices of Disallowance* issued by then GSIS Corporate Auditor Dimagiba.

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[46] *Id.* at 45.

V

Respondents touched on new and irrelevant matters which were not raised in the disallowances and/or pleadings below, and which were never validated.[47]

The crux of the present case boils down to the legality of Board Resolution Nos. 360, 326, and 6, which we shall refer to simply as "**the GSIS RFP**," in light of Republic Act No. 8291 or the GSIS Act of 1997, and Commonwealth Act No. 186 or the Government Service Insurance Act as amended by Republic Act No. 4968 (the Teves Retirement Law).

Below are the pertinent provisions of the foregoing laws:

Republic Act No. 8291

SECTION 41. Powers and Functions of the GSIS. — The GSIS shall exercise the following powers and functions:

x x x x x x x x x

(n) to design and adopt an Early Retirement Incentive Plan (ERIP) and/or financial assistance for the purpose of retirement for its own personnel; x x x.

Commonwealth Act No. 186 as amended by the Teves Retirement Law:

SEC. 28. *Miscellaneous Provisions* — x x x

(b) Hereafter no insurance or retirement plan for officers or employees shall be created by any employer. All supplementary retirement or pension plans heretofore in force in any government office, agency, or instrumentality or corporation owned or controlled by the government, are hereby declared inoperative or abolished. x x x.[48]

Republic Act No. 4968 or the Teves Retirement Law Is Still Good Law

The petitioners insist that under Section 3 of Republic Act No. 8291, which provides that "all laws or any law or parts of

[47] *Id.* at 12.

[48] As amended by Republic Act No. 660.

law specifically inconsistent herewith are hereby repealed or modified accordingly," all provisions of the Teves Retirement Law that are inconsistent with Republic Act No. 8291 are deemed repealed or modified.[49]

We do not subscribe to petitioner's interpretation of this law. This is because, unless the intention to revoke is clear and manifest, the abrogation or repeal of a law cannot be assumed.[50] The repealing clause contained in Republic Act No. 8291 is not an express repealing clause because it fails to identify or designate the statutes that are intended to be repealed. It is actually a clause, which predicated the intended repeal upon the condition that a substantial conflict must be found in existing and prior laws.[51]

Since Republic Act No. 8291 made no express repeal or abrogation of the provisions of Commonwealth Act No. 186 as amended by the Teves Retirement Law, the reliance of the petitioners on its general repealing clause is erroneous. The failure to add a specific repealing clause in Republic Act No. 8291 indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.[52]

We are likewise not convinced by petitioners' claim of repeal by implication. It is a well-settled rule that to bring about an implied repeal, the two laws must be absolutely incompatible and clearly repugnant that the later law cannot exist without nullifying the prior law.[53] As this Court held in *Recaña, Jr. v. Court of Appeals*:[54]

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[49] *Rollo*, p. 32.

[50] *Government Service Insurance System v. The City Assessor of Iloilo City*, G.R. No. 147192, June 27, 2006, 493 SCRA 169, 176.

[51] *Garcia v. Sandiganbayan*, 499 Phil. 589, 616 (2005).

[52] *Intia, Jr. v. Postmaster General, Philippine Postal Corporation*, 366 Phil. 273, 290 (1999).

[53] *Government Service Insurance System v. The City Assessor of Iloilo City*, *supra* note 50 at 176-177.

[54] 402 Phil. 26 (2001).

Repeal of laws should be made clear and expressed. Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. Such repeals are not favored for a law cannot be deemed repealed unless it is clearly manifest that the legislature so intended it. x x x.[55]

This Court sees no incompatibility between the two laws being discussed here. In reconciling Section 41(n) of Republic Act No. 8291 with the Teves Retirement Law, we are guided by this Court's pronouncement in *Philippine International Trading Corporation v. Commission on Audit*:[56]

In reconciling Section 6 of Executive Order No. 756 with Section 28, Subsection (b) of Commonwealth Act No. 186, as amended, uppermost in the mind of the Court is the fact that the best method of interpretation is that which makes laws consistent with other laws which are to be harmonized rather than having one considered repealed in favor of the other. Time and again, it has been held that every statute must be so interpreted and brought in accord with other laws as to form a uniform system of jurisprudence — *interpretere et concordare legibus est optimus interpretendi*. Thus, if diverse statutes relate to the same thing, they ought to be taken into consideration in construing any one of them, as it is an established rule of law that all acts in *pari materia* are to be taken together, as if they were one law. x x x.[57]

While Republic Act No. 8291 speaks of an **early retirement incentive plan or financial assistance** for the GSIS employees, Commonwealth Act No. 186 as amended by the Teves Retirement Law talks about **insurance or retirement plans other than our existing retirement laws**. In other words, what the Teves Retirement Law contemplates and prohibits are **separate** retirement or insurance plans. In fact, the very same provision declared inoperative or abolished all supplementary retirement or pension plans.

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[55] *Id.* at 35.

[56] G.R. No. 183517, June 22, 2010, 621 SCRA 461.

[57] *Id.* at 474.

The GSIS Retirement/Financial Plan is Null and Void

It is true that under Section 41(n) of Republic Act No. 8291, GSIS is expressly granted the power to adopt a retirement plan and/or financial assistance for its employees, but a closer look at the provision readily shows that this power is not absolute. It is qualified by the words "early," "incentive," and "for the purpose of retirement." The retirement plan must be an **early** retirement **incentive** plan and such early retirement incentive plan or financial assistance must be **for the purpose of retirement**.

According to Webster's Third New International Dictionary, "early" means "occurring before the expected or usual time," while "incentive" means "serving to encourage, rouse, or move to action," or "something that constitutes a motive or spur."[58]

It is clear from the foregoing that Section 41(n) of Republic Act No. 8291 contemplates a situation wherein GSIS, due to a reorganization, a streamlining of its organization, or some other circumstance, which calls for the termination of some of its employees, must design a plan to encourage, induce, or motivate these employees, who are **not yet qualified** for either optional or compulsory retirement under our laws, to instead voluntarily retire. This is the very reason why under the law, the retirement plan to be adopted is in reality an incentive scheme to encourage the employees to retire before their retirement age.

The above interpretation applies equally to the phrase "financial assistance," which, contrary to the petitioners' assertion, should not be read independently of the purpose of an early retirement incentive plan. Under the doctrine of *noscitur a sociis*, the construction of a particular word or phrase, which is in itself ambiguous, or is equally susceptible of various meanings, may be made clear and specific by considering the company of words in which it is found or with which it is associated. In other words, the obscurity or doubt of the word or phrase may be

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[58] *Webster's Third New International Dictionary* (1993).

reviewed by reference to associated words.[59] Thus, the phrase "financial assistance," in light of the preceding words with which it is associated, should also be construed as an incentive scheme to induce employees to retire early or as an assistance plan to be given to employees retiring earlier than their retirement age.

Such is not the case with the GSIS RFP. Its very objective, "[t]o motivate and reward employees for meritorious, faithful, and satisfactory service,"[60] contradicts the nature of an **early retirement incentive plan, or a financial assistance plan**, which involves a substantial amount that is given to motivate employees to retire *early*. Instead, it falls exactly within the purpose of a **retirement benefit**, which is a form of reward for an employee's loyalty and *lengthy* service,[61] in order to help him or her enjoy the remaining years of his life.

Furthermore, to be able to apply for the GSIS RFP, one must be qualified to retire under Republic Act No. 660 or Republic Act No. 8291, or must have previously retired under our existing retirement laws. This only means that the employees covered by the GSIS RFP were those who were already eligible to retire or had already retired. Certainly, this is not included in the scope of "an early retirement incentive plan or financial assistance for the purpose of retirement."

The fact that GSIS changed the name from "Employees Loyalty Incentive Plan" to "Retirement/Financial Plan" does not change its essential nature. A perusal of the plan shows that its purpose is not to encourage GSIS's employees to retire before their retirement age, but to augment the retirement benefits they would receive under our present laws.[62] **Without a doubt, the GSIS RFP is a supplementary retirement plan, which is prohibited by the Teves Retirement Law.**

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[59] *Oil and Natural Gas Commission v. Court of Appeals*, 354 Phil. 830, 841 (1998).

[60] *Rollo*, p. 75.

[61] *Aquino v. National Labor Relations Commission*, G.R. No. 87653, February 11, 1992, 206 SCRA 118, 121.

[62] *Conte v. Commission on Audit*, 332 Phil. 20, 32-33 (1996).

Conte v. Commission on Audit[63] squarely applies in this case. In that case, the Social Security System (SSS) issued Resolution No. 56, which provided financial incentive and inducement to SSS employees who were qualified to retire, to avail of retirement benefits under Republic Act No. 660, as amended (which GSIS would have to pay), rather than the retirement benefits under Republic Act No. 1616, as amended (which SSS would have to pay). Under SSS Resolution No. 56, those who retire under Republic Act No. 660 would be given a "financial assistance" equivalent in amount to the difference between what a retiree would have received under Republic Act No. 1616, less what he was entitled to under Republic Act No. 660. COA disallowed in audit all claims for financial assistance under SSS Resolution No. 56 for being similar to those separate retirement plans or incentive/separation pay plans adopted by other government corporate agencies, which resulted in the increase of benefits beyond what was allowed under existing retirement laws. This Court sustained COA's disallowance and held that SSS Resolution No. 56 constituted a supplementary retirement plan proscribed by Section 28(b) of Commonwealth Act No. 186, as amended by Republic Act No. 4968.[64]

The petitioners argue that *Conte* finds no application in this case, since SSS had no authority under its charter to adopt such a resolution, unlike the GSIS, which was cloaked with authority to issue the questioned resolutions. Furthermore, petitioners argue that Republic Act No. 8291 became effective in 1997, which was after this Court had already decided the *Conte* case.

We find no merit in the petitioners' arguments. The laws have not changed, and the doctrine in *Conte* has not been overturned or abandoned. The fact that Republic Act No. 8291 was approved and enacted after *Conte* is of no moment, as what was interpreted in *Conte* was the provision in the Teves Retirement Law in issue here. Moreover, we have already discussed above how such provision has neither been repealed nor modified by Section 41(n) of Republic Act No. 8291. Thus, it is just fitting that we

[63] *Id.*

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

find guidance in the application and interpretation of Section 28(b) of Commonwealth Act No. 186, as amended by Republic Act No. 4968, from the *Conte* case.

As we have held in that case:

> Section 28(b) [of C.A. No. 186] as amended by R.A. No. 4968 in no uncertain terms bars the creation of any insurance or retirement plan — other than the GSIS — for government officers and employees, in order to prevent the undue and inequitous proliferation of such plans. x x x.[65]

The petitioners asseverate that many laws such as Republic Act Nos. 8291, 1161, 8282, 6683, and 7641, were validly enacted after the Teves Retirement Law; thus, the evil that it seeks to avoid is the proliferation of those retirement plans that are not so authorized by law.[66] The petitioners even go so far as comparing themselves to other government agencies, which have adopted their own retirement schemes at one time or another such as the Development Bank of the Philippines, the Securities and Exchange Commission, the National Power Corporation, the COA, the Court of Appeals, and even this Court.[67]

The petitioners themselves admit that those retirement schemes were adopted as a "[one-time] grant [by] reason of reorganization"[68] pursuant to Republic Act No. 6683[69] or the Early Retirement Law. As for the additional benefits extended to retiring justices or commissioners, suffice it to say that they were also given pursuant to laws passed by Congress. Moreover, those retirement plans enjoy the presumption of validity and regularity.

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[65] *Id.* at 35.

[66] *Rollo*, p. 30.

[67] *Id.* at 19.

[68] *Id.*

[69] An Act Providing Benefits for Early Retirement and Voluntary Separation from the Government Service, As Well As Involuntary Separation of Civil Service Officers and Employees Pursuant to Various Executive Orders Authorizing Government Reorganization After the Ratification of the 1997 Constitution, Appropriating Funds Therefor and for Other Purposes.

In stark contrast, the GSIS RFP was not created because of a valid company reorganization. Its purpose did not include the granting of benefits for early retirement. Neither did it provide benefits for either voluntary or involuntary separation from GSIS. It was intended for employees who were already eligible to retire under existing retirement laws. While the GSIS may have been clothed with authority to adopt an early retirement or financial assistance plan, such authority was limited by the very law it was seeking to implement.

Borrowing this Court's words in the *Conte* case, "it is beyond cavil that [the GSIS Retirement/Financial Plan] contravenes [Section 28(b) of C.A. No. 186 as amended by R.A. No. 4968 or the Teves Retirement Law], and is therefore invalid, void, and of no effect. To ignore this and rule otherwise would be tantamount to permitting every other government office or agency to put up its own supplementary retirement benefit plan under the guise of such 'financial assistance.'"[70]

Another compelling reason to nullify the GSIS RFP is that it allows, and in fact mandates, the inclusion of the years in government service of previously retired employees, to wit:

PROCEDURE:

x x x x x x x x x

4. Government service of previously retired employees shall be considered in computing the loyalty incentive.[71]

In *Santos v. Court of Appeals*,[72] we affirmed the Court of Appeals and the Civil Service Commission's ruling that for the purpose of computing or determining Santos' separation pay, his years of service in his previous government office should be excluded and his separation pay should be solely confined to his services in his new government position. We gave the rationale for this as follows:

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[70] *Conte v. Commission on Audit, supra* note 62 at 35.

[71] *Rollo*, p. 76.

[72] 282 Phil. 298 (2000).

Such would run counter to the policy of this Court against double compensation for exactly the same services. More important, it would be in violation of the first paragraph of Section 8 of Article IX-B of the Constitution, which proscribes additional, double, or indirect compensation. Said provision reads:

> No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law… .[73]

Our ruling therein is likewise applicable in this case. To credit the years of service of GSIS retirees in their previous government office into the computation of their retirement benefits under the GSIS RFP, notwithstanding the fact that they had received or had been receiving the retirement benefits under the applicable retirement law they retired in, would be to countenance double compensation for exactly the same services.[74]

To emphasize COA's "distaste"[75] for the huge retirement benefits of GSIS's board members, officers, and employees, who are already receiving significantly higher salaries than their counterparts in other government agencies, COA illustrated the glaring discrepancy between what a GSIS employee would get under the GSIS RFP, and what a mere GSIS member would get under applicable retirement laws:

GSIS EMPLOYEE vs GSIS MEMBER not covered by [GSIS RFP]

GSIS EMPLOYEE	**SALARY GRADE**	**GSIS MEMBER**
GSIS Vice-President	27	Director III
46.36895	Length of Service	46.36895
₱110,775.00	Basic Salary	₱25,223.00
65 years old	Age at Retirement	65 years old
August 21, 2001	Date of Retirement	August 21, 2001
April 8, 1954	First Day in Govt Service	April 8, 1954
April 8, 1954	First Day in GSIS/Other office	April 8, 1954

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[73] *Id.* at 307-308.

[74] *Id.* at 307.

[75] *Rollo*, p. 65.

BENEFITS UNDER DIFFERENT MODES OF RETIREMENT

[GSIS Employee]				**[GSIS Member]**		
[GSIS RFP]	**RA 1616**	**RA 660**		**[GSIS RFP]**	**RA 1616**	**RA 660**
90.92238	67.7379	46.36895	CGS	N/A	67.7379	46.36895
10,071,926.00	7,503,665.87	NONE	GA		1,708,553.05	NONE
		3,176,380.80	5YLS			1,210,704.00
		52,939.68	BMP			20,178.40
NONE	with refund	NONE	RRP		with refund	NONE

*[GSIS RFP] less 5YLS = FINANCIAL ASSISTANCE plus MP of ₱52,939.68 after five years

= ₱6,895,545.20 Financial Assistance + Monthly Pension after five years

* CGS - Creditable Government Service
* GA - Gratuity Amount Payable by Employer
* 5YLS - Five (5) Year Lump Sum Payable by GSIS
* BMP - Basic Monthly Pension
* RRP - Refund of Retirement Premiums[76]

With the above illustration, it can be readily seen and understood why the Teves Retirement Law prohibits the proliferation of additional retirement plans in our government offices. While it is true that a better compensation package will not only attract more competent and capable individuals to work in GSIS, but will also ensure that they remain loyal and faithful therein, this has already been addressed by the GSIS employees' exemption from Republic Act No. 678 or the Salary Standardization Law (SSL), under Sec. 43(d) of Republic Act No. 8291. As shown in the above tables, the salary of a GSIS employee is much higher compared to his counterpart in another government agency. This remains to be true even with the recent increase of the salaries in the SSL.

The petitioners also question COA's authority to nullify the resolutions involved in this case. It must be remembered that none of the COA decisions nullified the Board Resolutions adopted by GSIS's Board of Trustees. What the COA decisions affirmed

[76] *Id.*

were the disallowances made by GSIS's own Corporate Auditor, Dimagiba. It is irrelevant that COA, in its decisions, touched upon issues not brought before it, or that it referred to its general counsel's opinion on the GSIS RFP, as these were done only to reinforce COA's position. They have no bearing upon the weight of COA's decisions, which are based upon our existing laws and jurisprudence.

As for Dimagiba, while she may have relied on the opinion of COA's legal counsel to support the disallowances she had made, it is worthy to note that she had already informed Garcia of the GSIS RFP's illegality even before she sought COA's opinion on the matter. Moreover, neither Dimagiba's nor COA's confidence in the opinion of COA's general counsel could be faulted, as under Presidential Decree No. 1445, or the Government Auditing Code of the Philippines, one of the responsibilities of COA's legal office is to interpret pertinent laws and auditing rules and regulations, to wit:

> SECTION 11. *The Legal Office*. — The Legal Office shall be charged with the following responsibilities:
>
> (1) Perform advisory and consultative functions and render legal services with respect to the performance of the functions of the Commission and the interpretation of pertinent laws and auditing rules and regulations; x x x.

In view of the above, we can hardly impute grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondents COA, Escarda, and Dimagiba, for disallowing in audit the portion of retirement benefits in excess of what is allowed under our existing retirement laws. On the contrary, they acted with caution, diligence, and vigilance in the exercise of their duties, especially since what was involved were huge amounts of money imbued with public interest, since GSIS's funds come from the contributions of its members. Thus, GSIS's business is to keep in trust the money belonging to its members,[77] who are not limited to its own employees.

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[77] *Government Service Insurance System v. Court of Appeals*, 350 Phil. 654, 660 (1998).

The Payees are Liable for the Return of the Disallowed Benefits Under the GSIS RFP

The petitioners claim that GSIS's Board of Trustees cannot be held liable as they were acting pursuant to a valid law when they adopted the GSIS RFP. The petitioners also argue that the implementation of the GSIS RFP was merely ministerial, thus the GSIS officers held accountable under the Notices of Disallowance should not be held responsible and accountable for the allocation and release of the benefits under the GSIS RFP.

This Court agrees that only the payees should be held liable for the return of the disallowed amounts under the GSIS RFP.

Although it is true that as early as December 2000,[78] Dimagiba already questioned the legality of the GSIS RFP, it was only in August 2001 when GSIS received COA's opinion on the matter. Moreover, COA first decided the issue only in 2002.

While the Board of Trustees believed they had the authority and power to adopt the GSIS RFP, the officers on the other hand believed that they were implementing a valid resolution. As we said in *Buscaino v. Commission on Audit*,[79] the resolution of the Board of Trustees was sufficient basis for the disbursement, and it is beyond these officers' competence to pass upon the validity of such board resolutions.[80]

On account of the GSIS RFP's doubtful validity, the petitioners should have exercised prudence and held in abeyance the disbursement of the portion of retirement benefits under the GSIS RFP until the issue of its legality had been resolved.

However, the Board of Trustees and the officers held accountable under the Notices of Disallowance should not be held liable as they are entitled to the presumption of having exercised their functions with regularity and in good faith.

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[78] *Rollo*, p. 69.

[79] 369 Phil. 886 (1999).

[80] *Id.* at 904.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The assailed Decisions of the Commission on Audit Nos. 2003-062 and 2004-004 dated March 18, 2003 and January 27, 2004, are *AFFIRMED* with the *MODIFICATION* that *only the payees* of the disbursements made under the GSIS RFP in the Notices of Disallowance are liable for such disbursements. *Board Resolution Nos. 326, 360, and 6* are declared *ILLEGAL, VOID, and OF NO EFFECT*.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Brion, Peralta, Abad, Villarama, Jr., Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Bersamin and *Perez, JJ.,* on official leave.

Del Castillo, J., on leave.

EN BANC

[G.R. No. 164301. October 11, 2011]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **BPI EMPLOYEES UNION-DAVAO CHAPTER-FEDERATION OF UNIONS IN BPI UNIBANK,** *respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; EMPLOYMENT CONTRACTS; AUTOMATICALLY ASSUMED BY THE SURVIVING CORPORATION IN A MERGER, EVEN IN THE ABSENCE OF AN EXPRESS STIPULATION IN THE ARTICLES OF MERGER OR THE MERGER PLAN. — Taking a second look on this point, we have come to agree

with Justice Brion's view that it is more in keeping with the dictates of social justice and the State policy of according full protection to labor to deem employment contracts as automatically assumed by the surviving corporation in a merger, even in the absence of an express stipulation in the articles of merger or the merger plan. x x x By upholding the automatic assumption of the non-surviving corporation's existing employment contracts by the surviving corporation in a merger, the Court strengthens judicial protection of the right to security of tenure of employees affected by a merger and avoids confusion regarding the status of their various benefits which were among the chief objections of our dissenting colleagues. However, nothing in this Resolution shall impair the right of an employer to terminate the employment of the absorbed employees for a lawful or authorized cause or the right of such an employee to resign, retire or otherwise sever his employment, whether before or after the merger, subject to existing contractual obligations. In this manner, Justice Brion's theory of automatic assumption may be reconciled with the majority's concerns with the successor employer's prerogative to choose its employees and the prohibition against involuntary servitude.

2. ID.; ID.; COLLECTIVE BARGAINING AGREEMENT (CBA); UNION SHOP CLAUSE; ABSORBED EMPLOYEES ARE COVERED BY THE UNION SHOP CLAUSE; EXPLAINED. — Notwithstanding this concession, we find no reason to reverse our previous pronouncement that the absorbed FEBTC employees are covered by the Union Shop Clause. Even in our August 10, 2010 Decision, we already observed that the legal fiction in the law on mergers (that the surviving corporation continues the corporate existence of the non-surviving corporation) is mainly a tool to adjudicate the rights and obligations between and among the merged corporations and the persons that deal with them. Such a legal fiction cannot be unduly extended to an interpretation of a Union Shop Clause so as to defeat its purpose under labor law. x x x Although by virtue of the merger BPI steps into the shoes of FEBTC as a successor employer as if the former had been the employer of the latter's employees from the beginning it must be emphasized that, in reality, the legal consequences of the merger only occur at a specific date, *i.e.*, upon its effectivity which is the date of approval of the merger by the SEC. Thus, we observed in the Decision that BPI and FEBTC stipulated in the Articles of

Merger that they will both continue their respective business operations until the SEC issues the certificate of merger and in the event no such certificate is issued, they shall hold each other blameless for the non-consummation of the merger. We likewise previously noted that BPI made its assignments of the former FEBTC employees effective on April 10, 2000, or after the SEC approved the merger. In other words, the obligation of BPI to pay the salaries and benefits of the former FEBTC employees and its right of discipline and control over them only arose with the effectivity of the merger. Concomitantly, the obligation of former FEBTC employees to render service to BPI and their right to receive benefits from the latter also arose upon the effectivity of the merger. What is material is that all of these legal consequences of the merger took place during the life of an existing and valid CBA between BPI and the Union wherein they have mutually consented to include a Union Shop Clause. x x x Indeed, there are differences between (a) new employees who are hired as probationary or temporary but later regularized, and (b) new employees who, by virtue of a merger, are absorbed from another company as regular and permanent from the beginning of their employment with the surviving corporation. It bears reiterating here that these differences are too insubstantial to warrant the exclusion of the absorbed employees from the application of the Union Shop Clause.

3. ID.; ID.; ID.; ID.; ID.; RIGHT TO SECURITY OF TENURE, NOT VIOLATED; TERMINATION OF EMPLOYMENT BY VIRTUE OF A UNION SECURITY CLAUSE EMBODIED IN A CBA IS RECOGNIZED; RATIONALE. — We now come to the question: Does our affirmance of our ruling that former FEBTC employees absorbed by BPI are covered by the Union Shop Clause violate their right to security of tenure which we expressly upheld in this Resolution? We answer in the negative. In *Rance v. National Labor Relations Commission*, we held that: It is the policy of the state to assure the right of workers to "security of tenure" (Article XIII, Sec. 3 of the New Constitution, Section 9, Article II of the 1973 Constitution). The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed **security of tenure as**

meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the Code. x x x We have also previously held that the fundamental guarantee of security of tenure and due process dictates that no worker shall be dismissed except for a just and authorized cause provided by law and after due process is observed. Even as we now recognize the right to continuous, unbroken employment of workers who are absorbed into a new company pursuant to a merger, it is but logical that their employment may be terminated for any causes provided for under the law or in jurisprudence without violating their right to security of tenure. As Justice Carpio discussed in his dissenting opinion, it is well-settled that termination of employment by virtue of a union security clause embodied in a CBA is recognized in our jurisdiction. In *Del Monte Philippines, Inc. v. Saldivar*, we explained the rationale for this policy in this wise: Article 279 of the Labor Code ordains that "in cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by [Title I, Book Six of the Labor Code]." **Admittedly, the enforcement of a closed-shop or union security provision in the CBA as a ground for termination finds no extension within any of the provisions under Title I, Book Six of the Labor Code. Yet jurisprudence has consistently recognized, thus: "It is State policy to promote unionism** to enable workers to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. For this reason, the law has allowed stipulations for 'union shop' and 'closed shop' as means of encouraging workers to join and support the union of their choice in the protection of their rights and interests *vis-a-vis* the employer."

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; DISMISSAL MUST BE DONE WITH DUE PROCESS; DISCUSSED. — Although it is accepted that non-compliance with a union security clause is a valid ground for an employee's dismissal, jurisprudence dictates that such a dismissal must still be done in accordance with due process. This much we decreed in *General Milling Corporation v. Casio*, to wit: The Court reiterated in *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos* that: While respondent company may validly dismiss the employees expelled by the union for disloyalty under the union

security clause of the collective bargaining agreement upon the recommendation by the union, this dismissal should not be done hastily and summarily thereby eroding the employees' right to due process, self-organization and security of tenure. The enforcement of union security clauses is authorized by law **provided such enforcement is not characterized by arbitrariness, and always with due process**. Even on the assumption that the federation had valid grounds to expel the union officers, due process requires that these union officers **be accorded a separate hearing by respondent company**. The twin requirements of notice and hearing constitute the essential elements of procedural due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan and *Hildegardo F. Inigo* for petitioner.

Gregorio A. Pizarro for respondent.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

In the present incident, petitioner Bank of the Philippine Islands (BPI) moves for reconsideration[1] of our Decision dated August 10, 2010, holding that former employees of the Far East Bank and Trust Company (FEBTC) "absorbed" by BPI pursuant to the two banks' merger in 2000 were covered by the Union Shop Clause in the then existing collective bargaining agreement

[1] *Rollo*, pp. 249-258.

(CBA)[2] of BPI with respondent BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank (the Union).

To recall, the Union Shop Clause involved in this long standing controversy provided, thus:

ARTICLE II

x x x x x x x x x

Section 2. Union Shop — **New employees** falling within the bargaining unit as defined in Article I of this Agreement, **who may hereafter be regularly employed by the Bank shall, within thirty (30) days after they become regular employees, join the Union as a condition of their continued employment.** It is understood that membership in good standing in the Union is a condition of their continued employment with the Bank.[3] (Emphases supplied.)

The bone of contention between the parties was whether or not the "absorbed" FEBTC employees fell within the definition of "new employees" under the Union Shop Clause, such that they may be required to join respondent union and if they fail to do so, the Union may request BPI to terminate their employment, as the Union in fact did in the present case. Needless to state, BPI refused to accede to the Union's request. Although BPI won the initial battle at the Voluntary Arbitrator level, BPI's position was rejected by the Court of Appeals which ruled that the Voluntary Arbitrator's interpretation of the Union Shop Clause was at war with the spirit and rationale why the Labor Code allows the existence of such provision. On review with this Court, we upheld the appellate court's ruling and disposed of the case as follows:

WHEREFORE, the petition is hereby DENIED, and the Decision dated September 30, 2003 of the Court of Appeals is AFFIRMED, subject to the thirty (30) day notice requirement imposed herein.

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[2] The term of the CBA in question covered the period April 1, 1996 to March 31, 2001.

[3] *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*, G.R. No. 164301, August 10, 2010, 627 SCRA 590, 613.

Former FEBTC employees who opt not to become union members but who qualify for retirement shall receive their retirement benefits in accordance with law, the applicable retirement plan, or the CBA, as the case may be.[4]

Notwithstanding our affirmation of the applicability of the Union Shop Clause to former FEBTC employees, for reasons already extensively discussed in the August 10, 2010 Decision, even now BPI continues to protest the inclusion of said employees in the Union Shop Clause.

In seeking the reversal of our August 10, 2010 Decision, petitioner insists that the parties to the CBA clearly intended to limit the application of the Union Shop Clause only to new employees who were hired as non-regular employees but later attained regular status at some point after hiring. FEBTC employees cannot be considered new employees as BPI merely stepped into the shoes of FEBTC as an employer purely as a consequence of the merger.[5]

Petitioner likewise relies heavily on the dissenting opinions of our respected colleagues, Associate Justices Antonio T. Carpio and Arturo D. Brion. From both dissenting opinions, petitioner derives its contention that "the situation of absorbed employees can be likened to old employees of BPI, insofar as their full tenure with FEBTC was recognized by BPI and their salaries were maintained and safeguarded from diminution" but such absorbed employees "cannot and should not be treated in exactly the same way as old BPI employees for there are substantial differences between them."[6] Although petitioner admits that there are similarities between absorbed and new employees, they insist there are marked differences between them as well. Thus, adopting Justice Brion's stance, petitioner contends that the absorbed FEBTC employees should be considered "a *sui generis* group of employees whose classification will not be duplicated until

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[4] *Id.* at 649.

[5] *Rollo*, pp. 251-252; Motion for Reconsideration, pp. 3-4.

[6] *Id.* at 253; *id.* at 5.

BPI has another merger where it would be the surviving corporation."[7] Apparently borrowing from Justice Carpio, petitioner propounds that the Union Shop Clause should be strictly construed since it purportedly curtails the right of the absorbed employees to abstain from joining labor organizations.[8]

Pursuant to our directive, the Union filed its Comment[9] on the Motion for Reconsideration. In opposition to petitioner's arguments, the Union, in turn, adverts to our discussion in the August 10, 2010 Decision regarding the voluntary nature of the merger between BPI and FEBTC, the lack of an express stipulation in the Articles of Merger regarding the transfer of employment contracts to the surviving corporation, and the consensual nature of employment contracts as valid bases for the conclusion that former FEBTC employees should be deemed new employees.[10] The Union argues that the creation of employment relations between former FEBTC employees and BPI (*i.e.*, BPI's selection and engagement of former FEBTC employees, its payment of their wages, power of dismissal and of control over the employees' conduct) occurred after the merger, or to be more precise, after the Securities and Exchange Commission's (SEC) approval of the merger.[11] The Union likewise points out that BPI failed to offer any counterargument to the Court's reasoning that:

> The rationale for upholding the validity of union shop clauses in a CBA, even if they impinge upon the individual employee's right or freedom of association, is not to protect the union for the union's sake. Laws and jurisprudence promote unionism and afford certain protections to the certified bargaining agent in a unionized company because a strong and effective union presumably benefits all employees

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[7] Justice Brion's Dissenting Opinion, *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*, *supra* note 3 at 693; quoted in Motion for Reconsideration, *id.*

[8] *Rollo,* pp. 254-256.

[9] *Id.* at 262-278.

[10] *Id.* at 264-271.

[11] *Id.* at 275.

in the bargaining unit since such a union would be in a better position to demand improved benefits and conditions of work from the employer. x x x.

x x x Nonetheless, settled jurisprudence has already swung the balance in favor of unionism, in recognition that ultimately the individual employee will be benefited by that policy. In the hierarchy of constitutional values, this Court has repeatedly held that the right to abstain from joining a labor organization is subordinate to the policy of encouraging unionism as an instrument of social justice.[12]

While most of the arguments offered by BPI have already been thoroughly addressed in the August 10, 2010 Decision, we find that a qualification of our ruling is in order only with respect to the interpretation of the provisions of the Articles of Merger and its implications on the former FEBTC employees' security of tenure.

Taking a second look on this point, we have come to agree with Justice Brion's view that it is more in keeping with the dictates of social justice and the State policy of according full protection to labor to deem employment contracts as automatically assumed by the surviving corporation in a merger, even in the absence of an express stipulation in the articles of merger or the merger plan. In his dissenting opinion, Justice Brion reasoned that:

To my mind, due consideration of Section 80 of the Corporation Code, the constitutionally declared policies on work, labor and employment, and the specific FEBTC-BPI situation — *i.e.*, a merger with complete "body and soul" transfer of all that FEBTC embodied and possessed and where both participating banks were willing (albeit by deed, not by their written agreement) to provide for the affected human resources by recognizing continuity of employment — should point this Court to a declaration that in a complete merger situation where there is total takeover by one corporation over another and there is silence in the merger agreement on what the fate of the human resource complement shall be, the latter should not be left in legal limbo and should be properly provided for, by compelling

[12] *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*, *supra* note 3 at 647-648.

the surviving entity to absorb these employees. This is what Section 80 of the Corporation Code commands, as the surviving corporation has the legal obligation to assume all the obligations and liabilities of the merged constituent corporation.

Not to be forgotten is that the affected employees managed, operated and worked on the transferred assets and properties as their means of livelihood; they constituted a basic component of their corporation during its existence. In a merger and consolidation situation, they cannot be treated without consideration of the applicable constitutional declarations and directives, or, worse, be simply disregarded. If they are so treated, it is up to this Court to read and interpret the law so that they are treated in accordance with the legal requirements of mergers and consolidation, read in light of the social justice, economic and social provisions of our Constitution. Hence, there is a need for the surviving corporation to take responsibility for the affected employees and to absorb them into its workforce where no appropriate provision for the merged corporation's human resources component is made in the Merger Plan.[13]

By upholding the automatic assumption of the non-surviving corporation's existing employment contracts by the surviving corporation in a merger, the Court strengthens judicial protection of the right to security of tenure of employees affected by a merger and avoids confusion regarding the status of their various benefits which were among the chief objections of our dissenting colleagues. However, nothing in this Resolution shall impair the right of an employer to terminate the employment of the absorbed employees for a lawful or authorized cause or the right of such an employee to resign, retire or otherwise sever his employment, whether before or after the merger, subject to existing contractual obligations. In this manner, Justice Brion's theory of automatic assumption may be reconciled with the majority's concerns with the successor employer's prerogative to choose its employees and the prohibition against involuntary servitude.

Notwithstanding this concession, we find no reason to reverse our previous pronouncement that the absorbed FEBTC employees are covered by the Union Shop Clause.

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[13] *Id.* at 683-684.

Even in our August 10, 2010 Decision, we already observed that the legal fiction in the law on mergers (that the surviving corporation continues the corporate existence of the non-surviving corporation) is mainly a tool to adjudicate the rights and obligations between and among the merged corporations and the persons that deal with them.[14] Such a legal fiction cannot be unduly extended to an interpretation of a Union Shop Clause so as to defeat its purpose under labor law. Hence, we stated in the Decision that:

> In any event, it is of no moment that the former FEBTC employees retained the regular status that they possessed while working for their former employer upon their absorption by petitioner. This fact would not remove them from the scope of the phrase "new employees" as contemplated in the Union Shop Clause of the CBA, contrary to petitioner's insistence that the term "new employees" only refers to those who are initially hired as non-regular employees for possible regular employment.
>
> The Union Shop Clause in the CBA simply states that "new employees" who during the effectivity of the CBA "may be regularly employed" by the Bank must join the union within thirty (30) days from their regularization. There is nothing in the said clause that limits its application to only new employees who possess non-regular status, meaning probationary status, at the start of their employment. Petitioner likewise failed to point to any provision in the CBA expressly excluding from the Union Shop Clause new employees who are "absorbed" as regular employees from the beginning of their employment. What is indubitable from the Union Shop Clause is that upon the effectivity of the CBA, petitioner's new regular employees (regardless of the manner by which they became employees of BPI) are required to join the Union as a condition of their continued employment.[15]

Although by virtue of the merger BPI steps into the shoes of FEBTC as a successor employer as if the former had been the employer of the latter's employees from the beginning it must be emphasized that, in reality, the legal consequences of the

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[14] *Id.* at 630-631.

[15] *Id.* at 632.

merger only occur at a specific date, *i.e.*, upon its effectivity which is the date of approval of the merger by the SEC. Thus, we observed in the Decision that BPI and FEBTC stipulated in the Articles of Merger that they will both continue their respective business operations until the SEC issues the certificate of merger and in the event no such certificate is issued, they shall hold each other blameless for the non-consummation of the merger.[16] We likewise previously noted that BPI made its assignments of the former FEBTC employees effective on April 10, 2000, or after the SEC approved the merger.[17] In other words, the obligation of BPI to pay the salaries and benefits of the former FEBTC employees and its right of discipline and control over them only arose with the effectivity of the merger. Concomitantly, the obligation of former FEBTC employees to render service to BPI and their right to receive benefits from the latter also arose upon the effectivity of the merger. What is material is that all of these legal consequences of the merger took place during the life of an existing and valid CBA between BPI and the Union wherein they have mutually consented to include a Union Shop Clause.

From the plain, ordinary meaning of the terms of the Union Shop Clause, it covers employees who (a) enter the employ of BPI during the term of the CBA; (b) are part of the bargaining unit (defined in the CBA as comprised of BPI's rank and file employees); and (c) become regular employees without distinguishing as to the manner they acquire their regular status. Consequently, the number of such employees may adversely affect the majority status of the Union and even its existence itself, as already amply explained in the Decision.

Indeed, there are differences between (a) new employees who are hired as probationary or temporary but later regularized, and (b) new employees who, by virtue of a merger, are absorbed from another company as regular and permanent from the beginning of their employment with the surviving corporation.

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[16] *Id.* at 634.

[17] *Id.*

It bears reiterating here that these differences are too insubstantial to warrant the exclusion of the absorbed employees from the application of the Union Shop Clause. In the Decision, we noted that:

> Verily, we agree with the Court of Appeals that there are no substantial differences between a newly hired non-regular employee who was regularized weeks or months after his hiring and a new employee who was absorbed from another bank as a regular employee pursuant to a merger, for purposes of applying the Union Shop Clause. Both employees were hired/employed only after the CBA was signed. At the time they are being required to join the Union, they are both already regular rank and file employees of BPI. They belong to the same bargaining unit being represented by the Union. They both enjoy benefits that the Union was able to secure for them under the CBA. When they both entered the employ of BPI, the CBA and the Union Shop Clause therein were already in effect and neither of them had the opportunity to express their preference for unionism or not. We see no cogent reason why the Union Shop Clause should not be applied equally to these two types of new employees, for they are undeniably similarly situated.[18]

Again, it is worthwhile to highlight that a contrary interpretation of the Union Shop Clause would dilute its efficacy and put the certified union that is supposedly being protected thereby at the mercy of management. For if the former FEBTC employees had no say in the merger of its former employer with another bank, as petitioner BPI repeatedly decries on their behalf, the Union likewise could not prevent BPI from proceeding with the merger which undisputedly affected the number of employees in the bargaining unit that the Union represents and may negatively impact on the Union's majority status. In this instance, we should be guided by the principle that courts must place a practical and realistic construction upon a CBA, giving due consideration to the context in which it is negotiated and purpose which it is intended to serve.[19]

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[18] *Id.* at 635-636.

[19] *Marcopper Mining Corporation v. National Labor Relations Commission*, 325 Phil. 618, 632 (1996).

We now come to the question: Does our affirmance of our ruling that former FEBTC employees absorbed by BPI are covered by the Union Shop Clause violate their right to security of tenure which we expressly upheld in this Resolution? We answer in the negative.

In *Rance v. National Labor Relations Commission*,[20] we held that:

> It is the policy of the state to assure the right of workers to "security of tenure" (Article XIII, Sec. 3 of the New Constitution, Section 9, Article II of the 1973 Constitution). The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed **security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the Code**. x x x (Emphasis supplied.)

We have also previously held that the fundamental guarantee of security of tenure and due process dictates that no worker shall be dismissed except for a just and authorized cause provided by law and after due process is observed.[21] Even as we now recognize the right to continuous, unbroken employment of workers who are absorbed into a new company pursuant to a merger, it is but logical that their employment may be terminated for any causes provided for under the law or in jurisprudence without violating their right to security of tenure. As Justice Carpio discussed in his dissenting opinion, it is well-settled that termination of employment by virtue of a union security clause embodied in a CBA is recognized in our jurisdiction.[22] In *Del*

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[20] 246 Phil. 287, 292-293 (1988), cited in *Gatus v. Quality House Inc.*, G.R. No. 156766, April 16, 2009, 585 SCRA 177, 199 and *Perez v. Philippine Telegraph and Telephone Company*, G.R. No. 152048, April 7, 2009, 584 SCRA 110, 150.

[21] *Cosep v. National Labor Relations Commission*, 353 Phil. 148, 157 (1998); *Archbuild Masters and Construction, Inc. v. National Labor Relations Commission*, 321 Phil. 869, 877 (1995).

[22] Justice Carpio's Dissenting Opinion, *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI*

Monte Philippines, Inc. v. Saldivar,[23] we explained the rationale for this policy in this wise:

> Article 279 of the Labor Code ordains that "in cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by [Title I, Book Six of the Labor Code]." **Admittedly, the enforcement of a closed-shop or union security provision in the CBA as a ground for termination finds no extension within any of the provisions under Title I, Book Six of the Labor Code. Yet jurisprudence has consistently recognized, thus: "It is State policy to promote unionism** to enable workers to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. For this reason, the law has allowed stipulations for 'union shop' and 'closed shop' as means of encouraging workers to join and support the union of their choice in the protection of their rights and interests *vis-a-vis* the employer."[24] (Emphasis supplied.)

Although it is accepted that non-compliance with a union security clause is a valid ground for an employee's dismissal, jurisprudence dictates that such a dismissal must still be done in accordance with due process. This much we decreed in *General Milling Corporation v. Casio*,[25] to wit:

> The Court reiterated in *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos* that:
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> > While respondent company may validly dismiss the employees expelled by the union for disloyalty under the union security clause of the collective bargaining agreement upon the recommendation by the union, this dismissal should not be done hastily and summarily thereby eroding the employees' right to due process, self-organization and security of tenure.

Unibank, *supra* note 3 at 667, citing *Alabang Country Club, Inc. v. National Labor Relations Commission*, G.R. No. 170287, February 14, 2008, 545 SCRA 351, 361.

[23] G.R. No. 158620, October 11, 2006, 504 SCRA 192.

[24] *Id.* at 203-204.

[25] G.R. No. 149552, March 10, 2010, 615 SCRA 13.

> The enforcement of union security clauses is authorized by law **provided such enforcement is not characterized by arbitrariness, and always with due process**. Even on the assumption that the federation had valid grounds to expel the union officers, due process requires that these union officers **be accorded a separate hearing by respondent company**.
>
> The twin requirements of notice and hearing constitute the essential elements of procedural due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality.
>
> Irrefragably, GMC **cannot dispense with the requirements of notice and hearing before dismissing Casio, *et al.* even when said dismissal is pursuant to the closed shop provision in the CBA**. The rights of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the company or his own union are not wiped away by a union security clause or a union shop clause in a collective bargaining agreement. x x x[26] (Emphases supplied.)

In light of the foregoing, we find it appropriate to state that, apart from the fresh thirty (30)-day period from notice of finality of the Decision given to the affected FEBTC employees to join the Union before the latter can request petitioner to terminate the former's employment, petitioner must still accord said employees the twin requirements of notice and hearing on the possibility that they may have other justifications for not joining the Union. Similar to our August 10, 2010 Decision, we reiterate that our ruling presupposes there has been no material change in the situation of the parties in the interim.

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

WHEREFORE, the Motion for Reconsideration is *DENIED*. The Decision dated August 10, 2010 is *AFFIRMED*, subject to the qualifications that:

(a) Petitioner is deemed to have assumed the employment contracts of the Far East Bank and Trust Company (FEBTC) employees upon effectivity of the merger *without break in the continuity of their employment*, even without express stipulation in the Articles of Merger; and

(b) Aside from the thirty (30) days, counted from notice of finality of the August 10, 2010 Decision, given to former FEBTC employees to join the respondent, said employees shall be accorded full procedural due process before their employment may be terminated.

SO ORDERED.

Corona, C.J., Velasco, Jr., Peralta, Abad, Villarama, Jr., Mendoza, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J., reiterates his dissenting opinion.

Brion, J., in light of modification, he concurs.

Sereno, J., joins *J.* Carpio.

Bersamin and *Perez, JJ.*, on official leave.

Del Castillo, J., on leave.

Reyes, J., no part.

EN BANC

[G.R. No. 174476. October 11, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNOLD T. AGCANAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL AND ALIBI; WEAK DEFENSES WHICH CANNOT PREVAIL AGAINST POSITIVE IDENTIFICATION. — This Court has held in a number of cases that denial and alibi are weak defenses, which cannot prevail against positive identification. *People v. Caisip* thus held: "Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters."

2. ID.; ID.; ID.; ID.; FOR ALIBI TO PROSPER AS A DEFENSE, THE ACCUSED MUST PROVE NOT ONLY THAT HE WAS AT SOME OTHER PLACE AT THE TIME THE CRIME WAS COMMITTED, BUT THAT IT WAS LIKEWISE IMPOSSIBLE FOR HIM TO BE AT THE *LOCUS CRIMINIS* AT THE TIME OF THE ALLEGED CRIME. — [T]he accused miserably failed to satisfy the requirements for an alibi to be considered plausible. For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the *locus criminis* at the time of the alleged crime. The accused testified that he was attending the birthday celebration of his brother, Alejandro Agcanas, at the time of the incident. However, the trial court pointed out several inconsistencies in the testimony of the accused.

3. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; QUALIFYING CIRCUMSTANCES;

TREACHERY; ESTABLISHED IN THE CASE AT BAR. — [T]he Court likewise finds that there was treachery in the commission of the crime. In *People v. Dela Cruz*, this Court reiterated: "There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted." The victim was then eating his dinner, seated with his back to the kitchen door. Suddenly, without provocation or reason, the accused entered through that door and shot the victim in the head, causing the latter's instantaneous death. With the suddenness of the attack, the victim could not do anything, except turn his head towards the accused.

4. ID.; AGGRAVATING CIRCUMSTANCES; DWELLING; PRESENT IN THE CASE AT BAR. — The trial court was also correct in ruling that dwelling was an aggravating circumstance. It has been held in a long line of cases that dwelling is aggravating because of the sanctity of privacy which the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.

5. ID.; ID.; ILLEGAL POSSESSION OF FIREARM; PROPERLY APPRECIATED IN THE CASE AT BAR; EXPLAINED. — The aggravating circumstance of illegal possession of firearm was likewise properly appreciated, even though the firearm used was not recovered. As this Court held in *People v. Taguba,* the actual firearm itself need not be presented if its existence can be proved by the testimonies of witnesses or by other evidence presented. In the case at bar, Beatriz Raguirag testified that she saw the accused holding a gun and then heard a gunshot. The post-mortem examination also showed that the accused died of a gunshot wound. Thus, the presentation of the actual firearm was not indispensible to prove its existence and use.

Second, during pre-trial the accused admitted that he was not a licensed firearm holder. As this Court stated in *Del Rosario v. People of the Philippines:* "In crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements thereof, viz.: **(a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. The essence of the crime of illegal possession is the possession,** whether actual or constructive, of the subject firearm, without which there can be no conviction for illegal possession. **After possession is established by the prosecution, it would only be a matter of course to determine whether the accused has a license to possess the firearm**. **Possession of any firearm becomes unlawful only if the necessary permit or license therefor is not first obtained. The absence of license and legal authority constitutes an essential ingredient of the offense of illegal possession of firearm and every ingredient or essential element of an offense must be shown by the prosecution by proof beyond reasonable doubt**."

6. ID.; CRIMES AGAINST PERSONS; MURDER; PENALTY. — The judgment of the trial court must, however, be modified. On 24 June 2006, Republic Act No. 9346 (RA 9346) abolished the death penalty. Thus, pursuant to Section 2(a) of RA 9346, the accused shall instead suffer the penalty of *reclusion perpetua.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *J.*:

For the automatic review of this Court is the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00845 convicting

[1] *Rollo*, pp. 3-16. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Fernanda Lampas Peralta and Vicente S.E. Veloso, concurring and dated 26 May 2006.

the accused of murder and sentencing him to suffer the penalty of death and to pay damages.

The antecedent facts are as follows:

On 8 May 2000, the provincial prosecutor of Laoag City charged the accused with murder in the Regional Trial Court (RTC), Branch 16, Laoag City, under the following Information:[2]

> That on or about 9:00 o'clock in the evening of May 4, 2000 at Brgy. Root, Dingras, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with evident premeditation, with treachery and nighttime (sic) having been purposely sought and inside a dwelling, did then and there willfully (sic), unlawfully and feloniously shoot WARLITO RAGUIRAG with an illegally possessed firearm of yet unknown calibre, inflicting upon the latter fatal gunshot wounds which caused the death of said WARLITO RAGUIRAG immediately thereafter.
>
> CONTRARY TO LAW.
>
> NO BAIL RECOMMENDED.

Upon arraignment, the accused pleaded not guilty. Thereafter, trial ensued.

The trial court found that on 4 May 2000, at about nine o'clock in the evening while the victim Warlito Raguirag was having dinner at home, herein accused Arnold Agcanas entered the former's house through the kitchen door. The accused pointed a gun at the back of the left ear of the victim and shot him point-blank. Beatriz Raguirag, the victim's wife, shouted, "We were invaded [*sinerrek*] by Arnold Agcanas."[3] Under the 50-watt light bulb and with only a meter between them, the wife was able to identify the accused, who was the son of her cousin.

Around 9:15 in the evening, Senior Police Officer (SPO) 1 Jessie Malvar, SPO4 Bonifacio Valenciano, SPO1 Marlon Juni and Police Officer (PO) 2 Ramil P. Belong arrived at the scene of the crime and were informed by Beatriz Raguirag that Arnold

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[2] CA *rollo,* pp. 9-10.

[3] TSN, 29 June 2001, p. 3.

Agcanas was the assailant. The police were also informed by several people that the accused had a relative in *Barangay* Naiporta, Sarrat, Ilocos Norte. Thereafter, around ten o'clock in the evening, the police found the accused in the house of his brother, Alejandro Agcanas, who was actually residing in *Barangay* San Miguel, Sarrat, Ilocos Norte. The accused then went willingly with the police officers to the police station.

The trial court further found that the crime was aggravated by the qualifying circumstance of dwelling, given that the crime was committed in the kitchen of the house of the victim. Finally, it held that the accused shot the victim with an illegally possessed firearm, although it was not presented as evidence. It did not, however, find the crime attended by the aggravating circumstances of evident premeditation and nighttime, there being no evidence presented to prove these two.

Thus, on 30 September 2004, the trial court found the accused guilty beyond reasonable doubt of the crime of murder, qualified by treachery and attended by the aggravating circumstances of dwelling and the use of an illegally possessed firearm. The dispositive portion of the Decision states:

> WHEREFORE, PREMISES CONSIDERED, the prosecution was able to prove the guilt of the accused ARNOLD AGCANAS beyond reasonable doubt of the crime of Murder qualified by treachery. With the same quantum of evidence, the aggravating circumstance (sic) of dwelling and the use of an illegally possessed firearm were duly established. No mitigating circumstance is accorded to the accused. Hence, the maximum penalty of DEATH is hereby imposed upon him with all its accessory penalties. Likewise, he is ordered to pay the widow of the victim WARLITO RAGUIRAG Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity; Fifty Thousand (₱50,000.00) as moral damages; Fifty Thousand Pesos (₱50,000.00) as exemplary damages and the costs.
>
> SO ORDERED.[4]

On intermediate appellate review by the Court of Appeals, the conviction was affirmed. However, the award of damages

[4] CA *rollo*, pp. 21-27.

was modified based on prevailing jurisprudence. The dispositive portion states:

> WHEREFORE, premises considered, the appealed decision finding the accused-appellant guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the supreme penalty of **DEATH** is hereby **AFFIRMED** with the **MODIFICATIONS** as to damages.
>
> The accused-appellant is ordered to pay the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00), as moral damages, and Twenty Five Thousand Pesos (₱25,000.00), as exemplary damages.
>
> In accordance with A.M. No. 00-5-03-SC which took effect on October 15, 2004, amending Section 13, Rule 124 of the Revised Rules of Criminal Procedure, let the entire records of this case be elevated to the Supreme Court for review.
>
> Costs *de oficio*.
>
> SO ORDERED.

Accused-appellant assigns the following errors for this Court's automatic review:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT WAS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II.

ASSUMING *ARGUENDO* THAT ACCUSED-APPELLANT WAS LIABLE FOR THE DEATH OF THE VICTIM, THE TRIAL COURT GRAVELY ERRED IN FINDING HIM GUILTY OF MURDER INSTEAD OF HOMICIDE ONLY.

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE CRIME WAS AGGRAVATED BY THE CIRCUMSTANCES OF DWELLING AND ILLEGAL POSSESSION OF FIREARM.

After a judicious review of the records, the Court finds no cogent reason to overturn the findings of the trial court.

This Court has held in a number of cases that denial and alibi are weak defenses, which cannot prevail against positive identification.[5] *People v. Caisip*[6] thus held:

> Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.

Beatriz Raguirag positively identified the accused as the one who had shot her husband. She was firm and consistent throughout her testimony. This Court does not see any ill motive on her part in testifying against her own relative regarding the death of her husband. Thus, there is no reason to question her credibility as a witness.

On the other hand, the accused miserably failed to satisfy the requirements for an alibi to be considered plausible. For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the *locus criminis* at the time of the alleged crime.[7]

The accused testified that he was attending the birthday celebration of his brother, Alejandro Agcanas, at the time of the incident. However, the trial court pointed out several inconsistencies in the testimony of the accused.

First, while he testified that the birthday celebration of Alejandro was on 4 May 2000, the latter was actually born on 22 July 1950. The accused also testified that the celebration ended around midnight, but Alejandro testified that the former

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[5] *People v. Mapalo,* G.R. No. 172608, 6 February 2007, 514 SCRA 689; *People v. Caraang,* 463 Phil. 715; *People v. Caisip,* 352 Phil. 1058.

[6] 352 Phil. 1058, 1065.

[7] *People v. Malones,* 469 Phil. 301; *People v. Libo-on,* 410 Phil. 378; *People v. Marquez,* 400 Phil. 1313.

left the house between 9:30 p.m. and 10:00 p.m. after the party. Meanwhile, the arresting officers said that upon reaching the house of Alejandro Agcanas, the lights were off and there was no celebration going on. The trial court further reasoned that the house of Alejandro Agcanas was only 45 minutes away from the scene of the crime; therefore, it was not physically impossible for him to travel from the victim's house to Alejandro Agcanas' house where he was arrested by the police officers. Finally, another witness, Liwliwa Agcanas, a relative of the accused by affinity, likewise testified that her house was twenty (20) meters away from the victim's house. On the night of the shooting incident, around nine o'clock, she saw the accused drinking with some others five meters from where she stood in front of her house.

Thus, the trial court correctly ruled that the alibi of the accused deserved scant consideration.

The accused additionally alleges that his right to counsel was violated when, on the morning of 5 May 2000, he made an admission without his lawyer that he had shot the victim. While it is true that an admission made by the accused without counsel is violative of due process and is therefore inadmissible, it must be noted that the findings of the trial court in this case were not based on the 5 May 2000 admission. The issue, therefore, is irrelevant to this case, since the trial court did not take the admission as evidence against the accused.

Anent the second assigned error, the Court likewise finds that there was treachery in the commission of the crime.

In *People v. Dela Cruz*,[8] this Court reiterated:

> There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to be considered, two elements

[8] *People v. Dela Cruz*, G.R. No. 188353, 16 February 2010, 612 SCRA 738.

must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.

The victim was then eating his dinner, seated with his back to the kitchen door. Suddenly, without provocation or reason, the accused entered through that door and shot the victim in the head, causing the latter's instantaneous death. With the suddenness of the attack, the victim could not do anything, except turn his head towards the accused. The testimony of Beatriz Raguirag is revealing:

Fiscal Molina:

Q: You said Madam Witness in the last hearing that (that) was the time Arnold Agcanas entered(.) (W)hat portion of your house did Arnold Agcanas enter?

A: In (*sic*) the kitchen, sir.

Q: In what part (*sic*) of the kitchen did Arnold Agcanas enter?

A: At (*sic*) the door, sir.

Q: When you saw Arnold Agcanas enter, what happened next?

A: He immediately shoot (*sic*) Warlito Raguirag, sir.

Q: What was the place where Arnold Agcanas placed himself when he shoot (*sic*) your husband in relation to your husband?

A: At the back of my husband, sir

. . . . . .

Q: From the time you saw Arnold Agcanas enter the door of the kitchen up to the time he actually shoot (*sic*) your husband how long was it?

A: When he entered the kitchen he immediately shoot (*sic*) my husband and left hurriedly, sir.

Q: What part of your house did he exit?

A: (Through) [t]he door of the kitchen, where he entered, sir.[9]

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[9] TSN, May 23, 2001, pp. 2-3.

Moreover, the accused was the nephew of the victim's wife; thus, an attack from a relative right in their own home was unexpected. Since the accused was not a stranger to the spouses, the wife did not immediately demand that he leave as soon as she saw him enter the kitchen.

The trial court was also correct in ruling that dwelling was an aggravating circumstance. It has been held in a long line of cases that dwelling is aggravating because of the sanctity of privacy which the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[10]

The aggravating circumstance of illegal possession of firearm was likewise properly appreciated, even though the firearm used was not recovered. As this Court held in *People v. Taguba,*[11] the actual firearm itself need not be presented if its existence can be proved by the testimonies of witnesses or by other evidence presented. In the case at bar, Beatriz Raguirag testified that she saw the accused holding a gun and then heard a gunshot. The post-mortem examination also showed that the accused died of a gunshot wound. Thus, the presentation of the actual firearm was not indispensible to prove its existence and use.

Second, during pre-trial the accused admitted that he was not a licensed firearm holder. As this Court stated in *Del Rosario v. People of the Philippines:*[12]

> In crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements thereof, viz.: **(a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. The essence of the crime of illegal possession is the possession,** whether actual or constructive, of the subject firearm, without which there can be no conviction for illegal possession. **After possession**

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[10] *People v. Montesa,* G.R. No. 181899, 27 November 2008, 572 SCRA 317; *People v. Daniela,* 449 Phil. 547*; People v. Molina,* 370 Phil. 546.

[11] 396 Phil. 366.

[12] 410 Phil. 642, 659.

is established by the prosecution, it would only be a matter of course to determine whether the accused has a license to possess the firearm. **Possession of any firearm becomes unlawful only if the necessary permit or license therefor is not first obtained. The absence of license and legal authority constitutes an essential ingredient of the offense of illegal possession of firearm and every ingredient or essential element of an offense must be shown by the prosecution by proof beyond reasonable doubt**. . . (Emphasis supplied.)

The judgment of the trial court must, however, be modified. On 24 June 2006, Republic Act No. 9346 (RA 9346) abolished the death penalty. Thus, pursuant to Section 2(a) of RA 9346, the accused shall instead suffer the penalty of *reclusion perpetua.*

WHEREFORE, in view of the foregoing, the assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00845 finding the accused guilty beyond reasonable doubt of the crime of murder is hereby *AFFIRMED*. By virtue of RA 9346, the penalty is MODIFIED, and the accused is hereby sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole. Based on prevailing jurisprudence, the award of damages is likewise *MODIFIED*. The accused is ordered to pay ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱30,000 as exemplary damages to the heirs of Warlito Raguirag.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Abad, Villarama, Jr., Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Peralta, J., no part.

Bersamin and *Perez, JJ.,* on official leave.

Del Castillo, J., on sick leave.

EN BANC

[G.R. No. 177807. October 11, 2011]

EMILIO GANCAYCO, *petitioner, vs.* **CITY GOVERNMENT OF QUEZON CITY AND METRO MANILA DEVELOPMENT AUTHORITY,** *respondents.*

[G.R. No. 177933. October 11, 2011]

METRO MANILA DEVELOPMENT AUTHORITY, *petitioner, vs.* **JUSTICE EMILIO A. GANCAYCO (Retired),** *respondent.*

SYLLABUS

1. CIVIL LAW; ESTOPPEL; ESTABLISHED IN CASE AT BAR; EXPLAINED. — [W]e find that Justice Gancayco may still question the constitutionality of the ordinance to determine whether or not the ordinance constitutes a "taking" of private property without due process of law and just compensation. It was only in 2003 when he was allegedly deprived of his property when the MMDA demolished a portion of the building. Because he was granted an exemption in 1966, there was no "taking" yet to speak of. Moreover, in *Acebedo Optical Company, Inc. v. Court of Appeals,* we held: **"*Ultra vires* acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect. The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*."** Recently, in *British American Tobacco v. Camacho,* we likewise held: **"The mere fact that a law has been relied upon in the past and all that time has not been attacked as unconstitutional is not a ground for considering petitioner estopped from assailing its validity. For courts will pass upon a constitutional question only when presented before it in *bona fide* cases for determination, and the fact that the question has not been raised before is not a valid reason for refusing to allow it to be raised later."** Anent the second ground, we find that Justice Gancayco may not question the ordinance on the ground of equal protection when he also benefited from the exemption. It bears emphasis

that Justice Gancayco himself requested for an exemption from the application of the ordinance in 1965 and was eventually granted one. Moreover, he was still enjoying the exemption at the time of the demolition as there was yet no valid notice from the city engineer. Thus, while the ordinance may be attacked with regard to its different treatment of properties that appears to be similarly situated, Justice Gancayco is not the proper person to do so.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; POLICE POWER; NATURE; DISCUSSED. —** In *MMDA v. Bel-Air Village Association,* we discussed the nature of police powers exercised by local government units, *to wit*: "Police power is an inherent attribute of sovereignty. It has been defined as the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same. The power is plenary and its scope is vast and pervasive, reaching and justifying measures for public health, public safety, public morals, and the general welfare. It bears stressing that police power is lodged primarily in the National Legislature. It cannot be exercised by any group or body of individuals not possessing legislative power. The National Legislature, however, may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body."

3. **ID.; ID.; ID.; ID.; VALID DELEGATION OF POLICE POWER TO THE CITY COUNCIL, ESTABLISHED IN THE CASE AT BAR. —** It is clear that Congress expressly granted the city government, through the city council, police power by virtue of Section 12(oo) of Republic Act No. 537, or the Revised Charter of Quezon City, which states: To make such further ordinances and regulations not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred by this Act and such as it shall deem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort,

and convenience of the city and the inhabitants thereof, and for the protection of property therein; and enforce obedience thereto with such lawful fines or penalties as the City Council may prescribe under the provisions of subsection (jj) of this section. Specifically, on the powers of the city government to regulate the construction of buildings, the Charter also expressly provided that the city government had the power to regulate the kinds of buildings and structures that may be erected within fire limits and the manner of constructing and repairing them.

4. ID.; ID.; ID.; ID.; ID.; POWER OF THE LOCAL GOVERNMENT UNITS TO ISSUE ZONING ORDINANCES; UPHELD IN CASE AT BAR. — With regard meanwhile to the power of the local government units to issue zoning ordinances, we apply *Social Justice Society v. Atienza*. In that case, the *Sangguniang Panlungsod* of Manila City enacted an ordinance on 28 November 2001 reclassifying certain areas of the city from industrial to commercial. As a result of the zoning ordinance, the oil terminals located in those areas were no longer allowed. Though the oil companies contended that they stood to lose billions of pesos, this Court upheld the power of the city government to pass the assailed ordinance, stating: "In the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfil the objectives of the government. Otherwise stated, **the government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare. However, the interference must be reasonable and not arbitrary. And to forestall arbitrariness, the methods or means used to protect public health, morals, safety or welfare must have a reasonable relation to the end in view.** The means adopted by the *Sanggunian* was the enactment of a zoning ordinance which reclassified the area where the depot is situated from industrial to commercial. **A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines and apportions a given political subdivision into specific land uses as present and future projection of needs.** As a result of the zoning, the continued operation of the businesses of the oil companies in their present location will no longer be permitted. **The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents**

of a locality. Consequently, the enactment of Ordinance No. 8027 is within the power of the *Sangguniang Panlungsod* of the City of Manila and any resulting burden on those affected cannot be said to be unjust. . . . x x x" In the case at bar, it is clear that the primary objectives of the city council of Quezon City when it issued the questioned ordinance ordering the construction of arcades were the health and safety of the city and its inhabitants; the promotion of their prosperity; and the improvement of their morals, peace, good order, comfort, and the convenience. These arcades provide safe and convenient passage along the sidewalk for commuters and pedestrians, not just the residents of Quezon City. More especially so because the contested portion of the building is located on a busy segment of the city, in a business zone along EDSA.

5. CIVIL LAW; PROPERTY; NUISANCES; DEFINED; "WING WALLS" OF THE BUILDING ARE NOT NUISANCES *PER SE*. — The fact that in 1966 the City Council gave Justice Gancayco an exemption from constructing an arcade is an indication that the wing walls of the building are not nuisances *per se*. The wing walls do not *per se* immediately and adversely affect the safety of persons and property. The fact that an ordinance may declare a structure illegal does not necessarily make that structure a nuisance. Article 694 of the Civil Code defines nuisance as any act, omission, establishment, business, condition or property, or anything else that (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or, (5) hinders or impairs the use of property. A nuisance may be *per se* or *per accidens*. A nuisance *per se* is that which affects the immediate safety of persons and property and may summarily be abated under the undefined law of necessity. Clearly, when Justice Gancayco was given a permit to construct the building, the city council or the city engineer did not consider the building, or its demolished portion, to be a threat to the safety of persons and property. This fact alone should have warned the MMDA against summarily demolishing the structure.

6. ID.; ID.; ID.; ONLY COURTS OF LAW HAVE THE POWER TO DETERMINE WHETHER A THING IS A NUISANCE. — Neither does the MMDA have the power to declare a thing

a nuisance. Only courts of law have the power to determine whether a thing is a nuisance. In *AC Enterprises v. Frabelle Properties Corp*., we held: "We agree with petitioner's contention that, under Section 447(a)(3)(i) of R.A. No. 7160, otherwise known as the Local Government Code, the *Sangguniang Panglungsod* is empowered to enact ordinances declaring, preventing or abating noise and other forms of nuisance. It bears stressing, however, that the *Sangguniang Bayan* cannot declare a particular thing as a nuisance *per se* and order its condemnation. **It does not have the power to find, as a fact, that a particular thing is a nuisance when such thing is not a nuisance *per se*; nor can it authorize the extrajudicial condemnation and destruction of that as a nuisance which in its nature, situation or use is not such. Those things must be determined and resolved in the ordinary courts of law.** If a thing be in fact, a nuisance due to the manner of its operation, that question cannot be determined by a mere resolution of the *Sangguniang Bayan*."

7. POLITICAL LAW; STATUTES; PRESIDENTIAL DECREE NO. 1096 (NATIONAL BUILDING CODE); THE AUTHORITY TO ORDER THE DEMOLITION OF ANY STRUCTURE LIES WITH THE BUILDING OFFICIAL. — [T]he Building Code clearly provides the process by which a building may be demolished. The authority to order the demolition of any structure lies with the Building Official. The pertinent provisions of the Building Code provide: "SECTION 205. Building Officials. — Except as otherwise provided herein, the Building Official shall be responsible for carrying out the provisions of this Code in the field as well as the enforcement of orders and decisions made pursuant thereto. Due to the exigencies of the service, the Secretary may designate incumbent Public Works District Engineers, City Engineers and Municipal Engineers act as Building Officials in their respective areas of jurisdiction. The designation made by the Secretary under this Section shall continue until regular positions of Building Official are provided or unless sooner terminated for causes provided by law or decree. x x x **When any building work is found to be contrary to the provisions of this Code, the Building Official may order the work stopped and prescribe the terms and/or conditions when the work will be allowed to resume. Likewise, the Building Official is authorized to order the discontinuance of the occupancy or**

use of any building or structure or portion thereof found to be occupied or used contrary to the provisions of this Code. x x x SECTION 215. **Abatement of Dangerous Buildings. — When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines."**

8. ID.; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; VALID DELEGATION OF POWERS TO MMDA, NOT ESTABLISHED IN CASE AT BAR; SOLE LIABILITY OF MMDA FOR THE DEMOLITION OF PROPERTY, UPHELD. — As pointed out in *Trackworks,* the MMDA does not have the power to enact ordinances. Thus, it cannot supplement the provisions of Quezon City Ordinance No. 2904 merely through its Resolution No. 02-28. Lastly, the MMDA claims that the City Government of Quezon City may be considered to have approved the demolition of the structure, simply because then Quezon City Mayor Feliciano R. Belmonte signed MMDA Resolution No. 02-28. In effect, the city government delegated these powers to the MMDA. The powers referred to are those that include the power to declare, prevent and abate a nuisance and to further impose the penalty of removal or demolition of the building or structure by the owner or by the city at the expense of the owner. MMDA's argument does not hold water. There was no valid delegation of powers to the MMDA. Contrary to the claim of the MMDA, the City Government of Quezon City washed its hands off the acts of the former. In its Answer, the city government stated that "the demolition was undertaken by the MMDA only, without the participation and/or consent of Quezon City." Therefore, the MMDA acted on its own and should be held solely liable for the destruction of the portion of Justice Gancayco's building.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates for Emilio Gancayco.
The Solicitor General for MMDA.
City Attorney (Quezon City) for City Government of Quezon City.

D E C I S I O N

SERENO, *J.*:

Before us are consolidated Petitions for Review under Rule 45 of the Rules of Court assailing the Decision[1] promulgated on 18 July 2006 and the Resolution[2] dated 10 May 2007 of the Court of Appeals in CA-G.R. SP No. 84648.

The Facts

In the early 1950s, retired Justice Emilio A. Gancayco bought a parcel of land located at 746 Epifanio delos Santos Avenue (EDSA),[3] Quezon City with an area of 375 square meters and covered by Transfer Certificate of Title (TCT) No. RT114558.

On 27 March 1956, the Quezon City Council issued Ordinance No. 2904, entitled "An Ordinance Requiring the Construction of Arcades, for Commercial Buildings to be Constructed in Zones Designated as Business Zones in the Zoning Plan of Quezon City, and Providing Penalties in Violation Thereof."[4]

An arcade is defined as any portion of a building above the first floor projecting over the sidewalk beyond the first storey wall used as protection for pedestrians against rain or sun.[5]

Ordinance No. 2904 required the relevant property owner to construct an arcade with a width of 4.50 meters and height of 5.00 meters along EDSA, from the north side of Santolan Road to one lot after Liberty Avenue, and from one lot before Central Boulevard to the Botocan transmission line.

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[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring, *rollo* (G.R. No. 177807), pp. 58-79.

[2] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Bienvenido L. Reyes and Juan Q. Enriquez, Jr., concurring, *id.* at 81-83.

[3] Formerly 808 Highway 54.

[4] *Rollo* (G.R. No. 177933), pp. 29-31.

[5] Definitions, "Annex A", National Building Code, Presidential Decree No. 1096.

At the outset, it bears emphasis that at the time Ordinance No. 2904 was passed by the city council, there was yet no building code passed by the national legislature. Thus, the regulation of the construction of buildings was left to the discretion of local government units. Under this particular ordinance, the city council required that the arcade is to be created by constructing the wall of the ground floor facing the sidewalk a few meters away from the property line. Thus, the building owner is not allowed to construct his wall up to the edge of the property line, thereby creating a space or shelter under the first floor. In effect, property owners relinquish the use of the space for use as an arcade for pedestrians, instead of using it for their own purposes.

The ordinance was amended several times. On 8 August 1960, properties located at the Quezon City-San Juan boundary were exempted by Ordinance No. 60-4477 from the construction of arcades. This ordinance was further amended by Ordinance No. 60-4513, extending the exemption to commercial buildings from Balete Street to Seattle Street. Ordinance No. 6603 dated 1 March 1966 meanwhile reduced the width of the arcades to three meters for buildings along V. Luna Road, Central District, Quezon City.

The ordinance covered the property of Justice Gancayco. Subsequently, sometime in 1965, Justice Gancayco sought the exemption of a two-storey building being constructed on his property from the application of Ordinance No. 2904 that he be exempted from constructing an arcade on his property.

On 2 February 1966, the City Council acted favorably on Justice Gancayco's request and issued Resolution No. 7161, S-66, "subject to the condition that upon notice by the City Engineer, the owner shall, within reasonable time, demolish the enclosure of said arcade at his own expense when public interest so demands."[6]

Decades after, in March 2003, the Metropolitan Manila Development Authority (MMDA) conducted operations to clear obstructions along the sidewalk of EDSA in Quezon City pursuant

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[6] *Rollo* (G.R. No. 177933), p. 32.

to Metro Manila Council's (MMC) Resolution No. 02-28, Series of 2002.[7] The resolution authorized the MMDA and local government units to "clear the sidewalks, streets, avenues, alleys, bridges, parks and other public places in Metro Manila of all illegal structures and obstructions."[8]

On 28 April 2003, the MMDA sent a notice of demolition to Justice Gancayco alleging that a portion of his building violated the National Building Code of the Philippines (Building Code)[9] in relation to Ordinance No. 2904. The MMDA gave Justice Gancayco fifteen (15) days to clear the portion of the building that was supposed to be an arcade along EDSA.[10]

Justice Gancayco did not comply with the notice. Soon after the lapse of the fifteen (15) days, the MMDA proceeded to demolish the party wall, or what was referred to as the "wing walls," of the ground floor structure. The records of the present case are not entirely clear on the extent of the demolition; nevertheless, the fact of demolition was not disputed. At the time of the demolition, the affected portion of the building was being used as a restaurant.

On 29 May 2003, Justice Gancayco filed a Petition[11] with prayer for a temporary restraining order and/or writ of preliminary injunction before the Regional Trial Court (RTC) of Quezon City, docketed as Civil Case No. Q03-49693, seeking to prohibit the MMDA and the City Government of Quezon City from demolishing his property. In his Petition,[12] he alleged that the ordinance authorized the taking of private property without due process of law and just compensation, because the construction of an arcade will require 67.5 square meters from the 375 square

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[7] *Id.* at 7.

[8] *Id.* at 33-37.

[9] Presidential Decree No. 1096.

[10] *Rollo* (G.R. No. 177933), p. 38.

[11] *Id.* at 39-55.

[12] *Id.* at 149-165.

meter property. In addition, he claimed that the ordinance was selective and discriminatory in its scope and application when it allowed the owners of the buildings located in the Quezon City-San Juan boundary to Cubao Rotonda, and Balete to Seattle Streets to construct arcades at their option. He thus sought the declaration of nullity of Ordinance No. 2904 and the payment of damages. Alternately, he prayed for the payment of just compensation should the court hold the ordinance valid.

The City Government of Quezon City claimed that the ordinance was a valid exercise of police power, regulating the use of property in a business zone. In addition, it pointed out that Justice Gancayco was already barred by estoppel, laches and prescription.

Similarly, the MMDA alleged that Justice Gancayco could not seek the nullification of an ordinance that he had already violated, and that the ordinance enjoyed the presumption of constitutionality. It further stated that the questioned property was a public nuisance impeding the safe passage of pedestrians. Finally, the MMDA claimed that it was merely implementing the legal easement established by Ordinance No. 2904.[13]

The RTC rendered its Decision on 30 September 2003 in favor of Justice Gancayco.[14] It held that the questioned ordinance was unconstitutional, ruling that it allowed the taking of private property for public use without just compensation. The RTC said that because 67.5 square meters out of Justice Gancayco's 375 square meters of property were being taken without compensation for the public's benefit, the ordinance was confiscatory and oppressive. It likewise held that the ordinance violated owners' right to equal protection of laws. The dispositive portion thus states:

WHEREFORE, the petition is hereby granted and the Court hereby declares Quezon City Ordinance No. 2094,[15] Series of 1956 to be

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[13] *Id.* at 166-173.

[14] *Id.* at 77-85.

[15] Note that the questioned ordinance is Ordinance No. 2904.

unconstitutional, invalid and void *ab initio*. The respondents are hereby permanently enjoined from enforcing and implementing the said ordinance, and the respondent MMDA is hereby directed to immediately restore the portion of the party wall or wing wall of the building of the petitioner it destroyed to its original condition.

IT IS SO ORDERED.

The MMDA thereafter appealed from the Decision of the trial court. On 18 July 2006, the Court of Appeals (CA) partly granted the appeal.[16] The CA upheld the validity of Ordinance No. 2904 and lifted the injunction against the enforcement and implementation of the ordinance. In so doing, it held that the ordinance was a valid exercise of the right of the local government unit to promote the general welfare of its constituents pursuant to its police powers. The CA also ruled that the ordinance established a valid classification of property owners with regard to the construction of arcades in their respective properties depending on the location. The CA further stated that there was no taking of private property, since the owner still enjoyed the beneficial ownership of the property, *to wit*:

> Even with the requirement of the construction of arcaded sidewalks within his commercial lot, appellee still retains the beneficial ownership of the said property. Thus, there is no "taking" for public use which must be subject to just compensation. While the arcaded sidewalks contribute to the public good, for providing safety and comfort to passersby, the ultimate benefit from the same still redounds to appellee, his commercial establishment being at the forefront of a busy thoroughfare like EDSA. The arcaded sidewalks, by their nature, assure clients of the commercial establishments thereat some kind of protection from accidents and other hazards. Without doubt, this sense of protection can be a boon to the business activity therein engaged.[17]

Nevertheless, the CA held that the MMDA went beyond its powers when it demolished the subject property. It further found that Resolution No. 02-28 only refers to sidewalks, streets,

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[16] *Rollo* (G.R. No. 177933), pp. 86-107.

[17] *Id.* at 99.

avenues, alleys, bridges, parks and other public places in Metro Manila, thus excluding Justice Gancayco's private property. Lastly, the CA stated that the MMDA is not clothed with the authority to declare, prevent or abate nuisances. Thus, the dispositive portion stated:

> WHEREFORE, the appeals are **PARTLY GRANTED**. The *Decision* dated September 30, 2003 of the Regional Trial Court, Branch 224, Quezon City, is **MODIFIED**, as follows:
>
> 1) The validity and constitutionality of Ordinance No. 2094,[18] Series of 1956, issued by the City Council of Quezon City, is **UPHELD**; and
>
> 2) The injunction against the enforcement and implementation of the said Ordinance is **LIFTED**.
>
> SO ORDERED.

This ruling prompted the MMDA and Justice Gancayco to file their respective Motions for Partial Reconsideration.[19]

On 10 May 2007, the CA denied the motions stating that the parties did not present new issues nor offer grounds that would merit the reconsideration of the Court.[20]

Dissatisfied with the ruling of the CA, Justice Gancayco and the MMDA filed their respective Petitions for Review before this Court. The issues raised by the parties are summarized as follows:

I. WHETHER OR NOT JUSTICE GANCAYCO WAS ESTOPPED FROM ASSAILING THE VALIDITY OF ORDINANCE NO. 2904.
II. WHETHER OR NOT ORDINANCE NO. 2904 IS CONSTITUTIONAL.
III. WHETHER OR NOT THE WING WALL OF JUSTICE GANCAYCO'S BUILDING IS A PUBLIC NUISANCE.
IV. WHETHER OR NOT THE MMDA LEGALLY DEMOLISHED THE PROPERTY OF JUSTICE GANCAYCO.

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[18] Note that the questioned ordinance is Ordinance No. 2904.

[19] *Id.* at 108-116.

[20] *Rollo* (G.R. No. 177807), pp. 81-83.

The Court's Ruling

Estoppel

The MMDA and the City Government of Quezon City both claim that Justice Gancayco was estopped from challenging the ordinance, because, in 1965, he asked for an exemption from the application of the ordinance. According to them, Justice Gancayco thereby recognized the power of the city government to regulate the construction of buildings.

To recall, Justice Gancayco questioned the constitutionality of the ordinance on two grounds: (1) whether the ordinance "takes" private property without due process of law and just compensation; and (2) whether the ordinance violates the equal protection of rights because it allowed exemptions from its application.

On the first ground, we find that Justice Gancayco may still question the constitutionality of the ordinance to determine whether or not the ordinance constitutes a "taking" of private property without due process of law and just compensation. It was only in 2003 when he was allegedly deprived of his property when the MMDA demolished a portion of the building. Because he was granted an exemption in 1966, there was no "taking" yet to speak of.

Moreover, in *Acebedo Optical Company, Inc. v. Court of Appeals*,[21] we held:

> It is therefore decisively clear that estoppel cannot apply in this case. The fact that petitioner acquiesced in the special conditions imposed by the City Mayor in subject business permit does not preclude it from challenging the said imposition, which is *ultra vires* or beyond the ambit of authority of respondent City Mayor. ***Ultra vires* acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect. The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires***. (Emphasis supplied.)

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[21] 385 Phil. 956, 978.

Recently, in *British American Tobacco v. Camacho*,[22] we likewise held:

> We find that petitioner was not guilty of estoppel. When it made the undertaking to comply with all issuances of the BIR, which at that time it considered as valid, petitioner did not commit any false misrepresentation or misleading act. Indeed, petitioner cannot be faulted for initially undertaking to comply with, and subjecting itself to the operation of Section 145(C), and only later on filing the subject case praying for the declaration of its unconstitutionality when the circumstances change and the law results in what it perceives to be unlawful discrimination. **The mere fact that a law has been relied upon in the past and all that time has not been attacked as unconstitutional is not a ground for considering petitioner estopped from assailing its validity. For courts will pass upon a constitutional question only when presented before it in *bona fide* cases for determination, and the fact that the question has not been raised before is not a valid reason for refusing to allow it to be raised later**. (Emphasis supplied.)

Anent the second ground, we find that Justice Gancayco may not question the ordinance on the ground of equal protection when he also benefited from the exemption. It bears emphasis that Justice Gancayco himself requested for an exemption from the application of the ordinance in 1965 and was eventually granted one. Moreover, he was still enjoying the exemption at the time of the demolition as there was yet no valid notice from the city engineer. Thus, while the ordinance may be attacked with regard to its different treatment of properties that appears to be similarly situated, Justice Gancayco is not the proper person to do so.

Zoning and the regulation of the construction of buildings are valid exercises of police power

In *MMDA v. Bel-Air Village Association*,[23] we discussed the nature of police powers exercised by local government units, *to wit*:

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[22] G.R. No. 163583, 20 August 2008, 562 SCRA 511, 537.

[23] 385 Phil. 586, 601-602.

Police power is an inherent attribute of sovereignty. It has been defined as the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same. The power is plenary and its scope is vast and pervasive, reaching and justifying measures for public health, public safety, public morals, and the general welfare.

It bears stressing that police power is lodged primarily in the National Legislature. It cannot be exercised by any group or body of individuals not possessing legislative power. The National Legislature, however, may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body.

To resolve the issue on the constitutionality of the ordinance, we must first determine whether there was a valid delegation of police power. Then we can determine whether the City Government of Quezon City acted within the limits of the delegation.

It is clear that Congress expressly granted the city government, through the city council, police power by virtue of Section 12(oo) of Republic Act No. 537, or the Revised Charter of Quezon City,[24] which states:

To make such further ordinances and regulations not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred by this Act and such as it shall deem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the city and the inhabitants thereof, and for the protection of property therein; and enforce obedience thereto with such lawful fines or penalties as the City Council may prescribe under the provisions of subsection (jj) of this section.

Specifically, on the powers of the city government to regulate the construction of buildings, the Charter also expressly provided

[24] Enacted on 16 June 1950.

that the city government had the power to regulate the kinds of buildings and structures that may be erected within fire limits and the manner of constructing and repairing them.[25]

With regard meanwhile to the power of the local government units to issue zoning ordinances, we apply *Social Justice Society v. Atienza*.[26] In that case, the *Sangguniang Panlungsod* of Manila City enacted an ordinance on 28 November 2001 reclassifying certain areas of the city from industrial to commercial. As a result of the zoning ordinance, the oil terminals located in those areas were no longer allowed. Though the oil companies contended that they stood to lose billions of pesos, this Court upheld the power of the city government to pass the assailed ordinance, stating:

> In the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfil the objectives of the government. Otherwise stated, **the government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare. However, the interference must be reasonable and not arbitrary. And to forestall arbitrariness, the methods or means used to protect public health, morals, safety or welfare must have a reasonable relation to the end in view.**
>
> The means adopted by the *Sanggunian* was the enactment of a zoning ordinance which reclassified the area where the depot is situated from industrial to commercial. **A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines and apportions a given political subdivision into specific land uses as present and future projection of needs.** As a result of the zoning, the continued operation of the businesses of the oil companies in their present location will no longer be permitted. **The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality.** Consequently, the enactment of Ordinance No. 8027 is within the power of the *Sangguniang Panlungsod* of the City of

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[25] Sec. 12 (j).

[26] G.R. No. 156502, 13 February 2008, 545 SCRA 92, 139-140.

Manila and any resulting burden on those affected cannot be said to be unjust. . . . (Emphasis supplied)

In *Carlos Superdrug v. Department of Social Welfare and Development*,[27] we also held:

> For this reason, when the conditions so demand as determined by the legislature, **property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.**
>
> **Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.** (Emphasis supplied.)

In the case at bar, it is clear that the primary objectives of the city council of Quezon City when it issued the questioned ordinance ordering the construction of arcades were the health and safety of the city and its inhabitants; the promotion of their prosperity; and the improvement of their morals, peace, good order, comfort, and the convenience. These arcades provide safe and convenient passage along the sidewalk for commuters and pedestrians, not just the residents of Quezon City. More especially so because the contested portion of the building is located on a busy segment of the city, in a business zone along EDSA.

Corollarily, the policy of the Building Code,[28] which was passed after the Quezon City Ordinance, supports the purpose for the enactment of Ordinance No. 2904. The Building Code states:

> Section 102. Declaration of Policy. — It is hereby declared to be the policy of the State to safeguard life, health, property, and public welfare, consistent with the principles of sound environmental

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[27] G.R. No. 166494, 29 June 2007, 526 SCRA 130, 144.

[28] Presidential Decree No. 1096.

management and control; and to this end, make it the purpose of this Code to provide for all buildings and structures, a framework of minimum standards and requirements to regulate and control their location, site, design quality of materials, construction, occupancy, and maintenance.

Section 1004 likewise requires the construction of arcades whenever existing or zoning ordinances require it. Apparently, the law allows the local government units to determine whether arcades are necessary within their respective jurisdictions.

Justice Gancayco argues that there is a three-meter sidewalk in front of his property line, and the arcade should be constructed above that sidewalk rather than within his property line. We do not need to address this argument inasmuch as it raises the issue of the wisdom of the city ordinance, a matter we will not and need not delve into.

To reiterate, at the time that the ordinance was passed, there was no national building code enforced to guide the city council; thus, there was no law of national application that prohibited the city council from regulating the construction of buildings, arcades and sidewalks in their jurisdiction.

The "wing walls" of the building are not nuisances per se.

The MMDA claims that the portion of the building in question is a nuisance *per se*.

We disagree.

The fact that in 1966 the City Council gave Justice Gancayco an exemption from constructing an arcade is an indication that the wing walls of the building are not nuisances *per se*. The wing walls do not *per se* immediately and adversely affect the safety of persons and property. The fact that an ordinance may declare a structure illegal does not necessarily make that structure a nuisance.

Article 694 of the Civil Code defines nuisance as any act, omission, establishment, business, condition or property, or anything else that (1) injures or endangers the health or safety

of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or, (5) hinders or impairs the use of property. A nuisance may be *per se* or *per accidens.* A nuisance *per* se is that which affects the immediate safety of persons and property and may summarily be abated under the undefined law of necessity.[29]

Clearly, when Justice Gancayco was given a permit to construct the building, the city council or the city engineer did not consider the building, or its demolished portion, to be a threat to the safety of persons and property. This fact alone should have warned the MMDA against summarily demolishing the structure.

Neither does the MMDA have the power to declare a thing a nuisance. Only courts of law have the power to determine whether a thing is a nuisance. In *AC Enterprises v. Frabelle Properties Corp.*,[30] we held:

> We agree with petitioner's contention that, under Section 447(a)(3)(i) of R.A. No. 7160, otherwise known as the Local Government Code, the *Sangguniang Panglungsod* is empowered to enact ordinances declaring, preventing or abating noise and other forms of nuisance. It bears stressing, however, that the *Sangguniang Bayan* cannot declare a particular thing as a nuisance *per se* and order its condemnation. **It does not have the power to find, as a fact, that a particular thing is a nuisance when such thing is not a nuisance *per se*; nor can it authorize the extrajudicial condemnation and destruction of that as a nuisance which in its nature, situation or use is not such. Those things must be determined and resolved in the ordinary courts of law.** If a thing be in fact, a nuisance due to the manner of its operation, that question cannot be determined by a mere resolution of the *Sangguniang Bayan*. (Emphasis supplied.)

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[29] *Telmo v. Bustamante*, G.R. No. 182567, 13 July 2009, 592 SCRA 552 citing *Tayaban v. People*, G.R. No. 150194, 6 March 2007, 517 SCRA 488, 507.

[30] G.R. No. 166744, 2 November 2006, 506 SCRA 625, 660-661.

MMDA illegally demolished the property of Justice Gancayco.

MMDA alleges that by virtue of MMDA Resolution No. 02-28, Series of 2002, it is empowered to demolish Justice Gancayco's property. It insists that the Metro Manila Council authorized the MMDA and the local government units to clear the sidewalks, streets, avenues, alleys, bridges, parks and other public places in Metro Manila of all illegal structures and obstructions. It further alleges that it demolished the property pursuant to the Building Code in relation to Ordinance No. 2904 as amended.

However, the Building Code clearly provides the process by which a building may be demolished. The authority to order the demolition of any structure lies with the Building Official. The pertinent provisions of the Building Code provide:

SECTION 205. Building Officials. — Except as otherwise provided herein, the Building Official shall be responsible for carrying out the provisions of this Code in the field as well as the enforcement of orders and decisions made pursuant thereto.

Due to the exigencies of the service, the Secretary may designate incumbent Public Works District Engineers, City Engineers and Municipal Engineers act as Building Officials in their respective areas of jurisdiction. The designation made by the Secretary under this Section shall continue until regular positions of Building Official are provided or unless sooner terminated for causes provided by law or decree.

x x x x x x x x x

SECTION 207. Duties of a Building Official. — In his respective territorial jurisdiction, the Building Official shall be primarily responsible for the enforcement of the provisions of this Code as well as of the implementing rules and regulations issued therefor. He is the official charged with the duties of issuing building permits.

In the performance of his duties, a Building Official may enter any building or its premises at all reasonable times to inspect and determine compliance with the requirements of this Code, and the terms and conditions provided for in the building permit as issued.

When any building work is found to be contrary to the provisions of this Code, the Building Official may order the work stopped and prescribe the terms and/or conditions when the work will be allowed to resume. Likewise, the Building Official is authorized to order the discontinuance of the occupancy or use of any building or structure or portion thereof found to be occupied or used contrary to the provisions of this Code.

x x x x x x x x x

SECTION 215. **Abatement of Dangerous Buildings. — When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.** (Emphasis supplied.)

MMDA v. Trackworks Rail Transit Advertising, Vending and Promotions, Inc.[31] is applicable to the case at bar. In that case, MMDA, invoking its charter and the Building Code, summarily dismantled the advertising media installed on the Metro Rail Transit (MRT) 3. This Court held:

It is futile for MMDA to simply invoke its legal mandate to justify the dismantling of Trackworks' billboards, signages and other advertising media. MMDA simply had no power on its own to dismantle, remove, or destroy the billboards, signages and other advertising media installed on the MRT3 structure by Trackworks. In *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*, *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, and *Metropolitan Manila Development Authority v. Garin*, **the Court had the occasion to rule that MMDA's powers were limited to the formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installing a system, and administration. Nothing in Republic Act No. 7924 granted MMDA police power, let alone legislative power**.

Clarifying the real nature of MMDA, the Court held:

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[31] G.R. No. 179554, 16 December 2009, 608 SCRA 325, 332-334.

. . . **The MMDA is, as termed in the charter itself, a "development authority." It is an agency created for the purpose of laying down policies and coordinating with the various national government agencies, people's organizations, non-governmental organizations and the private sector for the efficient and expeditious delivery of basic services in the vast metropolitan area. *All its functions are administrative in nature* and these are actually summed up in the charter itself**, *viz*:

> Sec.2. *Creation of the Metropolitan Manila Development Authority*. — x x x.
>
> The MMDA shall perform planning, monitoring and coordinative functions, and in the process exercise regulatory and supervisory authority over the delivery of metro-wide services within Metro Manila, without diminution of the autonomy of local government units concerning purely local matters.

The Court also agrees with the CA's ruling that MMDA Regulation No. 96-009 and MMC Memorandum Circular No. 88-09 did not apply to Trackworks' billboards, signages and other advertising media. The prohibition against posting, installation and display of billboards, signages and other advertising media applied only to public areas, but MRT3, **being private property pursuant to the BLT agreement between the Government and MRTC, was not one of the areas as to which the prohibition applied.** Moreover, MMC Memorandum Circular No. 88-09 did not apply to Trackworks' billboards, signages and other advertising media in MRT3, because it did not specifically cover MRT3, and because it was issued a year prior to the construction of MRT3 on the center island of EDSA. Clearly, MMC Memorandum Circular No. 88-09 could not have included MRT3 in its prohibition.

MMDA's insistence that it was only implementing Presidential Decree No. 1096 (*Building Code)* and its implementing rules and regulations is not persuasive. **The power to enforce the provisions of the *Building Code* was lodged in the Department of Public Works and Highways (DPWH), not in MMDA, considering the law's following provision**, thus:

> Sec. 201. Responsibility *for Administration and Enforcement*. — The administration and enforcement of the provisions of this Code including the imposition of penalties for administrative

violations thereof is hereby vested in the Secretary of Public Works, Transportation and Communications, hereinafter referred to as the "Secretary."

There is also no evidence showing that MMDA had been delegated by DPWH to implement the *Building Code*. *(*Emphasis supplied.)

Additionally, the penalty prescribed by Ordinance No. 2904 itself does not include the demolition of illegally constructed buildings in case of violations. Instead, it merely prescribes a punishment of "a fine of not more than two hundred pesos (₱200.00) or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment **at the discretion of the Court**, Provided, that if the violation is committed by a corporation, partnership, or any juridical entity, the Manager, managing partner, or any person charged with the management thereof shall be held responsible therefor." The ordinance itself also clearly states that it is the regular courts that will determine whether there was a violation of the ordinance.

As pointed out in *Trackworks,* the MMDA does not have the power to enact ordinances. Thus, it cannot supplement the provisions of Quezon City Ordinance No. 2904 merely through its Resolution No. 02-28.

Lastly, the MMDA claims that the City Government of Quezon City may be considered to have approved the demolition of the structure, simply because then Quezon City Mayor Feliciano R. Belmonte signed MMDA Resolution No. 02-28. In effect, the city government delegated these powers to the MMDA. The powers referred to are those that include the power to declare, prevent and abate a nuisance[32] and to further impose the penalty of removal or demolition of the building or structure by the owner or by the city at the expense of the owner.[33]

MMDA's argument does not hold water. There was no valid delegation of powers to the MMDA. Contrary to the claim of

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[32] Sec. 12(w).

[33] Sec. 12(jj).

the MMDA, the City Government of Quezon City washed its hands off the acts of the former. In its Answer,[34] the city government stated that "the demolition was undertaken by the MMDA only, without the participation and/or consent of Quezon City." Therefore, the MMDA acted on its own and should be held solely liable for the destruction of the portion of Justice Gancayco's building.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. SP No. 84648 is *AFFIRMED.*

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Abad, Villarama, Jr., Mendoza, and *Perlas-Bernabe, JJ.,* concur.

Reyes, J., no part.

Bersamin and *Perez, JJ.,* on official leave.

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[34] *Rollo* (G.R. No. 177933) pp. 249-270.

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— Non-compliance is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved. (People of the Phils. *vs*. Ulat *y* Aguinaldo, G.R. No. 180504, Oct. 05, 2011) p. 484

— The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved. (People of the Phils. *vs*. Unisa *y* Islan, G.R. No. 185721, Sept. 28, 2011) p. 89

— The law prescribes specific procedures on the seizure and custody of drugs; effect of failure to follow, elucidated. (People of the Phils. *vs*. Ulat *y* Aguinaldo, G.R. No. 180504, Oct. 05, 2011) p. 484

— The seized drugs were not photographed as required; non-photography of seized drugs not fatal as long as the integrity and the evidentiary value of the seized items are properly preserved. (People of the Phils. *vs*. Unisa *y* Islan, G.R. No. 185721, Sept. 28, 2011) p. 89

Illegal possession of prohibited drugs — Elements are: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession

is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug. (People of the Phils. *vs.* Unisa *y* Islan, G.R. No. 185721, Sept. 28, 2011) p. 89

— Mere possession of a regulated drug per se constitutes prima facie evidence of knowledge or *animus possidendi*. *(Id.)*

Illegal sale of prohibited drugs — Pre-operation report/ coordination sheet and use of dusted money are not indispensable proofs therein. (People of the Phils. *vs.* Unisa *y* Islan, G.R. No. 185721, Sept. 28, 2011) p. 89

— The following are the elements: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. (People of the Phils. *vs*. Ulat *y* Aguinaldo, G.R. No. 180504, Oct. 05, 2011) p. 484

(People of the Phils. *vs*. Unisa *y* Islan, G.R. No. 185721, Sept. 28, 2011) p. 89

Section 20 of — Provides for the confiscation and forfeiture of the proceeds or instruments of the unlawful act, including properties derived from illegal trafficking of dangerous drugs, except if they are the property of a third person not liable for the unlawful act. (Phil. Drug Enforcement Agency [PDEA] *vs*. Brodett, G.R. No. 196390, Sept. 28, 2011) p. 121

CONTEMPT

Case of — Allegation that the presiding judge is communicating with a party off the record is a serious allegation, contemptuous when unsubstantiated. (Cruz *vs*. Judge Gingoyon, G.R. No. 170404, Sept. 28, 2011) p. 42

Direct contempt — May be punished summarily; certiorari as remedy thereof must be filed first before ex-parte motion to post bond and quash warrant of arrest relative to direct contempt may be acted upon. (Cruz *vs*. Judge Gingoyon, G.R. No. 170404, Sept. 28, 2011) p. 42

— Present where contemptuous statements made in the pleadings were filed with the court. *(Id.)*

CONTRACTS

Penal clause — The courts may reduce unreasonable interest rates and penalty charges. (Phil. Export and Foreign Loan Guarantee Corp. *vs*. Amalgated Management and Dev't. Corp., G.R. No. 177729, Sept. 28, 2011) p. 60

COURT PERSONNEL

Administrative charge against — Dropping from the rolls is not a shield against an administrative case deemed instituted for offense committed while in office. (OCAD *vs*. Carbon III, A.M. No. P-10-2836, Sept. 28, 2011) p. 10

Conduct — Any conduct, act or omission violative of the norms of public accountability and that may diminish the faith of the people in the Judiciary should not be allowed. (Guerrero-Boylon *vs*. Boyles, A.M. No. P-09-2716, Oct. 11, 2011) p. 565

— Conduct and behavior of all officials and employees of an office involved in the administration of justice, from the highest judicial official to the lowest personnel, requires them to live up to the strictest standards of honesty, integrity and uprightness. (SC *vs*. Delgado, A.M. No. 2011-07-SC, Oct. 04, 2011) p. 185

Grave misconduct — Present with the court employee's admission of his participation in the case-fixing activity. (OCAD *vs*. Carbon III, A.M. No. P-10-2836, Sept. 28, 2011) p. 10

— The act of the respondents in causing the removal of several pages in a copy of the Agenda is a malevolent transgression of their duties as court personnel. (SC *vs*. Delgado, A.M. No. 2011-07-SC, Oct. 04, 2011) p. 185

— When committed. *(Id.)*

COURTS

Hierarchy of courts — Strict observance in hierarchy of courts in the issuance of extraordinary writs against courts, emphasized. (Cruz *vs*. Judge Gingoyon, G.R. No. 170404, Sept. 28, 2011) p. 42

CRIMINAL LIABILITY

How incurred — Criminal liability is incurred by any person committing a felony although the wrongful act done be different from that which he intended. (People of the Phils. *vs*. Sales, G.R. No. 177218, Oct. 03, 2011) p. 150

CRIMINAL PROCEDURE

Property confiscated — Court having jurisdiction over the offense has the right to dispose of the property used in committing a crime. (Phil. Drug Enforcement Agency [PDEA] *vs*. Brodett, G.R. No. 196390, Sept. 28, 2011) p. 121

— Ordering return of the seized car used in violation of R.A. 9165 during pendency of the case is grave abuse of discretion. *(Id.)*

— Personal property may be seized in connection with a criminal offense either by authority of a search warrant or as the product of a search incidental to a lawful arrest; property used as evidence must be returned once the criminal proceedings to which it relates have been terminated, unless it is then subject to forfeiture or other proceedings. *(Id.)*

DAMAGES

Attorney's fees — Circumstances when attorney's fees may be recovered as actual or compensatory damages. (Dev't. Bank of the Phils. *vs*. Traverse Dev't. Corp., G.R. No. 169293, Oct. 05, 2011) p. 405

— Reason for the award thereof must be stated in the body of the decision; exception is if findings of fact of the court clearly support such an award. (Alcatel Phils., Inc. *vs*. I.M. Bongar & Co., Inc., G.R. No. 182946, Oct. 5, 2011) p. 529

— The award of attorney's fees is the exception rather than the rule and the court must state explicitly the legal reason for such award. (Dev't. Bank of the Phils. *vs*. Traverse Dev't. Corp., G.R. No. 169293, Oct. 5, 2011) p. 405

Award of — Damages now subject to interest at the legal rate of 6% from date of finality of the decision until fully paid. (People of the Phils. *vs*. Yanson, G.R. No. 179195, Oct. 03, 2011) p. 169

— When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages. *(Id.)*

Exemplary damages — In view of the presence of abuse of superior strength in the killing, heirs of the deceased are entitled to exemplary damages. (People of the Phils. *vs*. Laog *y* Ramin, G.R. No. 178321, Oct. 05, 2011) p. 444

Moral damages — In cases of murder and homicide, the award of moral damages is mandatory. (People of the Phils. *vs*. Laog *y* Ramin, G.R. No. 178321, Oct. 05, 2011) p. 444

DECLARATION OF PRINCIPLES AND STATE POLICIES

Social justice — Financial assistance in the context of termination of employment is the award given to a validly dismissed employee, based on the principles of social justice. (Dumduma *vs*. CSC, G.R. No. 182606, Oct. 04, 2011; *Brion, J., concurring and dissenting opinion*) p. 257

— Separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. *(Id.)*

— The parameters in the private sector should be applicable to the public sector. *(Id.)*

— The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. *(Id.)*

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over the positive identification of the accused. (People of the Phils. *vs*. Agcanas, G.R. No. 174476, Oct. 11, 2011) p. 626

— Cannot prevail over the positive and credible testimonies of prosecution witnesses who were not shown to have any ill-motive to testify against the accused. (SC *vs*. Delgado, A.M. No. 2011-07-SC, Oct. 04, 2011) p. 185

(People of the Phils. *vs*. Jacalne y Guitierrez, G.R. No. 168552, Oct. 03, 2011) p. 139

(People of the Phils. *vs*. Unisa y Islan, G.R. No. 185721, Sept. 28, 2011) p. 89

DUE PROCESS

Essence of — Any due process infirmity was cured by subsequent motion for reconsideration. (Imperial, Jr. *vs*. GSIS, G.R. No. 191224, Oct. 04, 2011) p. 286

— The essence of due process is to be afforded a reasonable opportunity to be heard and to submit any evidence in support of one's claim or defense. (Violago, Sr. *vs*. COMELEC, G.R. No. 194143, Oct. 04, 2011) p. 305

(Imperial, Jr. *vs*. GSIS, G.R. No. 191224, Oct. 04, 2011) p. 286

ELECTIONS

Election protest — The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. (Violago, Sr. *vs*. COMELEC, G.R. No. 194143, Oct. 04, 2011) p. 305

ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA)

Application — Electric Power Industry Reform Act of 2001 (EPIRA) was enacted to tap private capital for the expansion and improvement of the electric power industry, as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

Legality of — Whether the state's policy of privatizing the electric power industry is wise, just, or expedient is not for the Court to decide. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

Section 34 of — Universal charge as payment for stranded debts; constitutionality, explained. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

— Universal charge is not a tax but an exaction in the exercise of the State's police power. *(Id.)*

EMPLOYMENT

Employment contracts — Automatically assumed by the surviving corporation in a merger, even in the absence of an express stipulation in the articles of merger or merger plan. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unionbank, G.R. No. 164301, Oct. 11, 2011) p. 609

EMPLOYMENT, TERMINATION OF

Constructive dismissal — The principle of managerial prerogative to transfer personnel must be exercised without abuse of discretion. (Emirate Sec. and Maintenance System, Inc. *vs*. Menese, G.R. No. 182848, Oct. 05, 2011) p. 501

Non-compliance with union security clause — Dismissal must still be done in accordance with due process. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unionbank, G.R. No. 164301, Oct. 11, 2011) p. 609

Security of tenure — Termination of employment by virtue of a union security clause embodied in the CBA is recognized; rationale. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unionbank, G.R. No. 164301, Oct. 11, 2011) p. 609

EVIDENCE

Burden of proof — Burden of proving that an accused is guilty of the offense charged is by proof beyond reasonable doubt. (People of the Phils. *vs*. Ulat y Aguinaldo, G.R. No. 180504, Oct. 05, 2011) p. 484

Circumstantial evidence — Circumstantial evidence, if sufficient, could supplant the absence of direct evidence. (Atty. Gacal *vs*. Judge Infante, A.M. No. RTJ- 04-1845, Oct. 05, 2011) p. 324

Documentary evidence — Official records vis-à-vis document obtained unofficially. (Dumduma vs. CSC, G.R. No. 182606, Oct. 04, 2011) p. 257

EXEMPLARY DAMAGES

Award of — Award thereof is proper when crime is committed with one or more aggravating circumstances. (People of the Phils. *vs*. Taguibuya, G.R. No. 180497, Oct. 05, 2011) p. 476

EXEMPTING CIRCUMSTANCES

Insanity — Only when there is a complete deprivation of intelligence at the time of the commission of the crime should the exempting circumstance of insanity be considered. (People of the Phils. *vs.* Bulagao, G.R. No. 184757, Oct. 05, 2011) p. 535

FAMILY CODE

Parental discipline — Father was motivated not by an honest desire to discipline the children for their misdeeds but by an evil intent of venting his anger. (People of the Phils. *vs*. Sales, G.R. No. 177218, Oct. 03, 2011) p. 150

— The imposition of parental discipline on children of tender years must always be with the view of correcting their erroneous behavior. *(Id.)*

GOVERNMENT SERVICE INSURANCE SYSTEM ACT OF 1997 (R.A. NO. 8291)

Application — Power of GSIS to adopt a retirement plan and/or financial assistance for its employees, elucidated. (GSIS *vs*. COA, G. R. No. 162372, Oct. 11, 2011) p. 578

Grant of salary loans — Non-compliance with GSIS PPG No. 153-99 constitutes misconduct, a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. (Imperial, Jr. *vs*. GSIS, G.R. No. 191224, Oct. 04, 2011; *Corona, C.J., concurring opinion*) p. 286

— Practice of bank managers given leeway to approve applications for salary loan and clearance from then GSIS Vice President negated the elements that would have qualified petitioner's misconduct as a grave misconduct. *(Id.)*

ILLEGAL POSSESSION OF FIREARMS

Commission of — Elements thereof are: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. (People of the Phils. *vs*. Agcanas, G.R. No. 174476, Oct. 11, 2011) p. 626

INTERVENTION

Motion for intervention — The purpose of intervention is to enable a stranger to an action to become a party in order for him to protect his interest and for the court to settle all conflicting claims. (Virra Mall Tenants Assn., Inc. *vs*. Virra Mall Greenhills Assn., Inc., G.R. No. 182902, Oct. 05, 2011) p. 517

— What qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. *(Id.)*

JUDGES

Code of Judicial Conduct — Every judge should maintain professional competence. (Atty. Gacal *vs*. Judge Infante, A.M. No. RTJ- 04-1845, Oct. 05, 2011) p. 324

Gross ignorance of the law — Present where judge failed to apply elementary rules of procedure as rendering decision within the reglementary period. (Orbe *vs*. Judge Gumarang, A.M. No. MTJ-11-1792, Sept. 28, 2011) p. 21

— The failure of the judge to conduct a hearing prior to the grant of bail in capital offenses was inexcusable and reflected gross ignorance of the law and the rules as well as a cavalier disregard of its requirement. (Atty. Gacal *vs*. Judge Infante, A.M. No. RTJ- 04-1845, Oct. 05, 2011) p. 324

JUDGMENT, EXECUTION OF

Levy on execution — Levy upon the property of the judgment obligor proper only if he cannot pay, and he can choose which of his property is to be levied upon. (Leachon Corpuz vs. Pascua, A.M. No. P-11-2972, Sept. 28, 2011) p. 28

JUDGMENTS

Dispositive portion — In case of conflict between the dispositive portion or *fallo* of the decision and the opinion of the court contained in the text or body of the judgment, the former shall prevail. (Law Firm of Raymundo A. Armovit *vs*. CA, G.R. No. 154559, Oct. 05, 2011) p. 344

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — Elements are: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping is 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 three days; (b) it is committed by simulating public authority; (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 official. (People of the Phils. *vs*. Jacalne *y* Gutierrez, G.R. No. 168552, Oct. 3, 2011) p. 139

— Essence of the crime is the actual deprivation of the victim's liberty. *(Id.)*

LEASE

Right of lessee — Right of the lessee should the lessor refuse to reimburse the improvement introduced therein in good faith; the sole right of the lessee is to remove the improvements without causing any more damage to the property leased than is necessary. (Heirs of Antonio Feraren *vs.* CA [Former 12th Div.], G.R. No. 159328, Oct. 05, 2011) p. 358

LEGISLATIVE DEPARTMENT

Police power — Power of the local government units to issue zoning ordinances, upheld. (Gancayco *vs.* City Gov't. of Q.C. and Metro Mla. Dev't. Authority, G.R. No. 177807, Oct. 11, 2011) p. 637

— The government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare; the interference must be reasonable and not arbitrary. *(Id.)*

— The power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth, and for the subjects of the same. *(Id.)*

Power to grant immunity — Congress possesses broad discretion and can lay down the conditions and the extent of the immunity to be granted. (Quarto *vs.* Hon. Ombudsman Simeon Marcelo, G.R. No. 169042, Oct. 05, 2011) p. 370

Principle of non-delegation of powers — No valid delegation of powers to MMDA; MMDA liable for the demolition of property. (Gancayco *vs.* City Gov't. of Q.C. and Metro Mla. Dev't. Authority, G.R. No. 177807, Oct. 11, 2011) p. 637

MANDAMUS

Petition for — The proper remedy to compel the performance of a ministerial duty imposed by law upon the respondent. (Quarto *vs*. Hon. Ombudsman Simeon Marcelo, G.R. No. 169042, Oct. 05, 2011) p. 370

MITIGATING CIRCUMSTANCES

Lack of intention to commit so grave a wrong — Not appreciated where appellant adopted means to ensure the success of the savage battering of his sons. (People of the Phils. *vs*. Sales, G.R. No. 177218, Oct. 03, 2011) p. 150

Voluntary surrender — Its essence is to save the authorities the trouble and expense that may be incurred for the accused's search and capture. (People of the Phils. *vs*. Sales, G.R. No. 177218, Oct. 03, 2011) p. 150

NATIONAL BUILDING CODE (P.D. 1096)

Application — The authority to order the demolition of any structure lies with the building official. (Gancayco *vs*. City Gov't. of Q.C. and Metro Mla. Dev't. Authority, G.R. No. 177807, Oct. 11, 2011) p. 637

NEGOTIABLE INSTRUMENTS LAW

Party to an instrument — The presumption of law is that every party to an instrument acquires the same for a consideration or for value. (Engr. Cayanan *vs*. North Star International Travel, Inc., G.R. No. 172954, Oct. 05, 2011) p. 435

NOTARIES PUBLIC

Importance of notarial act — By affixing his notarial seal on the instrument, the notary public converted the private document into a public document. (Caalim-Verzonilla *vs*. Atty. Pascua, A.C. No. 6655, Oct. 11, 2011) p. 550

2004 Rules on Notarial Practice — Violated when the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral. (Caalim-Verzonilla *vs*. Atty. Pascua, A.C. No. 6655, Oct. 11, 2011) p. 550

OBLIGATIONS

Delay — The obligor incurs in delay from the time the obligee judicially or extrajudicially demands the fulfillment of the obligation. (Phil. Export and Foreign Loan Guarantee Corp. *vs*. Amalgated Management and Dev't. Corp., G.R. No. 177729, Sept. 28, 2011) p. 60

Solidary obligation — Any of the solidary obligors may be compelled to perform the entire obligation. (Phil. Export and Foreign Loan Guarantee Corp. *vs.* Amalgated Management and Dev't. Corp., G.R. No. 177729, Sept. 28, 2011) p. 60

OMBUDSMAN

Findings of facts of — Conclusive when supported by substantial evidence; exception. (Office of the Ombudsman *vs*. Reyes, G.R. No. 170512, Oct. 05, 2011) p. 416

Power to grant immunity — Elucidated. (Quarto *vs*. Hon. Ombudsman Simeon Marcelo, G.R. No. 169042, Oct. 05, 2011) p. 370

PARRICIDE

Commission of — Defined as any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse. (People of the Phils. *vs*. Sales, G.R. No. 177218, Oct. 03, 2011) p. 150

PRESCRIPTION OF ACTIONS

Deficiency claim upon foreclosure of mortgage — The 10-year period to recover a deficiency claim starts to run upon the foreclosure of the property mortgaged. (Phil. Export and Foreign Loan Guarantee Corp. *vs*. Amalgated Management and Dev't. Corp., G.R. No. 177729, Sept. 28, 2011) p. 60

PRESUMPTIONS

Entries made in records in the regular course of official business — Presumed correct. (Dumduma *vs*. CSC, G.R. No. 182606, Oct. 04, 2011) p. 257

PRE-TRIAL

Pre-trial rules — The rule is that issues in trial are limited to those defined in the pre-trial order, however it may incorporate issues impliedly included. (Phil. Export and Foreign Loan Guarantee Corp. *vs*. Amalgated Management and Dev't. Corp., G.R. No. 177729, Sept. 28, 2011) p. 60

PROPERTY

Nuisances — Defined as any act, omission, establishment, business, condition or property, or anything else that: (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property; "wing walls" of building are not nuisance *per se*. (Gancayco *vs*. City Gov't. of Q.C. and Metro Mla. Dev't. Authority, G.R. No. 177807, Oct. 11, 2011) p. 637

— Only courts of law have the power to determine whether a thing is a nuisance. *(Id.)*

PUBLIC OFFICERS AND EMPLOYEES

Compensation — The designated cabinet officials cannot receive any form of additional compensation by way of per diems and allowances; elucidated. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

Designation of — Designation connotes an imposition of additional duties, usually by law, upon a person already in the public service by virtue of an earlier appointment. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

Grave misconduct — Qualifying elements; established by substantial evidence separate from the showing of the misconduct itself. (Imperial, Jr. *vs.* GSIS, G.R. No. 191224, Oct. 04, 2011; *Corona, C.J., concurring opinion)* p. 286

Misconduct — A deliberate violation of a rule of law. (Imperial, Jr. *vs*. GSIS, G.R. No. 191224, Oct. 04, 2011) p. 286

— Simple misconduct *vis-à-vis* grave misconduct, elucidated. (Office of the Ombudsman *vs*. Reyes, G.R. No. 170512, Oct. 05, 2011) p. 416

(Imperial, Jr. *vs*. GSIS, G.R. No. 191224, Oct. 04, 2011; *Corona, C.J., concurring opinion*) p. 286

— The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions. (Imperial, Jr. *vs*. GSIS, G.R. No. 191224, Oct. 04, 2011) p. 286

— Unless there is substantial evidence of corruption, the transgression of an established rule is properly characterized as simple misconduct only. (Imperial, Jr. *vs*. GSIS, G.R. No. 191224, Oct. 04, 2011; *Corona, C.J., concurring opinion*) p. 286

Prohibition against holding dual or multiple offices or employment — Prohibition does not apply to posts occupied by the executive officials specified therein without additional compensation in an ex-officio capacity. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

— The designation of the members of the Cabinet to form the National Power Board of Directors (NPB) does not violate the prohibition, as the privatization and restructuring of the electric power industry involves the close coordination and policy determination of various government agencies. *(Id.)*

Public service — Public service is a public trust; to do justice to this trust, exemplary service, at the very least, should be delivered. (Dumduma *vs*. CSC, G.R. No. 182606, Oct. 04, 2011; *Brion, J., concurring and dissenting opinion*) p. 257

QUALIFYING CIRCUMSTANCES

Treachery — The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner. (People of the Phils. *vs*. Yanson, G.R. No. 179195, Oct. 03, 2011) p. 169

— When appreciated. (People of the Phils. *vs*. Agcanas, G.R. No. 174476, Oct. 11, 2011) p. 626

RAPE

Commission of — Medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element for a conviction in rape. (People of the Phils. *vs*. Laog *y* Ramin, G.R. No. 178321, Oct. 05, 2011) p. 444

— The accused in a prosecution for rape can be convicted on the basis of the sole testimony of the victim provided the victim and her testimony are credible, convincing, and consistent with human nature and the normal course of things. (People of the Phils. *vs*. Taguibuya, G.R. No. 180497, Oct. 05, 2011) p. 476

RAPE WITH HOMICIDE

Commission of — Effect of the circumstances established during the commission of the crime; elucidated. (People of the Phils. *vs*. Laog *y* Ramin, G.R. No. 178321, Oct. 05, 2011) p. 444

— Only a single penalty for the composite acts of rape and the killing committed by reason or on the occasion of the rape. *(Id.)*

RETIREMENT

Retirement benefits — Separated, rehired, retiring, and retired employees should receive, and continue to receive, the retirement benefits to which they are legally entitled. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

— The receipt thereof does not bar the retiree from receiving separation pay. *(Id.)*

— When an employee has complied with the statutory requirements to be entitled to receive his retirement benefits, his right to retire and receive what is due him by virtue thereof becomes vested and may not thereafter be revoked or impaired. *(Id.)*

Retirement benefits and separation pay — Receipt of separation pay and retirement benefits is not proscribed by the 1987 Constitution. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

RULES OF PROCEDURE

Liberal application/construction — Technical rules may be relaxed only for the furtherance of justice and to benefit the deserving. (Heirs of Antonio Feraren *vs*. CA [Former 12th Div.], G.R. No. 159328, Oct. 05, 2011) p. 358

SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES, AN ACT TO PROTECT (R.A. NO. 6656)

Reorganization — A reorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

SHERIFFS

Duties — A sheriff's compliance with the Rules is not merely directory but mandatory. (Guerrero-Boylon *vs*. Boyles, A.M. No. P-09-2716, Oct. 11, 2011) p. 565

— Duty to show high degree of professionalism in work and to avoid any kind of behavior that would diminish faith in the judiciary. (Leachon Corpuz *vs*. Pascua, A.M. No. P-11-2972, Sept. 28, 2011) p. 28

— Importance of sheriffs and efficient performance of their functions in the administration of justice, emphasized. (Guerrero-Boylon *vs*. Boyles, A.M. No. P-09-2716, Oct. 11, 2011) p. 565

— Sheriff is duty-bound to know the basic rules in the implementation of a writ of execution. (Leachon Corpuz *vs*. Pascua, A.M. No. P-11-2972, Sept. 28, 2011) p. 28

— Writ of execution should only be enforced on the property of the judgment debtor. *(Id.)*

Gross neglect of duties — Refers to negligence that is characterized by a glaring want of care. (Guerrero-Boylon *vs*. Boyles, A.M. No. P-09-2716, Oct. 11, 2011) p. 565

Misconduct — Means the intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, especially by a government official. (Leachon Corpuz *vs*. Pascua, A.M. No. P-11-2972, Sept. 28, 2011) p. 28

SLIGHT PHYSICAL INJURIES

Commission of — Injuries which shall incapacitate the offended party for labor from one to nine days or shall require medical attendance during the same period. (People of the Phils. *vs*. Sales, G.R. No. 177218, Oct. 03, 2011) p. 150

SMALL CLAIMS CASES

Procedure for — Period within which judgment should be rendered is five (5) days. (Orbe *vs*. Judge Gumarang, A.M. No. MTJ-11-1792, Sept. 28, 2011) p. 21

— Theory behind small claims system, elucidated. *(Id.)*

STARE DECISIS

Principle of — Applied in case at bar. (Commissioner of Internal Revenue *vs*. Fortune Tobacco Corp., G.R. No. 180006, Sept. 28, 2011) p. 74

STATUTES

Interpretation of — A statute is to be read in a manner that would breathe life into it. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

Repeal by implication — To bring about an implied repeal, the two laws must be absolutely incompatible and clearly repugnant that the later law cannot exist without nullifying the prior law. (GSIS *vs*. COA, G. R. No. 162372, Oct. 11, 2011) p. 578

SUPREME COURT

Jurisdiction — Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts. (Betoy *vs*. Board of Directors, NPC, G.R. Nos. 156556-57, Oct. 04, 2011) p. 204

— Jurisdiction to issue writs of certiorari does not give litigants unrestrained freedom of choice of forum from which to seek such relief. *(Id.)*

— Power to declare a law valid is vested in the courts. *(Id.)*

Power of judicial review — Immunity statute cannot rule out a review by this Court of the Ombudsman's exercise of discretion. (Quarto *vs*. Hon. Ombudsman Simeon Marcelo, G.R. No. 169042, Oct. 05, 2011) p. 370

TAX LAWS

Interpretation of — Taxation should be uniform and equitable. (Commissioner of Internal Revenue *vs*. Fortune Tobacco Corp., G.R. No. 180006, Sept. 28, 2011) p. 74

Tax Code of 1997 — Higher tax rule, elucidated; not applicable to cigars, distilled spirits, wines and fermented liquors. (Commissioner of Internal Revenue *vs*. Fortune Tobacco Corp., G.R. No. 180006, Sept. 28, 2011) p. 74

— Shift from ad valorem to specific taxes not intended solely to raise government revenues. *(Id.)*

TEVES RETIREMENT LAW (R.A. NO. 4968)

Application — Not expressly repealed; elucidated. (GSIS *vs*. COA, G. R. No. 162372, Oct. 11, 2011) p. 578

WAGES

Overtime pay — Claim therefor shall be granted only upon showing of factual and legal basis. (Emirate Sec. and Maintenance System, Inc. *vs*. Menese, G.R. No. 182848, Oct. 05, 2011) p. 501

WITNESSES

Credibility of — Assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. (People of the Phils. *vs.* Laog *y* Ramin, G.R. No. 178321, Oct. 05, 2011) p. 444

(People of the Phils. *vs.* Jacalne *y* Guitierrez, G.R. No. 168552, Oct. 13, 2011) p. 139

(People of the Phils. *vs*. Unisa *y* Islan, G.R. No. 185721, Sept. 28, 2011) p. 89

— Minor inconsistencies in the testimony of a witness does not affect credibility. *(Id.)*

— People react differently when confronted with a frightful occurrence. (People of the Phils. *vs.* Yanson, G.R. No. 179195, Oct. 03, 2011) p. 169

— Recantation, frowned upon by the courts and does not necessarily negate an earlier declaration. (People of the Phils. *vs*. Bulagao, G.R. No. 184757, Oct. 05, 2011) p. 535

Testimony of — Positive and categorical testimony identified appellant as the perpetrator of the crime. (People of the Phils. *vs*. Yanson, G.R. No. 179195, Oct. 03, 2011) p. 169

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