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PHILIPPINES

FROM

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SUPREME COURT
MANILA
2014

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by

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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. 9081. October 12, 2011]

RODOLFO A. ESPINOSA and MAXIMO A. GLINDO, *complainants, vs.* **ATTY. JULIETA A. OMAÑA,** *respondent.*

SYLLABUS

1. CIVIL LAW; PERSONS AND FAMILY RELATIONS; MARRIAGE; CONJUGAL PARTNERSHIP OF GAINS; EXTRAJUDICIAL DISSOLUTION OF THE CONJUGAL PARTNERSHIP WITHOUT JUDICIAL APPROVAL IS VOID.— This Court has ruled that the extrajudicial dissolution of the conjugal partnership without judicial approval is void.

2. LEGAL ETHICS; ATTORNEYS; NOTARIES PUBLIC; A NOTARY PUBLIC SHOULD NOT FACILITATE THE DISINTEGRATION OF A MARRIAGE AND THE FAMILY BY ENCOURAGING THE SEPARATION OF THE SPOUSES AND EXTRAJUDICIALLY DISSOLVING THE CONJUGAL PARTNERSHIP.— [A] notary public should not facilitate the disintegration of a marriage and the family by encouraging the separation of the spouses and extrajudicially dissolving the conjugal partnership, which is exactly what Omaña did in this case.

3. ID.; ID.; ID.; A NOTARY PUBLIC IS PERSONALLY RESPONSIBLE FOR THE ENTRIES IN HIS/HER NOTARIAL REGISTER; NEGLIGENCE IN THE PERFORMANCE OF ONE'S NOTARIAL DUTIES, ESTABLISHED IN THE CASE AT BAR.— We cannot accept Omaña's allegation that it was her part-time office staff who notarized the contract. We agree with the IBP-CBD that Omaña herself notarized the contract. Even if it were true that it was her part-time staff who notarized the contract, it only showed Omaña's negligence in doing her notarial duties. We reiterate that a notary public is personally responsible for the entries in his notarial register and he could not relieve himself of this responsibility by passing the blame on his secretaries or any member of his staff.

4. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATED WHEN A NOTARY PUBLIC PREPARED AND NOTARIZED A VOID DOCUMENT; PENALTY.— We likewise agree with the IBP-CBD that in preparing and notarizing a void document, Omaña violated Rule 1.01, Canon 1 of the Code of Professional Responsibility which provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Omaña knew fully well that the "*Kasunduan Ng Paghihiwalay*" has no legal effect and is against public policy. Therefore, Omaña may be suspended from office as an attorney for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility.

APPEARANCES OF COUNSEL

Dwight M. Galarrita for complainants.
Hercules P. Guzman for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a complaint for disbarment filed by Rodolfo A. Espinosa (Espinosa) and Maximo A. Glindo (Glindo) against Atty. Julieta A. Omaña (Omaña).

The Antecedent Facts

Complainants Espinosa and Glindo charged Omaña with violation of her oath as a lawyer, malpractice, and gross misconduct in office.

Complainants alleged that on 17 November 1997, Espinosa and his wife Elena Marantal (Marantal) sought Omaña's legal advice on whether they could legally live separately and dissolve their marriage solemnized on 23 July 1983. Omaña then prepared a document entitled "*Kasunduan Ng Paghihiwalay*" (contract) which reads:

REPUBLIKA NG PILIPINAS
BAYAN NG GUMACA
LALAWIGAN NG QUEZON

KASUNDUAN NG PAGHIHIWALAY

KAMI, ELENA MARANTAL AT RODOLFO ESPINOSA, mga Filipino, may sapat na gulang, dating legal na mag-asawa, kasalukuyang naninirahan at may pahatirang sulat sa Brgy. Buensoceso, Gumaca, Quezon, at COMELEC, Intramuros, Manila ayon sa pagkakasunod-sunod, matapos makapanumpa ng naaayon sa batas ay nagpapatunay ng nagkasundo ng mga sumusunod:

1. Na nais na naming maghiwalay at magkanya-kanya ng aming mga buhay ng walang pakialaman, kung kaya't bawat isa sa amin ay maaari ng humanap ng makakasama sa buhay;

2. Na ang aming mga anak na sina Ariel John Espinosa, 14 na taong gulang; Aiza Espinosa, 11 taong gulang at Aldrin Espinosa, 10 taong gulang ay namili na kung kanino sasama sa

aming dalawa. Si Ariel John at Aiza Espinosa ay sasama sa kanilang ama, Rodolfo Espinosa, at ang bunso, Aldrin Espinosa at sasama naman sa ina na si Elena;

3. Na dahil sina Ariel John at Aiza ay nagsisipag-aral sa kasalukuyan sila ay pansamantalang mananatili sa kanilang ina, habang tinatapos ang kanilang pag-aaral. Sa pasukan sila ay maaari ng isama ng ama, sa lugar kung saan siya ay naninirahan;

4. Na ang mga bata ay maaaring dalawin ng sino man sa aming dalawa tuwing may pagkakataon;

5. Na magbibigay ng buwanang gastusin o suporta ang ama kay Aldrin at ang kakulangan sa mga pangangailangan nito ay pupunan ng ina;

6. Na lahat ng mga kasangkapan sa bahay tulad ng T.V., gas stove, mga kagamitan sa kusina ay aking (Rodolfo) ipinagkakaloob kay Elena at hindi na ako interesado dito;

7. Na lahat ng maaaring maipundar ng sino man sa amin dalawa sa mga panahong darating ay aming mga sari-sariling pag-aari na at hindi na pinagsamahan o conjugal.

BILANG PATUNAY ng lahat ng ito, nilagdaan namin ito ngayong ika-17 ng Nobyembre, 1997, dito sa Gumaca, Quezon.

(Sgd)	*(Sgd)*
ELENA MARANTAL	*RODOLFO ESPINOSA*
Nagkasundo	*Nagkasundo*

PINATUNAYAN AT PINANUMPAAN dito sa harap ko ngayong ika-17 ng Nobyembre, 1997, dito sa Gumaca, Quezon

ATTY. JULIETA A. OMAÑA
Notary Public
PTR No. 3728169; 1-10-97
Gumaca, Quezon

Doc. No. 482;
Page No. 97;
Book No. XI;
Series of 1997.

Complainants alleged that Marantal and Espinosa, fully convinced of the validity of the contract dissolving their marriage, started implementing its terms and conditions. However, Marantal eventually took custody of all their children and took possession of most of the property they acquired during their union.

Espinosa sought the advice of his fellow employee, complainant Glindo, a law graduate, who informed him that the contract executed by Omaña was not valid. Espinosa and Glindo then hired the services of a lawyer to file a complaint against Omaña before the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD).

Omaña alleged that she knows Glindo but she does not personally know Espinosa. She denied that she prepared the contract. She admitted that Espinosa went to see her and requested for the notarization of the contract but she told him that it was illegal. Omaña alleged that Espinosa returned the next day while she was out of the office and managed to persuade her part-time office staff to notarize the document. Her office staff forged her signature and notarized the contract. Omaña presented Marantal's "*Sinumpaang Salaysay*" (affidavit) to support her allegations and to show that the complaint was instigated by Glindo. Omaña further presented a letter of apology from her staff, Arlene Dela Peña, acknowledging that she notarized the document without Omaña's knowledge, consent, and authority.

Espinosa later submitted a "*Karagdagang Salaysay*" stating that Omaña arrived at his residence together with a girl whom he later recognized as the person who notarized the contract. He further stated that Omaña was not in her office when the contract was notarized.

The Decision of the Commission on Bar Discipline

In its Report and Recommendation[1] dated 6 February 2007, the IBP-CBD stated that Espinosa's desistance did not put an end to the proceedings. The IBP-CBD found that Omaña violated Rule 1.01, Canon 1 of the Code of Professional Responsibility

[1] Signed by Atty. Salvador B. Hababag, Commissioner.

which provides that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. The IBP-CBD stated that Omaña had failed to exercise due diligence in the performance of her function as a notary public and to comply with the requirements of the law. The IBP-CBD noted the inconsistencies in the defense of Omaña who first claimed that it was her part-time staff who notarized the contract but then later claimed that it was her former maid who notarized it. The IBP-CBD found:

> Respondent truly signed the questioned document, yet she still disclaimed its authorship, thereby revealing much more her propensity to lie and make deceit, which she is deserving [of] disciplinary sanction or disbarment.

The IBP-CBD recommended that Omaña be suspended for one year from the practice of law and for two years as a notary public.

In a Resolution dated 19 September 2007, the IBP Board of Governors adopted and approved the recommendation of the IBP-CBD.

Omaña filed a motion for reconsideration.

In a Resolution dated 26 June 2011, the IBP Board of Governors denied Omaña's motion for reconsideration.

The Issue

The sole issue in this case is whether Omaña violated the Canon of Professional Responsibility in the notarization of Marantal and Espinosa's "*Kasunduan Ng Paghihiwalay*."

The Ruling of this Court

We adopt the findings and recommendation of the IBP-CBD.

This case is not novel. This Court has ruled that the extrajudicial dissolution of the conjugal partnership without judicial approval is void.[2] The Court has also ruled that a notary public should

[2] *Selanova v. Judge Mendoza*, A.M. No. 804-CJ, 159-A Phil. 360 (1975).

not facilitate the disintegration of a marriage and the family by encouraging the separation of the spouses and extrajudicially dissolving the conjugal partnership,[3] which is exactly what Omaña did in this case.

In *Selanova v. Judge Mendoza*,[4] the Court cited a number of cases where the lawyer was sanctioned for notarizing similar documents as the contract in this case, such as: notarizing a document between the spouses which permitted the husband to take a concubine and allowed the wife to live with another man, without opposition from each other;[5] ratifying a document entitled "Legal Separation" where the couple agreed to be separated from each other mutually and voluntarily, renouncing their rights and obligations, authorizing each other to remarry, and renouncing any action that they might have against each other;[6] preparing a document authorizing a married couple who had been separated for nine years to marry again, renouncing the right of action which each may have against the other;[7] and preparing a document declaring the conjugal partnership dissolved.[8]

We cannot accept Omaña's allegation that it was her part-time office staff who notarized the contract. We agree with the IBP-CBD that Omaña herself notarized the contract. Even if it were true that it was her part-time staff who notarized the contract, it only showed Omaña's negligence in doing her notarial duties. We reiterate that a notary public is personally responsible for the entries in his notarial register and he could not relieve himself of this responsibility by passing the blame on his secretaries[9] or any member of his staff.

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[3] *Albano v. Mun. Judge Gapusan*, A.M. No. 1022-MJ, 162 Phil. 884 (1976).

[4] *Supra*, note 2.

[5] *Panganiban v. Borromeo*, 58 Phil. 367 (1933).

[6] *Biton v. Momongan*, 62 Phil. 7 (1935).

[7] *In re: Atty. Roque Santiago*, 70 Phil. 66 (1940).

[8] *Balinon v. De Leon*, 94 Phil. 277 (1954).

[9] *Lingan v. Calubaquib and Baliga*, 524 Phil. 60 (2006).

We likewise agree with the IBP-CBD that in preparing and notarizing a void document, Omaña violated Rule 1.01, Canon 1 of the Code of Professional Responsibility which provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Omaña knew fully well that the "*Kasunduan Ng Paghihiwalay*" has no legal effect and is against public policy. Therefore, Omaña may be suspended from office as an attorney for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility.[10]

WHEREFORE, we *SUSPEND* Atty. Julieta A. Omaña from the practice of law for ONE YEAR. We *REVOKE* Atty. Omaña's notarial commission, if still existing, and *SUSPEND* her as a notary public for TWO YEARS.

Let a copy of this Decision be attached to Atty. Omaña's personal record in the Office of the Bar Confidant. Let a copy of this Decision be also furnished to all chapters of the Integrated Bar of the Philippines and to all courts in the land.

SO ORDERED.

Brion, Sereno, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[10] *Catu v. Rellosa,* A.C. No. 5738, 19 February 2008, 546 SCRA 209.

[*] Designated Acting Member per Special Order No. 1114 dated 3 October 2011.

SECOND DIVISION

[G.R. No. 183444. October 12, 2011]

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **RONALDO E. QUIWA, doing business under the name "R.E.Q. Construction," EFREN N. RIGOR, doing business under the name "Chiara Construction," ROMEO R. DIMATULAC, doing business under the name "Ardy Construction" and FELICITAS C. SUMERA, doing business under the name "F.C.S. Construction," represented by her ATTORNEY-IN-FACT ROMEO M. DE LEON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURTS WHEN AFFIRMED BY APPELLATE COURTS ATTAIN CONCLUSIVENESS AND ARE GIVEN UTMOST RESPECT BY THE SUPREME COURT.— It should be borne in mind that a review under Rule 45 of the Rules of Court is discretionary and must be granted only when there are special and important reasons therefor. We find that these reasons are not present in this case. As a general rule, the factual findings of the trial court, when affirmed by the appellate court, attain conclusiveness and are given utmost respect by this Court. DPWH never questioned the completion of the Sacobia-Bamban-Parua river works. Neither did it question the authority of those who certified the completion of the works by respondents. The trial court ruled that the works were completed, as shown by the evidence presented before it. This finding was affirmed by the Court of Appeals. There is, therefore, no reason for us to view these factual findings. With the findings of the trial and the appellate courts, there is no longer any issue on whether the contractors completed the projects in accordance with the specifications agreed upon. The regular course of a contract is that after the complete rendering of services, the contractors are subsequently paid. The DPWH, however, deviated from this course. It should be

noted that the completion of the works was recognized by the DPWH, as shown by the certifications issued by its engineers and even by municipal officials. Notwithstanding the said recognition, DPWH chose not to act on the claims of respondents, and later denied liability for the payment of the works on the ground of the invalidity of the contracts.

2. CIVIL LAW; CONTRACTS; VOID GOVERNMENT CONTRACTS FOR PUBLIC WORKS; PAYMENT FOR SERVICES DONE ON ACCOUNT OF THE GOVERNMENT, BUT BASED ON A VOID CONTRACT, CANNOT BE AVOIDED; CASE AT BAR.— Petitioner DPWH primarily argues that the contracts with herein respondents were void for not complying with Sections 85 and 86 of P.D. 1445, or the Government Auditing Code of the Philippines, as amended by Executive Order No. 292. These sections require an appropriation for the contracts and a certification by the chief accountant of the agency or by the head of its accounting unit as to the availability of funds. It should be noted that there was an appropriation amounting to ₱400 million, which was increased to ₱700 million. The funding was for the rehabilitation of the areas devastated and affected by Mt. Pinatubo, which included the Sacobia-Bamban-Parua River for which some of the channeling, desilting and diking works were rendered by herein respondents' construction companies. It was, however, undisputed that there was no certification from the chief accountant of DPWH regarding the said expenditure. In addition, the project manager has a limited authority to approve contracts in an amount not exceeding ₱1 million. Notwithstanding these irregularities, it should be pointed out that there is no novelty regarding the question of satisfying a claim for construction contracts entered into by the government, where there was no appropriation and where the contracts were considered void due to technical reasons. It has been settled in several cases that payment for services done on account of the government, but based on a void contract, cannot be avoided. xxx *Royal Trust Construction v. Commission on Audit* case became the authority in granting claims of a contractor against the government based on a void contract. This exercise of equity to compensate contracts with the government was repeated in *Eslao vs. COA*. xxx *Royal*

Trust Construction was again mentioned in *Melchor v. COA*, which was decided a few months after *Eslao*. In *Melchor*, it was found that the contract was approved by an unauthorized person and, similar to the case at bar, the required certification of the chief accountant was absent. The Court did not deny or justify the invalidity of the contract. The Court, however, found that the government unjustifiably denied what the latter owed to the contractors, leaving them uncompensated after the government had benefited from the already completed work.

3. ID.; ID.; ID.; IT WOULD BE UNJUST TO HOLD PUBLIC OFFICIALS LIABLE FOR THE PAYMENT OF A CONSTRUCTION THAT BENEFITED THE GOVERNMENT.— As to Public Works and Highways officials Gregorio R. Vigilar, Teodoro T. Encarnacion and Jose P. de Jesus, their personal liability should not be sustained. They were sued in their official capacity, and it would be unfair to them to pay the contractors out of their own pockets. In Melchor, the Court declared that it was unjust to hold the public official liable for the payment of a construction that benefited the government.

4. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF IMPROPER IN CASE AT BAR.— We also depart from the CA and the RTC rulings awarding the respondents attorney's fees and costs of suit. The Constitution provides that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." Attorney's fees and costs of suit were not included in the appropriation of expenditures for the Sacobia-Bamban-Parua project. In addition, we are not disposed to say that there was bad faith on the part of the DPWH in not settling its liability to the respondents for the works accomplished by the latter. The DPWH relied on P.D. 1445, Section 87, which provides that contracts in violation of Sections 85 and 86 thereof are void. The subject contracts undoubtedly lacked the legal requirement of certification of the chief accountant of DWPH. It was also clear that the project manager had no authority to approve the contracts, since the amounts involved were beyond his authority. A strict application of the law, as the DPWH officials did, would therefore give a reasonable basis for the denial of the claim and eliminate the badge of bad faith on their part. The DPWH officials were

apparently apprehensive that they might end up being liable to the government if they had wrongfully paid the contractors. This apprehension clearly showed in their letter to the DOJ Secretary.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cruz Durian Alday and Cruz-Matters for respondents

D E C I S I O N

SERENO, *J.*:

Assailed in this Petition for Review on *Certiorari* is the 26 June 2008 Decision of the Court of Appeals in CA-G.R. CV No. 76584,[1] affirming the trial court's judgment in favor of herein respondents in their money claims against petitioner DPWH.

The Factual Antecedents

With the eruption of Mt. Pinatubo in 1991 and the consequent onslaught of lahar and floodwater, the rehabilitation of the affected areas became urgent. River systems needed to be channeled, dredged, desilted and diked to prevent flooding and overflowing of lahar; and to avert damage to life, limb and property of the people in the area.

In 1992, a number of contractors, including herein respondents, were engaged by the DPWH through its Project Manager, Philip F. Meñez, for the aforesaid services pursuant to an emergency project under the Mount Pinatubo Rehabilitation Project. It was alleged that prior to the engagement of the contractors, Undersecretary Teodoro T. Encarnacion of DPWH, who had overall supervision of the infrastructure and flood control projects, met with the contractors and insisted on the urgency of the said

[1] *Rollo*, pp. 47-56; CA *rollo*, pp. 368-377; Decision penned by Associate Justice Agustin S. Dizon, with Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo concurring.

projects. Respondents claimed that they had accomplished works on the Sacobia-Bamban-Parua River Control Project pursuant to this emergency project.[2] Ronaldo E. Quiwa claimed that under two construction agreements with the DPWH, his construction company, the R.E.Q. Construction, had accomplished the channeling of the Sacobia-Bamban-Parua River Control Project for the excavated spoils of 69,835 cubic meters, pegged at ₱3,448,258.25 for one project, and 80,480 cubic meters at the cost of ₱4,019,976.00 for another, or a total amount of ₱7,508,234.25.[3] Efren Rigor, on behalf of Chiara Construction, alleged that the sum of money due him for the channeling of the Sacobia-Bamban-Parua River was ₱8,854,654.10 for three accomplished projects.[4] Romeo Dimatulac of Ardy Construction claimed ₱1,402,928.45 for double diking;[5] and Felicitas C. Sumera, ₱4,232,363.40 for her construction company.[6]

Initially, R.E.Q. Construction filed its money claim with the DPWH, which referred the matter to the Commission on Audit.[7] The COA returned the claims to the DPWH with the information that the latter had already been given the funds and the authority to disburse them.[8] When respondent Quiwa filed his claims with the DPWH, it failed to act on these, resulting in the withholding of the payment due him, despite the favorable report and Certification of Completion made by the Assistant Project Manager for Operations, Engineer Rolando G. Santos.[9] Prompted by the prolonged inaction of the DPWH on their claims,

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[2] Records, Vol. 1, pp. 4-5.

[3] *Id.* at 9-15.

[4] *Id.* at 15-22.

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

[6] *Id.* at 24-26.

[7] First Folder of Exhibits, p. 32.

[8] *Id.* at 77.

[9] *Supra* note 7.

respondents jointly filed an action for a sum of money against the DPWH.[10] The case was decided in their favor by the Regional Trial Court (RTC) of Manila, Branch 51, in Civil Case No. 96-77180.[11]

As found by the RTC, the respondents, plaintiffs therein, were duly licensed contractors, who had completed the construction works on the Sacobia-Bamban-Parua River as certified by the DPWH itself. In 1992, the funding for the infrastructure and other work requirements under the Mt. Pinatubo Rehabilitation Program in the amount of ₱400 million pesos was initially allocated by the government, and was later increased to ₱700M. Despite the completion of respondents' works in accordance with the specifications and the allocation of the funds to cover the said services, the DPWH unjustly denied the claims. The court *a quo* gave credence to the evidence presented by respondents, consisting of contract agreements; statement of work accomplished, certified and signed by the engineers of the DPWH; and testimonial evidence of witnesses. It ruled that respondents were able to prove their claims by a preponderance of evidence. The RTC found that the contracts between DPWH and the plaintiffs were valid contracts, as all the requisites thereof — consent, subject matter and cause — were present; and, notwithstanding the absence of the signature of the regional director on the agreement executed with Quiwa and Sumera, the contract was ratified when he affixed his signature to the Inspection and Certification of Completion of the projects.

The court *a quo* likewise sustained the claim of Rigor and Dimatulac even in the absence of a written contract. It held that there was already a perfected contract, since there was a concurrence of the essential requisites thereof. It also, in effect, held that DPWH was already estopped from repudiating the contract, as the latter had already made representations and assurances that the plaintiffs would be paid for the work that

[10] Records, Vol. 1, pp. 1-34.

[11] Records, Vol. II, pp. 264-273, penned by Judge Rustico V. Panganiban.

they would do, and as even then DPWH Undersecretary Teodoro T. Encarnacion had told them to "fast-track" the project.[12]

The RTC also ruled that the claim of the respondents against DPWH was proper since they had already made a demand on the Commission on Audit regarding the payment of their construction services. Thus, they first availed themselves of the proper administrative remedy in filing their claim with COA, which unfortunately referred the claim to the DPWH. The court *a quo* also reasoned that the contracts could not be declared void on the ground of the absence of a certification of availability of funds issued by the proper accounting official. It found that there was already an advice of allotment from the Department of Budget and Management to cover the projects.[13] The respondents were thus correct in suing the government for the nonpayment of the services they had rendered. Consequently, the court *a quo* disposed:

WHEREFORE, in view of the foregoing, judgment is hereby ordered in favor of plaintiffs Ronaldo Quiwa doing business under the name R.E.Q . Construction, Efren N. Rigor, doing business under the name Chiara Construction, Romeo R. Dimatulac, doing business under the namme (sic) Ardy Construction and against Felicitas C. Sumera, doing business under the namee (sic) FC.S. (sic) Construction and against defendants Department of Public Works and Highways, Gregorio R. Vigilar, Teodoro T. Encarnacion and Jose P. de Jesus, ordering them to jointly and solidarily pay plaintiffs the following amounts:

1) To plaintiff Ronaldo Z. Quiwa

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[12] *Id.* at 270-271.

[13] *Id.* The Advice of Allotment states: The following allotments are made available in support of their functions, projects, purpose and all other expenditures authorized for the calendar year. The allotment for any given quarter shall only become self-executory at the beginning of that quarter. It is the primary responsibility of the head of the department, bureau or agency concerned to keep expenditures within the limits of the amount alloted. The purpose is to cover funding requirements for the implementation of necessary infrastructure projects and other works under the Mt. Pinatubo Rehabilitation Project. The appropriation was ₱400 million.

First: The principal sum of ₱3,488,258.25 representing the actual work accomplishments of Quiwa's first project, the channeling with disposal of Sacobia-Bamban-Parua River from Sta. 2 + 100 to Sta. 2 + 500 (left bank) in Bamban, Tarlac and the principal sum of ₱3,843,252.90 representing the actual work accomplishments of Quiwa's second project which is Channeling with Disposal of Sacobia-Bamban-Parua River from Sta. 1 + 200 to Sta. 1 + 500 at Bamban, Tarlac with legal rate of interest from July 1992 until fully paid;

Second: The sum of 10% of the total amount due as attorney's fees; and

Third: The sum equivalent to the lawful fees paid by plaintiff Quiwa in entering and docketing the action which must be the proportion of the filing fees for his total claim in the amount of ₱7,331,511.115 (sic) as costs of suit.

2) To plaintiff Efren Rigor

First: The principal sum of ₱3,843,252.90 representing the actual work accomplishments of plaintiff Rigor's first project, the channeling and disposal of Sacobia-Bamban-Parua River Channeling Section 1 + 200 Sta. 1 + 500 in Bamban, Tarlac, and the principal sum of ₱3,155,641.20 representing the actual accomplisments of plaintiff Rigor's second project which is the Channeling and Disposal Sacobia-Bamban-Parua River from Station -0 + 700 to Station-1 + 000 in Bamban, Tarlac with legal rate of interest from July 1992 until fully paid;

Second: The sum of 10% of the total amount due as attorney's fees; and

Third: The sum equivalent to the lawful fees paid by Plaintiff Rigor in entering or docketing the action which must be the proportion of the filing fees for his total claim in the amount of ₱6,998,849.10 as costs of suit.

3) For Plaintiff Romeo Dimatulac

First: The principal sum of ₱1,402,928.45 representing the actual work accomplishments of plaintiff Dimatulac project, the Double Diking at Sacobia-Bamban-Parua River Control System from Station 2 + 000 to Station 2 + 400 in Bamban, Tarlac with legal rate of interest from July 1922 until fully paid;

Second: The sum of 10% of the total amount due as attorney's fees; and

Third: The sum equivalent to the lawful fees paid by plaintiff Dimatulac in entering and docketing the action which must be the proportion of the filing fee for his total claim in the amount of ₱1,402,928.45 as costs of suit.

4) To plaintiff Felicitas C. Sumera

First: The principal sum of ₱4,232,363.40 representing the actual work accomplishments of plaintiff Sumera's project, the Channeling with disposal of the Sacobia-Bamban-Parua River Control covering Station -1 = 500 to Station -1 + 800 in Bamban, Tarlac with legal rate of interest from July 1992 until fully paid;

Second: The sum of 10% of the total amount due as attorney's fees; and

Third: The sum equivalent to the lawful fees paid by plaintiff Sumera's (sic) in entering and docketing the action which must be the proportion of the filing fees for her total claim in the amount of ₱4,232,363.40 as costs of suit.. (sic)

SO ORDERED.

Not amenable to the trial court's Decision, Petitioner DPWH, through the Office of the Solicitor General, filed an appeal[14] to question the said Decision. DPWH mainly argued that there was no valid contract between it and respondents.[15] It claimed that there was no certification of the availability of funds issued by the DPWH Chief Accountant or by the head of its accounting unit as required by Executive Order No. 292, or the Administrative Code of 1987.[16] It also alleged other deficiencies and irregularities, which rendered the contract void from its inception, such as the absence of the requirements enumerated in Presidential Decree (P.D.) Nos. 1594 and 1445; and the lack of authority on the part of Engineer Philip Meñez, Project Manager II of the DPWH to enter into contracts on behalf of DPWH. DPWH likewise

[14] *Id.* at 284.

[15] CA *rollo*, pp. 56-91.

[16] *Id.* at 72-75.

contested the RTC's award of attorney's fees and costs of suit to respondents.

The Court of Appeals (CA), similar to the court *a quo*, sided with respondents. The CA resolved in the affirmative the issue of whether the respondents are entitled to their claim representing actual expenses for the construction projects they undertook. It found that there was already a fund allocation for the projects, and that the payment for the channeling services rendered by the respondents had been included in the said fund allocation as testified to by DPWH's witness, Felix Desierto. It ruled that DPWH officials who approved the projects, even though middle-rank, had the authority to bind the department. The CA held:

> ...[I]t appears that all the procedures followed by the project managers and plaintiff-appellees were in accordance with the usual DPWH procedures, such that, there was no reason for plaintiffs-appellees not to rely on the authority of the project managers who allowed them to proceed with their projects from start to finish.[17]

The CA further held that revalidation was not part of the contract and, thus, not a precondition for payment to the respondents. The constitution of the revalidation team after the commencement of the construction project indicated that approval by DPWH was not meant to be a condition for the payment of the project.[18] With the completion of the project, the CA ruled that the DPWH was estopped from refusing to pay plaintiffs:[19]

> ...[I]t is readily seen that defendant-appellant's conduct in allowing the subject projects to continue without objecting thereto and in even assigning its own employees to oversee these projects estopped defendant-appellant from adopting a position that such projects were not authorized. Without a doubt, such acts induced plaintiff-appellees to believe that such projects will be honored by defendant-appellant

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[17] *Id.* at 345-346.

[18] *Id.* at 346-347.

[19] *Id.* at 347.

and that they will be compensated for all their expenditures.[20]

According to the CA, the absence of a written contract with R. Dimatulac and Rigor did not affect the validity and the enforceability of the contracts between DPWH and the contractors.

With the affirmance of the RTC Decision, DPWH filed a Petition for Review[21] before this Court, alleging that the following were errors committed by the Court of Appeals:[22]

IN NOT FINDING THAT THE PURPORTED CONTRACTS BETWEEN THE PARTIES ARE NULL AND VOID FROM THE BEGINNING AND HENCE, NOT BINDING BETWEEN THEM;

IN NOT FINDING THAT [RESPONDENTS QUIWA *ET AL*.] HAVE NO CAUSE OF ACTION AGAINST [PETITIONER DPWH];

IN NOT FINDING THAT THE AWARD OF ATTORNEY'S FEES AND COSTS OF SUIT IS UNWARRANTED AND HAS NO BASIS IN LAW.

Petitioner insists that there was no valid contract between it and the respondents, and, thus, the latter had no cause of action against the former. Consequently, there was no basis to grant the Complaint and to award attorney's fees and the costs of suit in favor of the respondents.[23]

On the other hand, respondents, in their comment, reiterates the correctness of the RTC and the CA Decisions. They also brought to the attention of this Court the fact that the individual defendants in the case, DPWH former Secretaries Gregorio T. Vigilar and Jose P. de Jesus, and Undersecretary Teodoro T. Encarnacion did not file an appeal to this Court. Both the RTC and the CA Decisions adjudged these defendants jointly and solidarily liable with DPWH to pay the amount awarded to the

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[20] *Id.* at 349.

[21] *Rollo*, pp. 8-44.

[22] *Id.* at 20-21.

[23] *Id.* at 21.

respondents. Respondents are effectively claiming that the said judgments have become final and executory against defendant public officials.

The Issues

We find that the crux of the Petition is simply whether the DPWH is liable to pay the claims filed against them by the plaintiffs. Corollary to this main issue, the following sub-issues beg for resolution:

Whether, in the absence of the legal requirements under PD 1445, a valid contract between the DPWH and the plaintiffs exists;

Whether the plaintiffs are entitled to payment for accomplishing 100% of the work, attorney's fees and costs of suit;

Whether the Secretary and the Undersecretary of DWPH should be held jointly and solidarily liable to plaintiffs.

The Court's Ruling

It should be borne in mind that a review under Rule 45 of the Rules of Court is discretionary and must be granted only when there are special and important reasons therefor.[24] We find that these reasons are not present in this case.

As a general rule, the factual findings of the trial court, when affirmed by the appellate court, attain conclusiveness and are given utmost respect by this Court.[25] DPWH never questioned the completion of the Sacobia-Bamban-Parua river works. Neither did it question the authority of those who certified the completion of the works by respondents. The trial court ruled that the works were completed, as shown by the evidence presented before it. This finding was affirmed by the Court of Appeals. There is, therefore, no reason for us to view these factual findings.

With the findings of the trial and the appellate courts, there

[24] ROC, R45 §6.

[25] See *Spouses Pudadera v. Magallanes*, G.R. No. 170073, 18 October 2010 citing *Uraca v. Court of Appeals*, 344 Phil. 253, 267 (1997).

is no longer any issue on whether the contractors completed the projects in accordance with the specifications agreed upon. The regular course of a contract is that after the complete rendering of services, the contractors are subsequently paid. The DPWH, however, deviated from this course.

It should be noted that the completion of the works was recognized by the DPWH, as shown by the certifications issued by its engineers and even by municipal officials. Notwithstanding the said recognition, DPWH chose not to act on the claims of respondents, and later denied liability for the payment of the works on the ground of the invalidity of the contracts.

Petitioner DPWH primarily argues that the contracts with herein respondents were void for not complying with Sections 85 and 86 of P.D. 1445, or the Government Auditing Code of the Philippines, as amended by Executive Order No. 292. These sections require an appropriation for the contracts and a certification by the chief accountant of the agency or by the head of its accounting unit as to the availability of funds. It should be noted that there was an appropriation amounting to ₱400 million, which was increased to ₱700 million. The funding was for the rehabilitation of the areas devastated and affected by Mt. Pinatubo, which included the Sacobia-Bamban-Parua River for which some of the channeling, desilting and diking works were rendered by herein respondents' construction companies.

It was, however, undisputed that there was no certification from the chief accountant of DPWH regarding the said expenditure. In addition, the project manager has a limited authority to approve contracts in an amount not exceeding ₱1 million.[26] Notwithstanding these irregularities, it should be pointed out that there is no novelty regarding the question of satisfying a claim for construction contracts entered into by the government, where there was no appropriation and where the contracts were considered void due to technical reasons. It

[26] Fourth Folder of Exhibits, Department Order No. 135, Series of 1990, p 1.

has been settled in several cases that payment for services done on account of the government, but based on a void contract, cannot be avoided. The Court first resolved such question in *Royal Trust Construction v. Commission on Audit*.[27] In that case, the court issued a Resolution granting the claim of Royal Trust Construction under a void contract. The unpublished Resolution reads as follows:

NOV 23 1988

Gentlemen

Quoted hereunder, for your information, is a resolution of the Court *En Banc* dated NOV 22 1988

G.R. No. 84202 (*ROYAL TRUST CONSTRUCTION v. COMMISSION ON AUDIT*). – The petitioner undertook the widening and deepening of the Betis River in Pampanga at the urgent request of the local officials and with the knowledge and consent of the Ministry of Public Works but without any written contract and the covering appropriation. The purpose of the project was to prevent the flooding of the neighboring areas and to irrigate the adjacent farmlands. On December 16, 1985, the petitioner sought compensation in the sum of ₱1,299,736.00 "for the completed portion of the ₱2.3 million Betis River project, which was implemented or undertaken sometime in mid-May, 1984."

In a memorandum dated February 17, 1986, then Public Works Minister Jesus Hipolito recommended immediate "payment of the works already completed" from the cash disbursement ceiling of ₱300,000.00 for Betis River. On July 16, 1986, his successor, Minister Rogaciano M. Mercado manifested that his office was interposing "no objection to the proposal to use the ₱294,000.00 release for Betis River Control, Betis, Mexico, Pampanga, for the partial payment of work already accomplished for the channel improvement of said river from Sta. 2+200 to Sta. 5-100, subject, however, to existing budgetary accounting and auditing rules and regulations."

On July 20, 1987, the Chairman of the Commission on Audit ruled that "payment to the contractor for the work accomplished, starting with the first partial payment in the amount of ₱268,051.14

[27] *Rollo* (G.R. No. 84202), pp. 65-66.

only on the basis of *quantum meruit* may be allowed, in keeping with the time-honored principle that no one may be permitted to unjustly enrich himself at the expense of another." However, in a subsequent indorsement dated August 27, 1987, Chairman Domingo reversed himself and held:

> "However, this Commission is only too aware of its existing policy on recovery from government contracts on the basis of *quantum meruit.* Under COA Resolution No. 36-58, dated November 15, 1986, this Commission has adhered to a policy of barring such recovery where the project subject of the contract is patently violative of the mandatory legal provisions relating to, among others, the existence of the corresponding appropriation covering the contract cost. The mere delay in the accomplishment of the required certificate of availability of funds (CAF) to support a contract presents an entirely different situation considering that since the covering funds have in fact been already appropriated and budgetarily allotted to the implementing agency, the delayed execution of the CAF would not alter such fact."

Even so, he added that "considering the sacrifices already made by the appellant in accomplishing the project in question, which are favorable circumstances attendant to the claim, payment on the basis of *quantum meruit* may be given due course but only upon order of a court."

The respondent is now faulted for grave abuse of discretion in disallowing the petitioner's claim without an order from a court. The Solicitor General, in support of the Commission on Audit, agrees that the said payment cannot be made because it is barred for lack of the required covering appropriation, let alone the corresponding written contract.

We hold for the petitioner.

The work done by it was impliedly authorized and later expressly acknowledged by the Ministry of Public Works, which has twice recommended favorable action on the petitioner's request for payment. Despite the admitted absence of a specific covering appropriation as required under COA Resolution No. 36-58, the petitioner may nevertheless be compensated for the services rendered by it, concededly for the public benefit, from the general fund allotted by law to the

Betis River Project. Substantial compliance with the said resolution, in view of the circumstances of this case, should suffice. The Court also feels that the remedy suggested by the respondent, to compensation claimed, would entail additional expense, inconvenience and delay which in fairness should not be imposed on the petitioner.

Accordingly, in the interest of substantial justice and equity, the respondent Commission on Audit is DIRECTED to determine on a *quantum meruit* basis the total compensation due to the petitioner for the services rendered by it in the channel improvement of the Betis River in Pampanga and to allow the payment thereof immediately upon completion of the said determination."

Very truly yours,

(sgd)
Daniel T. Martinez
Clerk of Court

The above case became the authority in granting claims of a contractor against the government based on a void contract. This exercise of equity to compensate contracts with the government was repeated in *Eslao vs. COA*.[28] In the said case, the respondent therein, Commission on Audit (COA), was ordered to pay the company of petitioner for the services rendered by the latter in constructing a building for a state university, notwithstanding the contract's violations of the mandatory requirements of law, including the prior appropriation of funds therefor. The Court, in resolving the case, cited the unpublished Resolution in *Royal Construction*, wherein the Court allowed the payment of the company's services sans the legal requirements of prior appropriation.

Royal Trust Construction was again mentioned in *Melchor v. COA*,[29] which was decided a few months after *Eslao*. In *Melchor*, it was found that the contract was approved by an unauthorized person and, similar to the case at bar, the required certification of the chief accountant was absent. The Court

[28] G.R. No. 89745, 8 April 1991, 195 SCRA 730.

[29] G.R. No. 95398, 16 August 1991, 200 SCRA 704.

did not deny or justify the invalidity of the contract. The Court, however, found that the government unjustifiably denied what the latter owed to the contractors, leaving them uncompensated after the government had benefited from the already completed work.

In *EPG Construction Co., et al v. Hon. Gregorio R. Vigilar*,[30] the Court again refused to stamp with legality DPWH's act of evading the payment of contracts that had been completed, and from which the government had already benefited. The Court held:

> Although this Court agrees with respondent's postulation that the "implied contracts", which covered the additional constructions, are void, in view of violation of applicable laws, auditing rules and lack of legal requirements, we nonetheless find the instant petition laden with merit and uphold, *in the interest of substantial justice*, petitioners-contractors' right to be compensated for the "additional constructions" on the public works housing project, applying the ***principle of quantum meruit***.

The Court also held in the above case:

> Notably, the peculiar circumstances present in the instant case buttress petitioners' claim for compensation for the additional constructions, despite the illegality and void nature of the "implied contracts" forged between the DPWH and petitioners-contractors. On this matter, it bears stressing that the illegality of the subject contracts proceeds from an express declaration or prohibition by law, and not from any intrinsic illegality. Stated differently, the subject contracts are not illegal *per se*.

To emphasize, the contracts in the above cases, as in this case, were not illegal *per se*. There was prior appropriation of funds for the project including appropriation; and payment to the contractors, upon the subsequent completion of the works, was warranted.

As to Public Works and Highways officials Gregorio R. Vigilar, Teodoro T. Encarnacion and Jose P. de Jesus, their

[30] G.R. No. 131544, 16 March 2001, 354 SCRA 566.

personal liability should not be sustained. They were sued in their official capacity, and it would be unfair to them to pay the contractors out of their own pockets. In Melchor, the Court declared that it was unjust to hold the public official liable for the payment of a construction that benefited the government.

We also depart from the CA and the RTC rulings awarding the respondents attorney's fees and costs of suit. The Constitution provides that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[31] Attorney's fees and costs of suit were not included in the appropriation of expenditures for the Sacobia-Bamban-Parua project. In addition, we are not disposed to say that there was bad faith on the part of the DPWH in not settling its liability to the respondents for the works accomplished by the latter. The DPWH relied on P.D. 1445, Section 87, which provides that contracts in violation of Sections 85 and 86 thereof are void. The subject contracts undoubtedly lacked the legal requirement of certification of the chief accountant of DWPH. It was also clear that the project manager had no authority to approve the contracts, since the amounts involved were beyond his authority.[32] A strict application of the law, as the DPWH officials did, would therefore give a reasonable basis for the denial of the claim and eliminate the badge of bad faith on their part. The DPWH officials were apparently apprehensive that they might end up being liable to the government if they had wrongfully paid the contractors. This apprehension clearly showed in their letter to the DOJ Secretary.[33]

In conclusion, we uphold the CA in affirming the liability of the DPWH for the works accomplished by herein contractors.

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[31] Constitution, Art. VI, §29 (1).

[32] Fourth Folder of Exhibits, p. 1. DPWH Department Order No. 135, Series of 1990.

[33] The letter dated 14 September 1993, written by Joel L. Altea, Asst. Secretary for Comptrollership and Financial Management of the DPWH, was addressed to the then DOJ Secretary Franklin M. Drilon, seeking an opinion on whether the DPWH Secretary would be personally liable in case he signed and allowed claims for work that turn out to have been mistakenly validated by the Validation Committee and the COA.

We, however, delete the liability of Gregorio Vigilar, Teodoro Encarnacion and Jose P. de Jesus, as well as other monetary awards in favor of respondents, as these awards were not directly for the subject accomplished works and were not funded by the department.

IN VIEW THEREOF, the assailed 26 June 2008 Decision of the Court of Appeals is hereby *AFFIRMED with MODIFICATION*. Gregorio Vigilar, Teodoro Encarnacion and Jose P. de Jesus are absolved from their solidary liability with the government for the payment of the subject contracts. The payment is solely on account of DPWH. Likewise, attorney's fees and costs of suit are hereby *DELETED.*

SO ORDERED.

Carpio (Chairperson), Brion, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 185833. October 12, 2011]

ROBERT TAGUINOD, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A WITNESS MUST BE CONSIDERED AND CALIBRATED IN ITS ENTIRETY AND NOT BY TRUNCATED PORTIONS THEREOF OR

[*] Designated as additional member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated 3 October 2011.

ISOLATED PASSAGES THEREIN.— The first issue raised by petitioner is purely factual in nature. It is well entrenched in this jurisdiction that factual 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 it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. This doctrine is premised on the undisputed fact that, since the trial court had the best opportunity to observe the demeanor of the witnesses while on the stand, it was in a position to discern whether or not they were telling the truth. Moreover, the testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.

2. ID.; ID.; ID.; THE INCONSISTENCIES IN THE TESTIMONY OF PETITIONER'S WITNESS APPEAR TO BE MORE THAN MINOR OR TRIVIAL, AND DOES NOT, IN ANY WAY, CAST REASONABLE DOUBT.— It is apparent in this present case that both the RTC and the CA accorded respect to the findings of the MeTC; hence, this Court finds no reason to oppose the other two courts in the absence of any clear and valid circumstance that would merit a review of the MeTC's assessment as to the credibility of the witnesses and their testimonies. Petitioner harps on his contention that the MeTC was wrong in not finding the testimony of his own witness, Mary Susan Lim Taguinod, to be credible enough. However, this Court finds the inconsistencies of said petitioner's witness to be more than minor or trivial; thus, it does not, in any way, cast reasonable doubt. As correctly pointed out by the MeTC: Defense witness Mary Susan Lim Taguinod is wanting in credibility. Her recollection of the past events is hazy as shown by her testimony on cross-examination. While she stated in her affidavit that the Honda CRV's "left side view mirror hit our right side view mirror, causing our side view mirror to fold" (par. 4, Exhibit "3"), she testified on cross-examination that the right side view mirror of the Vitara did not fold and there was only a slight dent or scratch. She initially testified that she does not recall having submitted her written version of the incident but ultimately admitted having executed an affidavit. Also, while the Affidavit stated that Mary Susan Lim

Taguinod personally appeared before the Notary Public, on cross-examination, she admitted that she did not, and what she only did was to sign the Affidavit in Quezon City and give it to her husband. Thus, her inaccurate recollection of the past incident, as shown by her testimony on cross-examination, is in direct contrast with her Affidavit which appears to be precise in its narration of the incident and its details. Such Affidavit, therefore, deserves scant consideration as it was apparently prepared and narrated by another. Thus, the Court finds that the prosecution has proven its case against the accused by proof beyond reasonable doubt.

3. CRIMINAL LAW; MALICIOUS MISCHIEF; ELEMENTS OF THE CRIME; PRESENT IN CASE AT BAR.— What really governs this particular case is that the prosecution was able to prove the guilt of petitioner beyond reasonable doubt. The elements of the crime of malicious mischief under Article 327 of the Revised Penal Code are: (1) That the offender deliberately caused damage to the property of another; (2) That such act does not constitute arson or other crimes involving destruction; (3) That the act of damaging another's property be committed merely for the sake of damaging it. In finding that all the above elements are present, the MeTC rightly ruled that: The following were not disputed: that there was a collision between the side view mirrors of the two (2) vehicles; that immediately thereafter, the wife and the daughter of the complainant alighted from the CRV and confronted the accused; and, the complainant, in view of the hostile attitude of the accused, summoned his wife and daughter to enter the CRV and while they were in the process of doing so, the accused moved and accelerated his Vitara backward as if to hit them. **The incident involving the collision of the two side view mirrors is proof enough to establish the existence of the element of "hate, revenge and other evil motive." Here, the accused entertained hate, revenge and other evil motive because to his mind, he was wronged by the complainant when the CRV overtook his Vitara while proceeding toward the booth to pay their parking fee, as a consequence of which, their side view mirrors collided**. On the same occasion, the hood of his Vitara was also pounded, and he was badmouthed by the complainant's wife and daughter when they alighted from the CRV to confront him for the collision of the side view mirrors.

These circumstances motivated the accused to push upward the ramp complainant's CRV until it reached the steel railing of the exit ramp. The pushing of the CRV by the Vitara is corroborated by the Incident Report dated May 26, 2002 prepared by SO Robert Cambre, Shift-In-Charge of the Power Plant Mall, as well as the Police Report. x x x The CA also accurately observed that the elements of the crime of malicious mischief are not wanting in this case, thus: Contrary to the contention of the petitioner, the evidence for the prosecution had proven beyond reasonable doubt the existence of the foregoing elements. **First, the hitting of the back portion of the CRV by the petitioner was clearly deliberate as indicated by the evidence on record**. The version of the private complainant that the petitioner chased him and that the Vitara pushed the CRV until it reached the stairway railing was more believable than the petitioner's version that it was private complainant's CRV which moved backward and deliberately hit the Vitara considering the steepness or angle of the elevation of the P2 exit ramp. It would be too risky and dangerous for the private complainant and his family to move the CRV backward when it would be hard for him to see his direction as well as to control his speed in view of the gravitational pull. **Second, the act of damaging the rear bumper of the CRV does not constitute arson or other crimes involving destruction**. **Lastly, when the Vitara bumped the CRV, the petitioner was just giving vent to his anger and hate as a result of a heated encounter between him and the private complainant.** In sum, this Court finds that the evidence on record shows that the prosecution had proven the guilt of the petitioner beyond reasonable doubt of the crime of malicious mischief. This adjudication is but an affirmation of the finding of guilt of the petitioner by both the lower courts, the MeTC and the RTC.

4. CIVIL LAW; DAMAGES; MORAL DAMAGES; CONCEPT OF AWARD.— In *Manuel v. People*, this Court tackled in substance the concept of the award of moral damages, thus: Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the **proximate result of the defendant's**

wrongful act or omission. An award for moral damages requires the confluence of the following conditions: **first, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; second, there must be culpable act or omission factually established; third, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and fourth, the award of damages is predicated on any of the cases stated in Article 2219 or Article 2220 of the Civil Code**.

5. ID.; ID.; ID.; INJURY CONTEMPLATED BY LAW WHICH MERITS THE AWARD OF MORAL DAMAGES WAS CLEARLY ESTABLISHED.— It is true that the private complainant is entitled to the award of moral damages under Article 2220 of the New Civil Code because the injury contemplated by the law which merits the said award was clearly established. Private complainant testified that he felt bad and lost sleep. The said testimony is substantial to prove the moral injury suffered by the private complainant for it is only him who can personally approximate the emotional suffering he experienced. For the court to arrive upon a judicious approximation of emotional or moral injury, competent and substantial proof of the suffering experienced must be laid before it. The same also applies with private complainant's claim that his wife felt dizzy after the incident and had to be taken to the hospital. However, anent the award of attorney's fees, the same was not established. In *German Marine Agencies, Inc. v. NLRC*, this Court held that there must always be a factual basis for the award of attorney's fees. This present case does not contain any valid and factual reason for such award.

APPEARANCES OF COUNSEL

Ongkiko Manhit Custodio & Acorda for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the petition for review[1] dated February 5, 2009 of petitioner Robert Taguinod seeking to reverse the Decision[2] of the Court of Appeals (CA) dated September 8, 2008 and its Resolution[3] dated December 19, 2008 affirming the Decisions of the Regional Trial Court of Makati City (RTC)[4] and the Metropolitan Trial Court of Makati City (MeTC)[5] dated September 6, 2007 and November 8, 2006, respectively.

The following are the antecedent facts:

This case started with a single incident on May 26, 2002 at the parking area of the Rockwell Powerplant Mall. Pedro Ang (private complainant) was driving his Honda CRV (CRV) from the 3rd basement parking, while Robert Taguinod (petitioner) was driving his Suzuki Vitara (Vitara) from the 2nd basement parking. When they were about to queue at the corner to pay the parking fees, the respective vehicles were edging each other. The CRV was ahead of the queue, but the Vitara tried to overtake, which resulted the touching of their side view mirrors. The side view mirror of the Vitara was pushed backward and naturally, the side view mirror of the CRV was pushed forward. This prompted the private complainant's wife and daughter, namely, Susan and Mary Ann, respectively, to alight from the CRV and confront the petitioner. Petitioner appeared to be hostile, hence, the private complainant instructed his wife and daughter to go back to the CRV. While they were returning to the car, petitioner accelerated the Vitara and moved backward as if to hit them. The CRV, having been overtaken by the Vitara, took another

[1] *Rollo*, pp. 13-152.

[2] Penned by Associate Justice Isaias Dicdican, with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; *id.* at 35-44.

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

[4] *Id.* at 91-98.

[5] *Id.* at 61-67.

lane. Private complainant was able to pay the parking fee at the booth ahead of petitioner. When the CRV was at the upward ramp leading to the exit, the Vitara bumped the CRV's rear portion and pushed the CRV until it hit the stainless steel railing located at the exit portion of the ramp.

As a result of the collision, the CRV sustained damage at the back bumper spare tires and the front bumper, the repair of which amounted to ₱57,464.66. The insurance company shouldered the said amount, but the private complainant paid ₱18,191.66 as his participation. On the other hand, the Vitara sustained damage on the right side of its bumper.

Thereafter, an Information[6] was filed in the MeTC of Makati City against petitioner for the crime of Malicious Mischief as defined in and penalized under Article 327[7] of the Revised Penal Code (RPC). The Information reads as follows:

> That on or about the 26th day of May, 2002, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to cause damage, and motivated by hate and revenge and other evil motives, did then and there willfully, unlawfully and feloniously bump the rear portion of a Honda CRV car bearing Plate No. APS-222 driven by Pedro N. Ang, thus, causing damage thereon in the amount of ₱200.00.
>
> CONTRARY TO LAW.

Petitioner pleaded *Not Guilty* during the arraignment on March 10, 2003. Consequently, the trial on the merits ensued. The prosecution presented the testimony of private complainant. The defense, on the other hand, presented the testimonies of Mary Susan Lim Taguinod, the wife of petitioner, Jojet N. San Miguel, Jason H. Lazo and Engr. Jules Ronquillo.

Afterwards, the MeTC, in its Decision dated November 8, 2006, found petitioner guilty of the crime charged in the Information, the dispositive portion of which, reads:

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[6] CA Decision, p. 8, *rollo*, p. 37.

[7] Art. 327. *Who are liable for malicious mischief*.- Any person who shall deliberately cause to the property of another any damage not falling

WHEREFORE, premises considered, judgment is hereby rendered finding the accused ROBERT TAGUINOD *y* AYSON GUILTY of Malicious Mischief penalized under Article 329 of the Revised Penal Code, and sentencing accused to FOUR (4) MONTHS imprisonment.

Accused Robert Taguinod *y* Ayson is likewise ordered to pay complainant Pedro Ang the amount of ₱18,191.66, representing complainant's participation in the insurance liability on the Honda CRV, the amount of ₱50,000.00 as moral damages, and the amount of ₱25,000.00 as attorney's fees; and to pay the costs.

SO ORDERED.[8]

The case was appealed to the RTC of Makati City, which rendered its Decision dated September 6, 2007, affirming the decision of the MeTC, disposing the appealed case as follows:

WHEREFORE, premises considered, the Decision dated 8 November 2006 is AFFIRMED in all respects.

SO ORDERED.[9]

Undaunted, petitioner filed a petition for review with the CA, praying for the reversal of the decision of the RTC. The CA partly granted the petition in its Decision dated September 8, 2008, ruling that:

WHEREFORE, in view of the foregoing premises, the petition for review filed in this case is hereby PARTLY GRANTED. The assailed decision dated September 6, 2007 of Branch 143 of the Regional Trial Court in Makati City in Criminal Case No. 07-657 is hereby MODIFIED as follows:

1. The petitioner is penalized to suffer the penalty of 30 days imprisonment;

2. The award of moral damages is reduced to ₱20,000.00; and

3. The award of attorney's fee is reduced to ₱10,000.00.

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within the terms of the next preceding chapter shall be guilty of malicious mischief.

[8] *Rollo*, p. 67.

[9] *Id.* at 98.

SO ORDERED.[10]

Petitioner filed with this Court a petition for review on *certiorari* dated February 5, 2009. On March 16, 2009, this Court denied[11] the said petition. However, after petitioner filed a motion for reconsideration[12] dated May 14, 2009, this Court reinstated[13] the present petition and required the Office of the Solicitor General to file its Comment.[14]

The grounds relied upon are the following:

A. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN UPHOLDING PETITIONER'S CONVICTION.

B. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN AWARDING MORAL DAMAGES AND ATTORNEY'S FEES TO PRIVATE COMPLAINANT.[15]

This Court finds the petition partly meritorious.

The first argument of the petitioner centers on the issue of credibility of the witnesses and the weight of the evidence presented. Petitioner insists that between the witness presented by the prosecution and the witnesses presented by the defense, the latter should have been appreciated, because the lone testimony of the witness for the prosecution was self-serving. He also puts into query the admissibility and authenticity of some of the pieces of evidence presented by the prosecution.

Obviously, the first issue raised by petitioner is purely factual in nature. It is well entrenched in this jurisdiction that factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not

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[10] *Id.* at 44.

[11] *Id.* at 154-155.

[12] *Id.* at 156-164.

[13] *Id.* at 164.

[14] Dated November 9, 2009, *id.* at 194-210.

[15] *Id.* at 19.

be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case.[16] This doctrine is premised on the undisputed fact that, since the trial court had the best opportunity to observe the demeanor of the witnesses while on the stand, it was in a position to discern whether or not they were telling the truth.[17] Moreover, the testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein.[18]

It is apparent in this present case that both the RTC and the CA accorded respect to the findings of the MeTC; hence, this Court finds no reason to oppose the other two courts in the absence of any clear and valid circumstance that would merit a review of the MeTC's assessment as to the credibility of the witnesses and their testimonies. Petitioner harps on his contention that the MeTC was wrong in not finding the testimony of his own witness, Mary Susan Lim Taguinod, to be credible enough. However, this Court finds the inconsistencies of said petitioner's witness to be more than minor or trivial; thus, it does not, in any way, cast reasonable doubt. As correctly pointed out by the MeTC:

> Defense witness Mary Susan Lim Taguinod is wanting in credibility. Her recollection of the past events is hazy as shown by her testimony on cross-examination. While she stated in her affidavit that the Honda CRV's "left side view mirror hit our right side view mirror, causing our side view mirror to fold" (par. 4, Exhibit "3"), she testified on cross-examination that the right side view mirror of the Vitara did not fold and there was only a slight dent or scratch. She initially testified that she does not recall having submitted her written version of the incident but ultimately admitted having executed an affidavit.

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[16] *People v. De Leon,* G.R. No. 180762, March 4, 2009, 580 SCRA 617, 624, citing *People v. Clidoro,* 449 Phil. 142, 149 (2003).

[17] *People v. De Leon*, 428 Phil. 556, 572 (2002), citing *People v. Baltazar*, 405 Phil. 340 (2001); *People v. Barrameda*, 396 Phil. 728 (2000).

[18] *People v. Roma,* G.R. No. 147996, September 30, 2005, 471 SCRA 413, 420, citing *People v. San Gabriel*, G.R. No. 107735, February 1, 1996, 253 SCRA 84, 93.

Also, while the Affidavit stated that Mary Susan Lim Taguinod personally appeared before the Notary Public, on cross-examination, she admitted that she did not, and what she only did was to sign the Affidavit in Quezon City and give it to her husband. Thus, her inaccurate recollection of the past incident, as shown by her testimony on cross-examination, is in direct contrast with her Affidavit which appears to be precise in its narration of the incident and its details. Such Affidavit, therefore, deserves scant consideration as it was apparently prepared and narrated by another.

Thus, the Court finds that the prosecution has proven its case against the accused by proof beyond reasonable doubt.[19]

What really governs this particular case is that the prosecution was able to prove the guilt of petitioner beyond reasonable doubt. The elements of the crime of malicious mischief under Article 327 of the Revised Penal Code are:

(1) That the offender deliberately caused damage to the property of another;

(2) That such act does not constitute arson or other crimes involving destruction;

(3) That the act of damaging another's property be committed merely for the sake of damaging it.[20]

In finding that all the above elements are present, the MeTC rightly ruled that:

The following were not disputed: that there was a collision between the side view mirrors of the two (2) vehicles; that immediately thereafter, the wife and the daughter of the complainant alighted from the CRV and confronted the accused; and, the complainant, in view of the hostile attitude of the accused, summoned his wife and daughter to enter the CRV and while they were in the process of doing so, the accused moved and accelerated his Vitara backward as if to hit them.

The incident involving the collision of the two side view mirrors is proof enough to establish the existence of the element

[19] MeTC Decision, p. 6; *rollo*, p. 66

[20] Reyes, *The Revised Penal Code*, Vol. II, p. 326.

of "hate, revenge and other evil motive." Here, the accused entertained hate, revenge and other evil motive because to his mind, he was wronged by the complainant when the CRV overtook his Vitara while proceeding toward the booth to pay their parking fee, as a consequence of which, their side view mirrors collided. On the same occasion, the hood of his Vitara was also pounded, and he was badmouthed by the complainant's wife and daughter when they alighted from the CRV to confront him for the collision of the side view mirrors. These circumstances motivated the accused to push upward the ramp complainant's CRV until it reached the steel railing of the exit ramp. The pushing of the CRV by the Vitara is corroborated by the Incident Report dated May 26, 2002 prepared by SO Robert Cambre, Shift-In-Charge of the Power Plant Mall, as well as the Police Report. x x x[21]

The CA also accurately observed that the elements of the crime of malicious mischief are not wanting in this case, thus:

Contrary to the contention of the petitioner, the evidence for the prosecution had proven beyond reasonable doubt the existence of the foregoing elements. **First, the hitting of the back portion of the CRV by the petitioner was clearly deliberate as indicated by the evidence on record**. The version of the private complainant that the petitioner chased him and that the Vitara pushed the CRV until it reached the stairway railing was more believable than the petitioner's version that it was private complainant's CRV which moved backward and deliberately hit the Vitara considering the steepness or angle of the elevation of the P2 exit ramp. It would be too risky and dangerous for the private complainant and his family to move the CRV backward when it would be hard for him to see his direction as well as to control his speed in view of the gravitational pull. **Second, the act of damaging the rear bumper of the CRV does not constitute arson or other crimes involving destruction**. **Lastly, when the Vitara bumped the CRV, the petitioner was just giving vent to his anger and hate as a result of a heated encounter between him and the private complainant.**

In sum, this Court finds that the evidence on record shows that the prosecution had proven the guilt of the petitioner beyond reasonable doubt of the crime of malicious mischief. This adjudication

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[21] MeTC Decision, p. 5, *rollo*, p. 65. (Emphasis supplied.)

is but an affirmation of the finding of guilt of the petitioner by both the lower courts, the MeTC and the RTC.[22]

Petitioner likewise raises the issue that the CA was wrong in awarding moral damages and attorney's fees to the private complainant claiming that during the trial, the latter's entitlement to the said monetary reliefs was not substantiated. This Court finds petitioner's claim, with regard to the award of moral damages, unmeritorious.

In *Manuel v. People*,[23] this Court tackled in substance the concept of the award of moral damages, thus:

> Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the **proximate result of the defendant's wrongful act or omission**. An award for moral damages requires the confluence of the following conditions: **first, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; second, there must be culpable act or omission factually established; third, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and fourth, the award of damages is predicated on any of the cases stated in Article 2219 or Article 2220 of the Civil Code**.[24]

It is true that the private complainant is entitled to the award of moral damages under Article 2220[25] of the New Civil Code because the injury contemplated by the law which merits the said award was clearly established. Private complainant testified

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[22] CA Decision, pp. 7-8, *id.* at 41-42. (Emphasis supplied.)

[23] G.R. No. 165842, November 29, 2005, 476 SCRA 461.

[24] *Id.* at 489, citing *Francisco v. Ferrer, Jr.*, G.R. No. 142029, February 28, 2001, 353 SCRA 261, 266 (Emphasis supplied.)

[25] Art. 2220. **Willful injury to property may be legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due**. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith. (Emphasis supplied.)

that he felt bad[26] and lost sleep.[27] The said testimony is substantial to prove the moral injury suffered by the private complainant for it is only him who can personally approximate the emotional suffering he experienced. For the court to arrive upon a judicious approximation of emotional or moral injury, competent and substantial proof of the suffering experienced must be laid before it.[28] The same also applies with private complainant's claim that his wife felt dizzy after the incident and had to be taken to the hospital.[29]

However, anent the award of attorney's fees, the same was not established. In *German Marine Agencies, Inc. v. NLRC,*[30] this Court held that there must always be a factual basis for the award of attorney's fees. This present case does not contain any valid and factual reason for such award.

WHEREFORE, the petition for review dated February 5, 2009 of petitioner Robert Taguinod is *DENIED*. The Decision of the Court of Appeals dated September 8, 2008 and its Resolution dated December 19, 2008 are hereby *AFFIRMED* with the *MODIFICATION* that the attorney's fees are *OMITTED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[26] TSN, August 26, 2003, p. 30.

[27] *Id*.

[28] *Quezon City Government v. Dacara*, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 256.

[29] TSN, August 26, 2003, p. 27.

[30] 403 Phil. 572, 597 (2001). Also see *Concept Placement Resources, Inc. v. Funk*, G.R. No. 137680, February 6, 2004, 422 SCRA 317.

SECOND DIVISION

[G.R. Nos. 187117 and 187127. October 12, 2011]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. JOSE D. AZARRAGA, in his capacity as the Presiding Judge of Branch 37, Regional Trial Court, Iloilo City and JOHN REY A. PREVENDIDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; PARTIES MUST OBSERVE THE HIERARCHY OF COURTS BEFORE THEY CAN SEEK RELIEF DIRECTLY FROM THE SUPREME COURT; RATIONALE.— It is an established policy that parties must observe the hierarchy of courts before they can seek relief directly from this Court. The *rationale* for this rule is twofold: (a) it would be an imposition upon the limited time of this Court; and (b) it would inevitably result in a delay, intended or otherwise, in the adjudication of cases, which in some instances, had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts. It is only for special and compelling reasons that this Court shall exercise its primary jurisdiction over the extraordinary remedy of writ of prohibition. However, in the case at bar, since it is only the Supreme Court itself that can clarify the assailed guidelines, petitioner is exempted from this rule.

2. ID.; ID.; RULE-MAKING POWER OF THE SUPRME COURT; GUIDELINES IN REASSINGNING DRUG CASES OF JUDGES SITTING IN SPECIAL COURTS; IN CONFORMITY WITH THE RIGHT OF ALL PERSONS TO A SPEEDY DISPOSITION OF CASES; CASE AT BAR.— The crux of the matter in the present case is whether or not this Court violated Sec. 90 of R.A. 9165 when it issued A.M. 03-8-02-SC, particularly Chap. V, Sec. 9, which prescribes the manner in which the executive judge reassigns cases in instances of inhibition or disqualification of judges sitting in special courts. Petitioner insists that should respondent judge (now Judge Fe Gallon-Gayanilo of Branch 35) continue hearing

and trying the case, it "would result in the circumvention of the legislative conferment of jurisdiction to a court to *exclusively* try and hear drug offenses only." Contrary to the assertion of petitioner, this Court did not commit any violation of R.A. 9165 when it issued the assailed guidelines. Rather, it merely obeyed Article VIII, Sec. 5(5) of the 1987 Constitution, which mandates that the rules promulgated by this Court should provide a simplified and inexpensive procedure for the speedy disposition of cases, in conformity with the right of all persons to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. As this Court stated in *San Ildefonso Lines v. Court of Appeals*, there must be a renewed adherence to the time-honored dictum that procedural rules are designed not to defeat, but to safeguard, the ends of substantial justice.

3. ID.; ID.; ID.; ID.; CONGRESS EMPOWERED THE SUPREME COURT UNDER R.A. 9165, WITH FULL DISCRETION, TO DESIGNATE SPECIAL COURTS TO HEAR, TRY AND DECIDE DRUG CASES.— Under R.A. 9165, Congress empowered this Court with the full discretion to designate special courts to hear, try and decide drug cases. It was precisely in the exercise of this discretionary power that the powers of the executive judge were included in Chap. V, Sec. 9 of A.M. No. 03-8-02-SC *vis-à-vis* Sec. 5(5) of Article VIII of the 1987 Constitution.

4. ID.; ID.; ID.; ID.; A.M. NO. 05-9-03-SC AND NO. 03-8-03-SC ARE NOT CONTRADICTORY; CASE AT BAR.— Nothing in A.M. No. 05-9-03-SC or in A.M. No. 03-8-03-SC suggests that they contradict each other. In fact, both were issued with a common *rationale*, that is, to "expeditiously resolve criminal cases involving violations of R.A. 9165," especially in the light of the strict time frame provided in Sec. 90 of R.A. 9165. Both provide for the guidelines regarding the assignment of drug cases to special courts. Thus, A.M. No. 05-9-03-SC provides for the exemption of special courts from the regular raffle under *normal* circumstances, while A.M. No. 03-8-02-SC provide for the assignment of drug cases to special courts except under *special* circumstances that would warrant reassignment to a regular court. Moreover, the exemption of special courts from the regular raffle was not

established as an ironclad rule. A.M. No. 05-9-03-SC does in fact allow special courts to acquire jurisdiction over cases that are not drug cases. In the interest of justice, executive judges may recommend to the Supreme Court the inclusion of drug courts in the regular raffle, and this Court has the discretion to approve the recommendation. In conclusion, the two sets of guidelines are examples of this Court's foresight and prudence in the exercise of its rule-making power. These guidelines were issued to prevent or address possible scenarios that might hinder the proper administration of justice.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Felix Sayago for private respondent.

D E C I S I O N

SERENO, *J.*:

In the present Petition for Prohibition with Prayer for Temporary Restraining Order/Preliminary Mandatory Injunction under Rule 65 of the Rules of Court, petitioner questions the legality of Chapter V, Section 9 of A.M. No. 03-8-02-SC or the "Guidelines on the Selection and Appointment of Executive Judges and Defining Their Powers, Prerogatives and Duties" issued by this Court on 27 January 2004, in relation to Section 90 of the Comprehensive Dangerous Drugs Act of 2002.

The antecedent facts are as follows:

On 7 February 2009, petitioner filed two (2) Informations[1] before the Regional Trial Court (RTC) of Iloilo City against private respondent John Rey Prevendido for Violation of Article II, Sections 5 and 11 of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The cases were

[1] *Rollo*, pp. 27-28.

raffled to Branch 36, a designated special court pursuant to R.A. 9165, presided by Judge Victor E. Gelvezon. Soon after, however, Judge Gelvezon disclosed that Coreen Gemarino, the Philippine Drug Enforcement Agency (PDEA) operative who conducted the entrapment operation against private respondent, had close family ties with him. Thus, in order to preserve the integrity of the court, Judge Gelvezon issued an Order[2] dated 17 February 2009 inhibiting himself from trying the case. The cases were then reassigned to the other special court, Branch 25, presided by Judge Evelyn E. Salao.

On 24 February 2009, Judge Salao also issued an Order[3] whereby she inhibited herself for the reason that Coreen Gemarino was a cousin; thus, the cases were endorsed to the Office of the Executive Judge for reassignment.

Citing Chap. V, Sec. 9 of A.M. No. 03-8-02-SC, Executive Judge Antonio M. Natino ordered the Clerk of Court to forward the entire records of the cases to Branch 37 presided over by public respondent, the pairing judge of Branch 36, which was the special court that originally handled the cases.[4]

On 16 March 2009, however, as soon as public respondent proceeded with the cases, Prosecutor Kenneth John Amamanglon filed a Motion to Transfer Case to a Branch of Competent Jurisdiction.[5] He questioned the jurisdiction of public respondent to hear the cases, citing Sec. 90 of R.A. 9165. Prosecutor Amamanglon also claimed that, as the prosecutor assigned to Branch 37, he was not among the prosecutors who had been designated to handle cases exclusively involving violations of R.A. 9165.

On the same day, respondent judge denied the motion on three grounds, to wit:

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[2] *Id.* at 33-36.

[3] *Id.* at 37.

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

[5] *Id.* at 42-43.

1. This motion ought not to have been filed in this court for lack of legal basis;

2. This court is not without jurisdiction to hear the instant case;

3. The matter about the appearance of Trial Prosecutor Kenneth John Amamanglon should have been addressed to the Department concerned.[6]

Respondent judge thus set the hearing on the Motion for Admission to Bail[7] filed on 10 February 2008. He directed the city prosecutor to assign an assistant city prosecutor to handle the case effective 20 March 2009.

Prosecutor Amamanglon, however, moved for a reconsideration[8] of respondent judge's Order, contending that the trial court needed a special designation from this Court in order to have jurisdiction over the cases. Thus, Prosecutor Amamanglon concluded, absent the special designation, respondent court should remand the cases to the Office of the Executive Judge for re-raffling to another court specially designated pursuant to R.A. 9165. To support its contention, petitioner further cited this Court's 11 October 2005 Resolution in A.M. No. 05-9-03-SC, which clarified whether drug courts should be included in the regular raffle.

Respondent judge denied the Motion for Reconsideration in its Order dated 20 March 2009.[9] He held that A.M. No. 03-8-02-SC should be deemed to have modified the designation of special courts for drug cases. He declared that, under the circumstances enumerated in A.M. No. 03-8-02-SC, Branch 37 itself became a special court. He further ruled that A.M. No. 05-9-03-SC was inapplicable.

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

[7] *Id.* at 30-31.

[8] *Id.* at 44-48.

[9] *Id.* at 25-26.

On 23 March 2009, the city prosecutor endorsed the assailed Orders of respondent judge to the Office of the Solicitor General for the appropriate review and filing of the necessary action.[10] Thus, on 24 March 2009, petitioner filed the present petition before this Court.

On 27 March 2009, while the Petition for Prohibition was pending, respondent judge issued an Order[11] inhibiting himself from hearing the case after private respondent alleged that the former was biased for the prosecution. The cases were thereafter transferred to Branch 35, also a regular court, presided by Judge Fe Gallon-Gayanilo.

Absent a temporary restraining order from this Court, the trial court proceeded to hear the cases.

The present petition raises two (2) issues, to wit:

I. WHETHER OR NOT RESPONDENT JUDGE HAS JURISDICTION OVER THE DRUG CASES IN CRIMINAL CASE NOS. 09-68815/16 DESPITE HIS ASSIGNMENT TO A REGULAR COURT

II. WHETHER OR NOT A.M. NO. 03-8-02-SC IS IN CONFORMITY WITH SECTION 90 OF REPUBLIC ACT NO. 9165, MANDATING THE DESIGNATION OF SPECIAL COURTS TO EXCLUSIVELY TRY AND HEAR DRUG CASES[12]

At the outset, it is an established policy that parties must observe the hierarchy of courts before they can seek relief directly from this Court. The *rationale* for this rule is twofold: (a) it would be an imposition upon the limited time of this Court; and (b) it would inevitably result in a delay, intended or otherwise, in the adjudication of cases, which in some instances, had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve

[10] *Id.* at 51.

[11] *Id.* at 58-60.

[12] *Id.* at 10.

the issues because this Court is not a trier of facts.[13] It is only for special and compelling reasons that this Court shall exercise its primary jurisdiction over the extraordinary remedy of writ of prohibition. However, in the case at bar, since it is only the Supreme Court itself that can clarify the assailed guidelines, petitioner is exempted from this rule.

The petition, however, must fail.

The crux of the matter in the present case is whether or not this Court violated Sec. 90 of R.A. 9165 when it issued A.M. 03-8-02-SC, particularly Chap. V, Sec. 9, which prescribes the manner in which the executive judge reassigns cases in instances of inhibition or disqualification of judges sitting in special courts. Petitioner insists that should respondent judge (now Judge Fe Gallon-Gayanilo of Branch 35) continue hearing and trying the case, it "would result in the circumvention of the legislative conferment of jurisdiction to a court to *exclusively* try and hear drug offenses only."[14]

Contrary to the assertion of petitioner, this Court did not commit any violation of R.A. 9165 when it issued the assailed guidelines. Rather, it merely obeyed Article VIII, Sec. 5(5) of the 1987 Constitution, which mandates that the rules promulgated by this Court should provide a simplified and inexpensive procedure for the speedy disposition of cases, in conformity with the right of all persons to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.[15] As this Court stated in *San Ildefonso Lines v. Court of Appeals*,[16] there must be a renewed adherence to the time-honored dictum that procedural rules are designed not to defeat, but to safeguard, the ends of substantial justice.

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[13] *Heirs of Bertuldo Hinog v. Hon. Achilles Melicor,* G.R. No. 140954, 12 April 2005, 455 SCRA 460; *Liga ng Mga Barangay Motional v. Atienza, Jr.*, G.R. No. 154599, 21 January 2004, 420 SCRA 562.

[14] *Rollo,* p. 15.

[15] CONSTITUTION, Art. III, Sec. 16.

[16] G.R. No. 119771, 24 April 1998, 289 SCRA 568.

Petitioner grounds its assertion on Sec. 90 of R.A. 9165, which states:

Jurisdiction. — **The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act**. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

xxx xxx xxx

Trial of the case under this Section shall be finished by the court not later than sixty (60) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case for resolution.

Petitioner interprets the above provision to mean that a court must be specifically designated by the Supreme Court as a special court. But what is Chap. V, Sec. 9 of A.M. No. 03-8-02-SC if not an express designation of a special court?

Chap. V, Sec. 9 of A.M. No. 03-8-02-SC provides:

Raffle and re-assignment of cases in special courts where judge is disqualified or voluntarily inhibits himself/herself from hearing case. — (a) Where a judge in a court designated to try and decide

xxx xxx xxx

(3) cases involving violations of the Dangerous Drugs Act, or

...

is disqualified or voluntarily inhibits himself/herself from hearing a case, the following guidelines shall be observed:

xxx xxx xxx

(ii) Where there are more than two special courts of the same nature in the station, the Executive Judge shall immediately assign the case by raffle to the other or another special court of the same nature. **In case the Presiding Judge of the other special court is also disqualified or inhibits himself/herself,**

> **the case shall be forwarded to the pairing judge of the special court which originally handled the said case. If the pairing judge is also disqualified or inhibits himself/herself, the case shall be raffled to the other regular courts.** At the next raffle, an additional case shall be assigned to the disqualified or inhibiting judge/s to replace the case so removed from his/her/their court... (Emphasis supplied.)

Under R.A. 9165, Congress empowered this Court with the full discretion to designate special courts to hear, try and decide drug cases. It was precisely in the exercise of this discretionary power that the powers of the executive judge were included in Chap. V, Sec. 9 of A.M. No. 03-8-02-SC *vis-à-vis* Sec. 5(5) of Article VIII of the 1987 Constitution. Thus, in cases of inhibition or disqualification, the executive judge is mandated to assign the drug case to a regular court in the following order: first, to the pairing judge of the special court where the case was originally assigned; and, second, if the pairing judge is likewise disqualified or has inhibited himself, then to another regular court through a raffle. Under these exceptional circumstances, this Court designated the regular court, *ipso facto*, as a special court – but only for that case. Being a "designated special court," it is likewise bound to follow the relevant rules in trying and deciding the drug case pursuant to R.A. 9165.

Petitioner also contends that the legislative intent of R.A. 9165 is "to make use of the expertise of trial judges in complicated and technical rules of the special drug law." Thus, petitioner suggests that in instances in which all the judges of special courts have inhibited themselves or are otherwise disqualified, the venue for the affected drug cases should be transferred to the nearest station that has designated special courts.

Petitioner's suggestion is ill-advised. To subscribe to this suggestion is to defeat the purpose of the law. Undoubtedly, petitioner's unwarranted suggestion would entail the use of precious resources, time and effort to transfer the cases to another station. On the other hand, the assailed guidelines provide for a much more practical and expedient manner of hearing and

deciding the cases. To reiterate, over and above utilizing the expertise of trial judges, the *rationale* behind Sec. 90 of R.A. 9165 and Chap. V, Sec. 9 of A.M. No. 03-8-02-SC is to effect an efficient administration of justice and speedy disposition of cases, as well as to breathe life into the policy enunciated in Sec. 2 of R.A. 9165, to wit:

> *Declaration of policy.* – It is the policy of the State to **safeguard the integrity of its territory and the well-being of its citizenry particularly the youth, from the harmful effects of dangerous drugs on their physical and mental well-being, and to defend the same against acts or omissions detrimental to their development and preservation. In view of the foregoing, the State needs to enhance further the efficacy of the law against dangerous drugs, it being one of today's more serious social ills.**
>
> Toward this end, the government shall pursue an intensive and unrelenting campaign against the trafficking and use of dangerous drugs and other similar substances through an integrated system of planning, implementation and enforcement of anti-drug abuse policies, programs, and projects. The government shall however aim to achieve a balance in the national drug control program so that people with legitimate medical needs are not prevented from being treated with adequate amounts of appropriate medications, which include the use of dangerous drugs.
>
> It is further declared the policy of the State to provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation. (Emphasis supplied.)

As a matter of fact, this Court also issued similar guidelines with regard to environmental cases,[17] election cases involving elective municipal officials,[18] and cases that involve killings of

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[17] Supreme Court Administrative Order No. 23-08, *Designation of Special Courts to Hear, Try and Decide Environmental Cases*, 28 January 2008.

[18] Supreme Court Administrative Order No. 54-07, *Designation of Special Courts to Hear, Try and Decide Election Contests Involving Elective Municipal Officials*, 11 May 2007.

political activists and members of media.[19] Foremost in its mind is the speedy and efficient administration of justice.

Petitioner further points out that this Court issued A.M. No. 05-9-03-SC to define the phrase "to exclusively try and hear cases involving violations of this Act" to mean "...[c]ourts designated as special courts for drug cases shall try and hear drug-related cases only, *i.e.*, cases involving violations of RA 9165, to the exclusion of other courts." Hence, petitioner submits, drug cases should not be assigned to regular courts according to the procedure provided in A.M. No. 03-8-02-SC; in other words, the two issuances contradict each other.

Again, this Court disagrees.

Petitioner underestimates the rule-making power of this Court. Nothing in A.M. No. 05-9-03-SC or in A.M. No. 03-8-03-SC suggests that they contradict each other. In fact, both were issued with a common *rationale*, that is, to "expeditiously resolve criminal cases involving violations of R.A. 9165," especially in the light of the strict time frame provided in Sec. 90 of R.A. 9165. Both provide for the guidelines regarding the assignment of drug cases to special courts. Thus, A.M. No. 05-9-03-SC provides for the exemption of special courts from the regular raffle under *normal* circumstances, while A.M. No. 03-8-02-SC provide for the assignment of drug cases to special courts except under *special* circumstances that would warrant reassignment to a regular court.

Moreover, the exemption of special courts from the regular raffle was not established as an ironclad rule. A.M. No. 05-9-03-SC does in fact allow special courts to acquire jurisdiction over cases that are not drug cases. In the interest of justice, executive judges may recommend to the Supreme Court the inclusion of drug courts in the regular raffle, and this Court has the discretion to approve the recommendation, as the Resolution states:

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[19] Supreme Court Administrative Order No. 25-07, *Designation of Special Courts to Hear, Try and Decide Cases Involving Killings of Political Activists and Members of Media*, 1 March 2007.

WHEREFORE, Executive Judges and presiding judges of special courts for drug cases shall hereby observe the following guidelines:

xxx xxx xxx

4. If, in the opinion of Executive Judges, the caseload of certain drug courts **allows their inclusion in the regular raffle without adversely affecting their ability to expeditiously resolve the drug cases assigned to them and their inclusion in the regular raffle becomes necessary to decongest the caseload of other branches**, **the concerned Executive Judges shall recommend to this Court the inclusion of drug courts in their jurisdiction in the regular raffle**. The concerned drug courts shall remain exempt from the regular raffle until the recommendation is approved. (Emphasis supplied.)

In conclusion, the two sets of guidelines are examples of this Court's foresight and prudence in the exercise of its rule-making power. These guidelines were issued to prevent or address possible scenarios that might hinder the proper administration of justice.

WHEREFORE, in view of the foregoing, the Petition for Prohibition is *DISMISSED* for lack of merit.

SO ORDERED.

Carpio (Chairperson), Brion, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated 3 October 2011.

SECOND DIVISION

[G.R. No. 187497. October 12, 2011]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MELANIO GALO *alias* "DODO" and "EDGAR," *alias* "ALDO," *alias* "YOCYOC," *alias* "DODO," *alias* "JIMMY," *alias* "JOSEPH," *alias* "DINDO," and *alias* "G.R.,"** *accused,* **EDWIN VILLAMOR *alias* "TATA,"** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.— We note that the lack of direct evidence does not *ipso facto* bar the finding of guilt against the appellant. As long as the prosecution establishes the appellant's participation in the crime through credible and sufficient circumstantial evidence that leads to the inescapable conclusion that the appellant committed the imputed crime, the latter should be convicted. According to Section 4, Rule 133 of the Rules of Court, circumstantial evidence is sufficient for conviction if: "(a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."

2. ID.; ID.; ID.; THE COMBINATION OF THE TEN (10) PROVEN CIRCUMSTANCES IN CASE AT BAR CONSTITUTES AN UNBROKEN CHAIN LEADING TO THE INESCAPABLE CONCLUSION THAT APPELLANT IS GUILTY OF MURDER.— In this regard, we give great weight to the findings of fact made by the RTC, as upheld by the CA, *viz.*: (a) the appellant and eight other armed people stayed at Demencita's house in *Sitio* Caran-caran on October 3, 2000, but only the appellant and Melanio stayed there until the early morning of October 9, 2000; (b) the appellant, Melanio, and three (3) others, who were armed with Garand and M14 Armalite rifles, passed by Jose's house in *Sitio* Caran-

caran in the afternoon of October 9, 2000, and were walking behind the "hog-tied" Resuelo, Sr.; (c) Resuelo Sr. was never seen alive again; (d) two armed men borrowed a bolo from Francisco at midnight of October 9, 2000, and told him that they would bury Resuelo, Sr.'s body; (e) Francisco saw Resuelo, Sr.'s body buried in his farm on October 10, 2000, and requested the three persons whom he saw near the shallow grave to transfer the cadaver to another place; (f) Francisco saw the victim's body buried in another portion of his farm on October 11, 2000, and reported the matter to the *barangay* captain; (g) Resuelo, Jr. reported to Leonora on October 11, 2000 that Resuelo, Sr. had been missing since October 9, 2000; (h) Leonora informed *Barangay* Captain Acyo that her husband had been missing for two days; (i) Nonito told *Barangay* Captain Acyo during a meeting that a man was buried at Francisco's farm; and (j) Resuelo, Jr., *Barangay* Captain Acyo, and some *barangay* officials went to Francisco's farm on October 11, 2000, and exhumed the victim's body. The combination of these ten (10) circumstances constitutes an unbroken chain leading to the inescapable conclusion that the appellant is guilty for the crime of murder. *First*, Jose's testimony sufficiently establishes that Resuelo, Sr. was last seen alive with the appellant and his companions. Jose unequivocally stated that he saw the appellant and his companions – with Resuelo, Sr. – walk in front of his house on the day of the murder. Jose positively declared that he saw the victim hog-tied at the time. This was in the afternoon of October 9, 2000. *Second*, Demencita's unequivocal statements – that the appellant and his co-accused Melanio stayed at her house on October 3, 2000 and left only in the morning of October 9, 2000, the day of the murder – confirm the appellant's presence in the locality at the time of the murder. He was next seen in the same locality by Jose, this time with the hog-tied victim, in the afternoon of the same day. *Third*, Francisco's testimony establishes the immediate aftermath of the murder. Not only did the armed men borrow a bolo from him at midnight of October 9, 2000, they also told him that they would bury Resuelo, Sr.'s body and warned him not to dig it up from its buried site. In the morning of October 10, 2000, he confirmed the presence of the dead body on his property when he saw the shallow grave and the victim's hand protruding from it. When the body was disinterred from where the armed

man had transferred it (the lower portion of Francisco's property), Francisco clearly identified the victim as Resuelo, Sr. The disinterred body not only showed significant damage to its face and wounds on its armpit; the victim's hands and feet were also hog-tied. *Fourth*, Francisco's testimony that Resuelo, Sr.'s body was buried in his farm was corroborated by Nonito's testimony that he saw someone being buried in the same place where Resuelo Sr.'s body was found. Thus, the evidence presented shows a sequence of events that can only lead to the conclusion that the armed men – of which the appellant was one of them – killed and buried the victim Resuelo, Sr. The sufficiency of the presented evidence to prove the appellant's guilt is fully supported by jurisprudence.

3. ID.; ID.; ID.; WHEN PRESENTED WITH SUFFICIENT CIRCUMSTANTIAL EVIDENCE, THE COURT WILL NOT SHIRK FROM UPHOLDING AN ACCUSED'S CONVICTION FOR MURDER.— In *People v. Solangon*, we convicted accused Ricardo Solangon on the strength of circumstantial evidence. In *Solangon*, even though no direct evidence was presented to prove that the accused (alleged to have been members of the NPA) actually killed the victim, we still upheld the conviction. In *People v. Oliva*, we upheld the conviction of the accused based on circumstantial evidence. In *Oliva*, the victim was abducted from his home, was last seen alive in the custody of the accused, and was hog-tied with coralon rope. Although no one saw the actual killing, we held that there was sufficient circumstantial evidence to find the accused guilty beyond reasonable doubt. In yet another case – *People v. Corfin* – we upheld the conviction of the accused based on evidence showing that: (1) the accused was the last person seen with the victim; (2) the accused and the victim were seen together near a dry creek; (3) the accused was seen leaving the place alone; and (4) the body of the victim was later found in the dry creek. All these cases show that the Court, when presented with sufficient circumstantial evidence, will not shirk from upholding an accused's conviction for murder. There are more than enough reasons to similarly act in this case where the law and the attendant facts, considered in relation to one another, lead to the single conclusion that the appellant participated in the killing of Resuelo, Sr.

4. ID.; ID.; DEFENSE OF ALIBI; INHERENTLY WEAK AND CRUMBLES IN THE LIGHT OF POSITIVE IDENTIFICATION BY TRUTHFUL WITNESSES; CASE AT BAR.— The defense anchors its theory on the alibi that the appellant was not in *Sitio* Caran-caran at the time of the murder. However, the RTC and the CA correctly refused to give credence to this defense in light of Jose's and Demencita's testimonies. We reiterate the principle that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses. Further, in *People of the Philippines v. Herminiano Marzan*, we held that "[d]enial is negative and self-serving and cannot be given greater evidentiary weight over the testimony of a credible witness who positively testified that the appellant was at the *locus criminis* and was the last person seen with the victim." In this case, Jose unequivocally testified that he saw the appellant at the vicinity of Caran-caran on October 9, 2000, the day of the murder. More importantly, Jose testified that he saw the appellant, together with four (4) other men, walking with Resuelo, Sr. – while the latter was hog-tied – on the day of the murder. Jose's testimony not only establishes a strong circumstance to establish the appellant's culpability – since the victim was last seen with the appellant and his companions – but also strongly negates the appellant's alibi that he was not in Caran-caran at the time of the murder. To be sure, Demencita not only saw the appellant and his companions in Caran-caran but she also allowed them to stay in her house until the morning of October 9, 2000, the day of the murder. The appellant's alibi necessarily crumbles in light of these two clear and positive testimonies.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the appeal from the November 21, 2008 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00224-MIN. The CA sustained (with modification) the Regional Trial Court (*RTC*), Branch 19, Digos City, Davao del Sur, whose decision[2] found Edwin Villamor *alias* "Tata" (*appellant*) guilty beyond reasonable doubt of murder, and imposed on him the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

In an Information dated May 9, 2001, the prosecution charged the appellant and eight (8) other co-accused[3] with the crime of murder. Out of the nine (9) accused, only the appellant was apprehended, while the others remained at large. The appellant was arraigned and pleaded not guilty to the charge.[4] During the trial, the prosecution presented the following witnesses: Jose Valderama; Francisco Anuada; Demencita Matutis; Leonora Resuelo; *Barangay* Captain Estremos Acyo; and Rodolfo Doong. For the defense, the appellant was presented as witness.

Jose, a relative of the victim Ruben Resuelo, Sr., recalled that he was outside his house in *Sitio* Caran-caran, Goma, Digos City, Davao del Sur, in the ***afternoon of October 9, 2000***, *when* ***the appellant, Melanio Galo, and three (3) other men*** – armed with Garand and M14 Armalite rifles – passed by, and walked behind the "hog-tied" Resuelo, Sr.[5] He went to his aunt's

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[1] *Rollo*, pp. 5-22; penned by Associate Justice Rodrigo F. Lim, Jr., and concurred in by Associate Justice Michael P. Elbinias and Associate Justice Ruben C. Ayson.

[2] CA *rollo*, pp. 21-27; penned by Judge Hilario I. Mapayo.

[3] Melanio Galo *alias* "Dodo" and "Edgar," *alias* "Aldo," *alias* "Yocyoc," *alias* "Dodo," *alias* "Jimmy," *alias* "Joseph," *alias* "Dindo," and *alias* "G.R."

[4] *Rollo*, p. 7.

[5] TSN, August 12, 2002, pp. 9-11 and 13.

house in *Barangay* Dulangan, and reported what he saw. After learning of Resuelo, Sr.'s death, he concluded that the appellant and his companions were responsible for his death.[6]

Francisco narrated that at ***midnight of October 9, 2000***, he was sleeping in his house in Camalig when two armed (2) men woke him up, and borrowed a "guna" (bolo) from him; they also told him that they would bury Resuelo, Sr.'s body. They then warned him of the consequences if the appellant's body would be discovered. While walking on his farm the next day, Francisco saw a shallow grave with a hand protruding from the soil; he also saw three (3) men near the grave. He requested them to transfer the body to another place as he might be implicated in the crime.[7] On October 11, 2000, he discovered that the body had been buried at another portion of his farm. He reported the matter to *Barangay* Captain Acyo, and accompanied him to the place where the body had been buried. Thereafter, he assisted the *barangay* officials and some residents in digging out the body.[8] Francisco likewise testified that Resuelo, Sr.'s face bore substantial damage and that his arms and feet were hog-tied.

Demencita testified that on the ***evening of October 3, 2000, the appellant and eight (8) other armed persons*** went to her house, and asked if they could stay there for the night. The appellant and Melanio stayed there until October 9, 2000, while their companions transferred from one house to another. On the evening of October 9, 2000, she learned that Resuelo, Sr. had been missing after the latter's children asked her about their father's whereabouts.[9]

Leonora, the victim's wife, testified that at 6:00 a.m. of October 11, 2000, her son, Ruben Resuelo, Jr., arrived at her house and informed her that Resuelo, Sr. had been missing

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[6] *Id.* at 14-16.

[7] TSN, June 19, 2002, pp. 8-12.

[8] *Id.* at 12-16.

[9] TSN, August 12, 2002, pp. 31-38.

since October 9, 2000. Leonora and her two other children immediately went to *Sitio* Caran-caran, Goma, Digos City, to search for Resuelo, Sr. She failed to locate him, leading her to inform *Barangay* Captain Acyo that her husband had been missing. *Barangay C*aptain Acyo called for a meeting, and then requested his constituents to disclose any information they might have regarding Resuelo, Sr.'s whereabouts. During this meeting, Nonito Calvo acknowledged that a man had been buried at Francisco's vegetable farm. *Barangay* Captain Acyo and his men proceeded to Francisco's farm, dug up the body, and brought it to the *barangay* hall for identification. According to Leonora, her husband's body bore seven stab wounds.[10]

***Barangay* Captain Acyo**'s testimony was aptly summarized by the RTC, as follows:

> He was informed that Edwin Villamor surrendered in Kiblawan in connection with the death of Resuelo. At the request of Edwin's mother, he went to see Edwin Villamor when he was detained in the Provincial Rehabilitation Center (PRC). Edwin denied being involved in the killing of Resuelo stating that the perpetrators were his companions[,] namely: Aldo, Melanio Galo, Edgar, *alias* Yokyok, *alias* Jimmy or Joseph, *alias* Dodo and *alias* G.R. Edwin said he was in Kamalig when Resuelo was killed. Asked why he surrendered, Edwin told him he was tired hiding in the mountains. Edwin admitted to him of being a member of the NPA.[11]

In his defense, the appellant confirmed that he was once a member of the New People's Army (*NPA*) assigned in Camandag, Makilala, but left the organization in May 2001. He denied any participation in Resuelo, Sr.'s death, and maintained that he was in Makilala at the time of the incident. In April 2001, he surrendered to the *barangay* captain of Balugan, who, in turn, brought him to the chief of police. The chief of police presented him to Cotabato Governor Manny Piñol, who offered him and six (6) other surrendered rebels livelihood projects.[12]

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[10] TSN, March 13, 2002, pp. 5-9.

[11] CA *rollo*, p. 23.

[12] TSN, March 10, 2003, pp. 5-8.

After some time, he went to the office of Davao del Sur Governor Roger Llanos to secure a recommendation letter for a job in Makilala, but the police arrested him. He denied any participation in the death of Resuelo, Sr. when *Barangay* Captain Acyo visited him in jail.[13]

The RTC, in its September 25, 2003 decision, found the appellant guilty beyond reasonable doubt of the crime of murder, and sentenced him to suffer the penalty of *reclusion perpetua*. The RTC also ordered him to pay the victim's heirs ₱50,000.00 as civil indemnity and ₱50,000.00 as actual damages. It likewise ordered the case against the other accused to be archived, subject to reinstatement upon their arrest.[14]

On appeal, we endorsed this case to the CA for appropriate action and disposition pursuant to our ruling in *People v. Mateo*.[15] After careful deliberations, the CA, in its November 21, 2008 decision, affirmed the RTC's decision with modification, ordering the appellant to pay the victim's heirs ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages in lieu of actual damages.

The CA held that all the elements of circumstantial evidence have been established to uphold the appellant's conviction. According to the CA, *viz.*:

> In the present case, the prosecution's evidence constitutes an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused-appellant as the author of the crime. First, Jose Valderama saw accused-appellant and four (4) other persons together with the hog-tied victim pass by his house in *Sitio* Caran-caran in the afternoon of October 9, 2000. Second, Demencita Matutis testified that accused-appellant and his companions stayed at her house in *Sitio* Caran-caran from October 3 to October 9, 2000. Third, Francisco Anuada testified that the body of Ruben was buried in his farm on the night of October 9, 2000 by several armed men. Fourth,

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[13] *Id.* at 8-10.

[14] *Supra* note 2.

[15] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

Estremos Acyo, the *Barangay* Captain of Goma, testified that accused-appellant implicated his co-accused as responsible for the killing of Ruben. Lastly, accused-appellant admitted to be a member of the New People's Army and they were actively operating in the area of Davao del Norte and sometimes even in the area of Davao del Sur.[16] (italics ours)

The CA further ruled that Jose's and Demencita's testimonies negated the appellant's defenses of denial and alibi.

In his brief,[17] the appellant argues that the courts *a quo* erred in convicting him of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt. He maintains that the circumstantial evidence against him for murder was weak.

THE COURT'S RULING

We uphold the appellant's conviction for murder.

The prosecution established the appellant's guilt for murder beyond reasonable doubt.

Preliminarily, we note that the lack of direct evidence does not *ipso facto* bar the finding of guilt against the appellant. As long as the prosecution establishes the appellant's participation in the crime through credible and sufficient circumstantial evidence[18] that leads to the inescapable conclusion that the appellant committed the imputed crime,[19] the latter should be convicted.

According to Section 4, Rule 133 of the Rules of Court, circumstantial evidence is sufficient for conviction if: "(a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of

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[16] *Supra* note 1, at 15-16.

[17] CA *rollo*, pp. 37-51.

[18] *People v. Solangon*, G.R. No. 172693, November 21, 2007, 537 SCRA 746.

[19] *People v. Villarino*, G.R. No. 185012, March 5, 2010, 614 SCRA 372.

all the circumstances is such as to produce a conviction beyond reasonable doubt."[20] In this regard, we give great weight to the findings of fact made by the RTC, as upheld by the CA,[21] *viz.*:

(a) the appellant and eight other armed people stayed at Demencita's house in *Sitio* Caran-caran on October 3, 2000, but only the appellant and Melanio stayed there until the early morning of October 9, 2000;

(b) the appellant, Melanio, and three (3) others, who were armed with Garand and M14 Armalite rifles, passed by Jose's house in *Sitio* Caran-caran in the afternoon of October 9, 2000, and were walking behind the "hog-tied" Resuelo, Sr.;

(c) Resuelo Sr. was never seen alive again;

(d) two armed men borrowed a bolo from Francisco at midnight of October 9, 2000, and told him that they would bury Resuelo, Sr.'s body;

(e) Francisco saw Resuelo, Sr.'s body buried in his farm on October 10, 2000, and requested the three persons whom he saw near the shallow grave to transfer the cadaver to another place;

(f) Francisco saw the victim's body buried in another portion of his farm on October 11, 2000, and reported the matter to the *barangay* captain;

(g) Resuelo, Jr. reported to Leonora on October 11, 2000 that Resuelo, Sr. had been missing since October 9, 2000;

(h) Leonora informed *Barangay* Captain Acyo that her husband had been missing for two days;

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[20] See *e.g. People v. Matignas*, 428 Phil. 834, 869-870 (2002).

[21] *People of the Philippines v. Arnold Castro y Yanga*, G.R. No. 194836, June 15, 2011.

(i) Nonito told *Barangay* Captain Acyo during a meeting that a man was buried at Francisco's farm; and

(j) Resuelo, Jr., *Barangay* Captain Acyo, and some *barangay* officials went to Francisco's farm on October 11, 2000, and exhumed the victim's body.

The combination of these ten (10) circumstances constitutes an unbroken chain leading to the inescapable conclusion[22] that the appellant is guilty for the crime of murder.[23]

First, Jose's testimony sufficiently establishes that Resuelo, Sr. was last seen alive with the appellant and his companions. Jose unequivocally stated that he saw the appellant and his companions – with Resuelo, Sr. – walk in front of his house on the day of the murder. Jose positively declared that he saw the victim hog-tied at the time. This was in the afternoon of October 9, 2000.

Second, Demencita's unequivocal statements – that the appellant and his co-accused Melanio stayed at her house on October 3, 2000 and left only in the morning of October 9, 2000, the day of the murder – confirm the appellant's presence in the locality at the time of the murder. He was next seen in the same locality by Jose, this time with the hog-tied victim, in the afternoon of the same day.

Third, Francisco's testimony establishes the immediate aftermath of the murder. Not only did the armed men borrow a bolo from him at midnight of October 9, 2000, they also told him that they would bury Resuelo, Sr.'s body and warned him not to dig it up from its buried site. In the morning of October 10, 2000, he confirmed the presence of the dead body on his property when he saw the shallow grave and the victim's hand protruding

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[22] *People of the Philippines v. Herminiano Marzan y Olonan*, G.R. No. 189294, February 21, 2011.

[23] *People of the Philippines v. Rodolfo Capitle and Arturo Nagares*, G.R. No. 175330, January 12, 2010, citing *Bastian v. Court of Appeals*, G.R. No. 160811, April 18, 2008, 552 SCRA 43, 55.

from it. When the body was disinterred from where the armed man had transferred it (the lower portion of Francisco's property), Francisco clearly identified the victim as Resuelo, Sr. The disinterred body not only showed significant damage to its face and wounds on its armpit; the victim's hands and feet were also hog-tied.

Fourth, Francisco's testimony that Resuelo, Sr.'s body was buried in his farm was corroborated by Nonito's testimony that he saw someone being buried in the same place where Resuelo Sr.'s body was found.

Thus, the evidence presented shows a sequence of events that can only lead to the conclusion that the armed men – of which the appellant was one of them – killed and buried the victim Resuelo, Sr. The sufficiency of the presented evidence to prove the appellant's guilt is fully supported by jurisprudence.

In *People v. Solangon*,[24] we convicted accused Ricardo Solangon on the strength of circumstantial evidence. In *Solangon*, even though no direct evidence was presented to prove that the accused (alleged to have been members of the NPA) actually killed the victim, we still upheld the conviction.

In *People v. Oliva*,[25] we upheld the conviction of the accused based on circumstantial evidence. In *Oliva*, the victim was abducted from his home, was last seen alive in the custody of the accused, and was hog-tied with coralon rope. Although no one saw the actual killing, we held that there was sufficient circumstantial evidence to find the accused guilty beyond reasonable doubt.

In yet another case – *People v. Corfin*[26] – we upheld the conviction of the accused based on evidence showing that: (1) the accused was the last person seen with the victim; (2) the

[24] G.R. No. 172693, November 21, 2007, 537 SCRA 746.

[25] 402 Phil. 482 (2001).

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

accused and the victim were seen together near a dry creek; (3) the accused was seen leaving the place alone; and (4) the body of the victim was later found in the dry creek.

All these cases show that the Court, when presented with sufficient circumstantial evidence, will not shirk from upholding an accused's conviction for murder. There are more than enough reasons to similarly act in this case where the law and the attendant facts, considered in relation to one another, lead to the single conclusion that the appellant participated in the killing of Resuelo, Sr.

The appellant's alibi was clearly negated by the testimonies of Jose and Demencita

The defense anchors its theory on the alibi that the appellant was not in *Sitio* Caran-caran at the time of the murder. However, the RTC and the CA correctly refused to give credence to this defense in light of Jose's and Demencita's testimonies.

We reiterate the principle that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses.[27] Further, in *People of the Philippines v. Herminiano Marzan*, we held that "[d]enial is negative and self-serving and cannot be given greater evidentiary weight over the testimony of a credible witness who positively testified that the appellant was at the *locus criminis* and was the last person seen with the victim."[28]

In this case, Jose unequivocally testified that he saw the appellant at the vicinity of Caran-caran on October 9, 2000, the day of the murder. More importantly, Jose testified that he saw the appellant, together with four (4) other men, walking

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[27] *People v. Dela Cruz*, G.R. No. 175929, December 16, 2008, 574 SCRA 78, 91; and *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 664-665.

[28] *People of the Philippines v. Herminiano Marzan y Olonan*, *supra* note 22.

with Resuelo, Sr. – while the latter was hog-tied – on the day of the murder. Jose's testimony not only establishes a strong circumstance to establish the appellant's culpability – since the victim was last seen with the appellant and his companions – but also strongly negates the appellant's alibi that he was not in Caran-caran at the time of the murder. To be sure, Demencita not only saw the appellant and his companions in Caran-caran but she also allowed them to stay in her house until the morning of October 9, 2000, the day of the murder. The appellant's alibi necessarily crumbles in light of these two clear and positive testimonies.

In sum, we find no cogent reason not to support the decision of the CA. The appellant is guilty beyond reasonable doubt of the crime of murder and clearly merits the penalty of *reclusion perpetua* with all the accessory penalties provided by law. As for damages, the CA awarded the following amounts: (1) ₱50,000.00 as civil indemnity *ex delicto*; (2) ₱50,000.00 as moral damages; and (3) ₱25,000.00 as temperate damages in lieu of actual damages. To conform to recent jurisprudence,[29] the amounts to be awarded are, as follows: (1) ₱50,000.00 as civil indemnity; (2) ₱50,000.00 as moral damages; (3) ₱30,000.00 as exemplary damages; and (4) ₱30,000.00 as temperate damages in lieu of actual damages.[30]

WHEREFORE, in light of all the foregoing, we *AFFIRM* the November 21, 2008 decision of the Court of Appeals in CA-G.R. CR-HC No. 00224-MIN. Appellant Edwin Villamor is hereby found *GUILTY* beyond reasonable doubt of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law. In conformity with recent jurisprudence, we *MODIFY* the amounts to be awarded, as follows: ₱50,000.00 as civil indemnity;

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[29] *People of the Philippines v. David Maningding*, G.R. No. 195665, September 14, 2011.

[30] *People v. Narzabal*, G.R. No. 174066, October 12, 2010, 632 SCRA 772.

₱50,000.00 as moral damages; ₱30,000.00 as exemplary damages; and ₱30,000.00 as temperate damages in lieu of actual damages.

SO ORDERED.

Carpio (Chairperson), Sereno, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 189365. October 12, 2011]

HON. JUDGE JESUS B. MUPAS, Presiding Judge, Regional Trial Court, Branch 112 and CARMELITA F. ZAFRA, Chief Administrative Officer, DSWD, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES, thru its duly authorized representative, the Legal Service of the DSWD, Quezon City and the Office of the Solicitor General,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL COURT'S GRANT OF THE DEMURRER TO EVIDENCE WAS ATTENDED BY GRAVE ABUSE OF DISCRETION; THE CRIME OF MALVERSATION MAY BE COMMITTED EITHER THROUGH A POSITIVE ACT OF MISAPPROPRIATION OF PUBLIC FUNDS OR PASSIVELY THROUGH NEGLIGENCE BY ALLOWING ANOTHER TO COMMIT MISAPPROPRIATION.— After a thorough review of the records of this case, particularly the

[*] Designated as Acting Member of the Second Division in lieu of Associate Justice Jose Portugal Perez, per Special Order No. 1114 dated October 3, 2011.

issues proffered by petitioner, we adopt the findings of the appellate court. We find no reversible error in the ruling which is eloquently supported by existing jurisprudence. We agree with the CA's disquisition that the lower court's grant of the demurrer to evidence of petitioner Zafra was attended by grave abuse of discretion. The prosecution's evidence was, *prima facie*, sufficient to prove the criminal charges filed against her for her inexcusable negligence, subject to the defense that she may present in the course of a full-blown trial. The lower court improperly examined the prosecution's evidence in the light of only one mode of committing the crimes charged; that is, through positive acts. The appellate court correctly concluded that the crime of malversation may be committed either through a positive act of misappropriation of public funds or passively through negligence by allowing another to commit such misappropriation.

2. ID.; ID.; A JUDGMENT GRANTING AN ACCUSED'S DEMURRER TO EVIDENCE AND THE CONSEQUENT ORDER OF ACQUITTAL ARE CONSIDERED VOID WHEN TAINTED WITH GRAVE ABUSE OF DISCRETION.— As a general rule, an order granting the accused's demurrer to evidence amounts to an acquittal. There are certain exceptions, however, as when the grant thereof would not violate the constitutional proscription on double jeopardy. For instance, this Court ruled that when there is a finding that there was grave abuse of discretion on the part of the trial court in dismissing a criminal case by granting the accused's demurrer to evidence, its judgment is considered void, as this Court ruled in *People v. Laguio, Jr.*: By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. **This may be done *via* the special civil action of *certiorari* under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction.** Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action *via certiorari*, the right of the accused against double jeopardy is not violated. In the instant case, having affirmed the CA finding grave abuse of discretion on the part of the trial court when it granted the accused's demurrer to evidence, we deem its consequent order of acquittal void.

3. ID.; ID.; CASE REMANDED TO TRIAL COURT FOR DETERMINATION OF CIVIL LIABILITY.— Further, we do not find any pronouncement by the trial court on whether the act or omission of petitioner under the circumstances would entail civil liability. Therefore, the CA properly ordered the remand of the case to the lower court for further proceedings to determine whether petitioner is civilly liable for the loss of the milk cartons.

APPEARANCES OF COUNSEL

Bernardo Fuentes & Associates Law Offices for petitioner Zafra.

The Solicitor General for respondents.

D E C I S I O N

SERENO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45, private petitioner seeks the reversal of the Decision[1] dated 19 March 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 105199. The CA Decision reversed and set aside the Orders[2] dated 19 December 2007 and 2 June 2008 of the Regional Trial Court of Pasay City (Branch 112), granting her demurrer to evidence in Criminal Case Nos. 02-0371 and 02-0372. Private petitioner also assails the CA Resolution dated 28 August 2009, denying her Motion for Reconsideration.

As the records and the CA found, private petitioner Carmelita F. Zafra (petitioner Zafra) was Supply Officer V[3] of the Department of Social Welfare and Development (DSWD). On 14 November 1998, she arranged for the withdrawal for replacement, of two hundred (200) cartons of Bear Brand

[1] Penned by CA Associate Justice Myrna Dimaranan Vidal and concurred in by then CA Associate Justice Martin S. Villarama, Jr. and Associate Justice Rosalinda Asuncion-Vicente.

[2] Penned by Presiding Judge Jesus B. Mupas.

[3] CA *rollo*, p. 475.

Powdered Milk that were nearing their expiry date. She made the arrangement for their withdrawal through DSWD personnel Marcelina Beltran, Administrative Officer III; and Manuelito Roga, Laborer 1.[4]

Petitioner Zafra instructed Marcelina Beltran to have someone from the DSWD Property Division withdraw the 200 cartons of milk from the DSWD-Villamor Airbase Relief Operation Center (DSWD-VABROC) on 14 November 1998. Beltran relayed this instruction to Roga. On the appointed date, however, no one from the Property Division arrived to pick up the milk cases. Instead, three unidentified persons on board a four-wheeler truck came and hauled the 200 cases of milk. One of the three persons who came to pick up the milk cases at the DSWD-VABROC premises introduced herself as Ofelia Saclayan to Roga, the only DSWD employee present at that time.[5] Saclayan turns out to be the sister of Zafra. The 200 cases of milk withdrawn by Saclayan and her unidentified companions were valued at three hundred six thousand seven hundred thirty-six pesos (₱306,736).[6]

An internal investigation was conducted by the DSWD on the persons involved in the loss of the milk cases. On 06 August 1999, the investigating committee of the DSWD issued a Memorandum[7] entitled "Report and Recommendation on the Loss of the Two Hundred (200) Cases of Bear Brand Powdered Milk from DSWD-VABROC." In brief, the committee report dismissed petitioner Zafra and her co-employees Beltran and Roga, whom they implicated in the loss of the milk cases. The committee found substantial evidence to hold petitioner Zafra guilty of dishonesty and "negligence of duty."[8]

The report of the DSWD investigating committee finding petitioner Zafra and her co-employee Beltran guilty of dishonesty

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[4] CA *rollo*, p. 08.

[5] *Id.*

[6] *Id.* at 15.

[7] *Id.* at 120.

[8] *Id.* at 125.

and negligence of duty was appealed to the Civil Service Commission (Commission). On 03 December 1999, the Commission promulgated Resolution No. 992652,[9] which slightly modified the findings of the committee. The Resolution, while absolving petitioner Zafra of the charge of dishonesty, found her guilty of simple neglect as follows:

> The Commission has noted, however, that Zafra is not that entirely innocent. For the records disclose that it was she who made representation with the MEGA Commercial, the supplier of said milk, to withdraw and replace those cases of milk that are nearing their expiry dates. Surprisingly, however, after November 14, 1998, when the 200 milk cases of milk were actually withdrawn from VABROC she never made any contact with MEGA Commercial as to what further steps to take on the case, such as to retrieve the loss thereof and have these replaced by the company. Neither did she make any further inquiry as to the condition of milk from VABROC. This unnatural inaction or callousness displayed by Zafra and her utter apathy in the performance of her official functions calls for the imposition of sanctions on her.
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> xxx xxx xxx
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> Being both government employees, Zafra and Beltran are required to perform their duties and functions with the highest degree of responsibility, integrity, loyalty and efficiency. And since both of them failed on this score, they must suffer the consequences of their negligence.
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> WHEREFORE, the respective appeals of Carmelita F. Zafra and Marcelina M. Beltran are hereby dismissed for want of merit. They are however, found guilty only of simple Neglect of Duty for which they are each imposed the penalty of six (6) months suspension without pay. The appealed decision is thus modified accordingly.
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> Quezon City, December 03, 1999.[10]

On 15 February 2002, the Ombudsman filed two Informations with the Regional Trial Court of Pasay (RTC-Pasay) against petitioner Zafra, Beltran and Roga, docketed as Criminal Case

[9] *Id.* at 103.

[10] Civil Service Commission Resolution dated 03 December 1999, CA *rollo*, pp. 114-115.

Nos. 02-0371 and 02-0372.

Under Criminal Case No. 02-0371, petitioner Zafra and her co-accused Beltran and Roga were charged with violating Section 3 (e) of Republic Act No. 3019 (R.A. 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act." The Information filed in this case reads:

> The undersigned Prosecutor, Office of the Ombudsman hereby accuses Marcelina M. Beltran, Carmelita Zafra, Manuelito T. Roga and Ofelia Saclayan for Violation of Section 3 (e) of RA 3019, as amended, committed as follows:
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> That on or about 13 November 1998, or for sometime, prior, or subsequent thereto, in Pasay City, and within the jurisdiction of this Honorable Court, accused Marcelina M. Beltran, Carmelita F. Zafra, Carmelito T. Roga (sic), Administrative Officer III, Supply Officer V, and Laborer I, respectively of the Department of Social Welfare and Development, while in the performance of their official duties, and in connivance with Ofelia Saclayan, a private respondent, with evident bad faith, did then and there, wilfully, unlawfully, and criminally, cause damage or undue injury to the government, particularly the Department of Social Welfare and Development in the amount of Php 306,736.00, by making it appear that the 200 cases of Bear Brand Powdered Milk stocked at the DSWD Villamor Airbase Relief Operation Center (DSWD-VABROC) are about to expire and need to be changed, and thereafter, without complying with the standard operating procedure in withdrawing goods from the *bodega*, did then and there arrange for the immediate withdrawal of the subject goods on the next day which was a Saturday, a non-working day, and appropriate the said goods for themselves.
>
> CONTRARY TO LAW.[11]

Petitioner Zafra, Beltran and Roga were charged with malversation under Article 217 of the Revised Penal Code in Criminal Case No. 02-0372. The Information reads:

> The undersigned Ombudsman Prosecutor, Office of the Ombudsman hereby accuses Carmelita Zafra, Marcelina M. Beltran Manuelito

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[11] CA *rollo*, p.74.

T. Roga and Ofelia Saclayan for Malversation under Article 217 of the Revised Penal Code, as amended, committed as follows:

That on or about 13 November 1998, or for sometime prior, or subsequent thereto, in Pasay City, and within the jurisdiction of this Honorable Court, accused Marcelina M. Beltran, Administrative Officer III of the Department of Social Welfare and Development, Villamor Airbase Relief Operation Center (DSWD-VABROC), an accountable public officer by virtue of her being the custodian of the goods inside the DSWD-VABROC *bodega*, in connivance with Carmelita F. Zafra, and Manuelito T. Roga, Supply Officer IV and Laborer I, respectively of the Department of Social Welfare and Development and with the indispensable cooperation of Ofelia T. Saclayan, a private respondent, did then and there, wilfully, unlawfully, and feloniously, cause the unauthorized withdrawal of the 200 cases of Bear Brand Powdered Milk, a public property owned by the DSWD stock[ed] at VABROC, and thereafter, did then and there appropriate the said goods for themselves to the prejudice of the DSWD in the amount of Php 306,736.00.

CONTRARY TO LAW.[12]

The cases against petitioner Zafra and her co-accused were raffled to Branch 112 of RTC-Pasay. Upon arraignment, they pleaded "not guilty" to the charges.

On 06 August 2003, the pretrial of the case was conducted, attended by only petitioner Zafra and Beltran.[13] Thereafter, a joint trial for Criminal Case Nos. 02-0371 and 02-0372 ensued.

During the trial on the merits, the prosecution presented four witnesses to build up its case. The prosecution presented Consolacion Obrique dela Cruz, a utility worker at the DSWD Property and Supply; Atty. Nelson Todas, former DSWD Legal Officer V; Ruby Maligo Cresencio, the operations officer of Mega Commercial Trading, which supplied the stolen milk cases to DSWD; and Isidro Tuastumban, a security guard posted at the DSWD lobby at the time the incident happened.

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[12] CA *rollo*, p. 77.

[13] *Id.* at 116.

[14] *Id.* at 34.

After the prosecution rested its case, petitioner Zafra filed a Motion for Demurrer to Evidence.[14] She alleged therein that the prosecution failed to present proof that she and her co-accused had wilfully, unlawfully, and feloniously caused the withdrawal of the 200 cases of Bear Brand Powdered Milk and appropriated these for themselves to the prejudice of DSWD. Thus, she concluded that the prosecution failed to establish the elements of the crime of malversation under Art. 217 of the Revised Penal Code. She likewise contended that the prosecution was not able to present proof that she and her co-accused had done so in violation of Section 3 (e) of R.A. 3019.

The lower court required the prosecution to comment on petitioner Zafra's demurrer to evidence. In its Comment,[15] the prosecution contradicted the allegations therein and claimed to have established and proved the elements of the crimes as charged against petitioner and her co-accused. It also alleged that it was able to establish conspiracy among the accused and had evidence to show that petitioner Zafra caused the withdrawal of the goods, subject matter of this case, through her sister — co-accused Ofelia Saclayan, who was an unauthorized person.

On 19 December 2007, public respondent Judge Mupas issued an Order[16] granting the demurrer to evidence of petitioner Zafra. Public respondent ruled that, after evaluating the testimonies of the witnesses for the prosecution, he found them substantially insufficient to warrant the conviction of petitioner Zafra under the charges filed against her by the Ombudsman. With the grant of her demurrer to evidence, petitioner was acquitted.[17] The decretal portion of the Order reads:

> WHEREFORE, the demurrer to evidence is **GRANTED**.
>
> Consequently, accused **CARMELITA ZAFRA *y* FUENTES** is

[15] CA *rollo*, p. 55.

[16] *Id.* at 25.

[17] *Id.* at 29.

hereby **ACQUITTED**.

SO ORDERED.

On 28 January 2008, the prosecution, through its private prosecutor, filed a Motion for Reconsideration of the Order dated 19 December 2007 issued by public respondent. On 2 June 2008, the motion was denied for lack of merit.[18]

On 09 September 2008, the *People* filed with the CA a Petition for *Certiorari* under Rule 65, assailing the lower court's grant of petitioner Zafra's demurrer to evidence, resulting in her acquittal.[19] The petition, filed through the DSWD, which was represented by its legal officers, raised the following issues:

> Whether or not the Honorable Judge committed grave abuse of discretion in denying petitioner's Motion for Reconsideration of its Order granting private respondent's demurrer to evidence;
>
> Whether or not the Honorable Judge committed grave abuse of discretion when he failed to appreciate the evidence of the prosecution providing beyond reasonable doubt private respondent's negligence which resulted to (sic) the unauthorized withdrawal of the 200 cases of Bear Brand Powdered Milk at the VABROC belonging to the government.[20]

The *People*'s Petition for *Certiorari* was docketed as CA-G.R. SP No. 105199 and was raffled to the appellate court's Special Sixth Division. On 22 September 2008, a Resolution[21] was promulgated, directing petitioner Zafra to file a Comment on the *certiorari* petition and thereafter instructing the Office of the Solicitor General to file a Reply thereto.

On 06 October 2008, petitioner Zafra, as private respondent in the appeal, filed her Comment and sought to dismiss the Petition

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[18] *Id.* at 30.

[19] CA *rollo*, p. 03.

[20] *Id.* at 09.

[21] *Id.* at 150.

[22] *Id.* at 151.

for *Certiorari* instituted by the prosecution.[22] In her Comment, she assailed the appeal of the DSWD for being improper, having been filed directly with the appellate court instead of seeking the intervention of the Office of the Solicitor General (OSG) to act on DSWD's behalf. She also pointed out the lack of authority of the signatory who had executed the certificate of non-forum shopping attached to the petition.

On 06 November 2008, the OSG filed a Manifestation and Motion[23] adopting the Petition for *Certiorari* filed by the DSWD. It prayed for the relaxation of the Rules on Procedure pertaining to the authority of the person signing the Verification and Certification against forum-shopping attached to the petition filed by the DSWD.

On 19 November 2008, petitioner Zafra filed a Comment/ Opposition[24] to the OSG's Manifestation and Motion and moved that it be expunged from the records, as it was filed out of time.

On 23 January 2009, the CA, through its Fourth Division, issued a Resolution[25] granting the OSG's Manifestation and Motion.

On 19 March 2009, the appellate court, through its Third Division, promulgated a Decision[26] granting the *People*'s petition and revoking and setting aside the lower court's Order granting private respondent's demurrer to evidence. In its Decision reversing the trial court's Order, the CA found that public respondent Judge Mupas committed grave abuse of discretion through his grant of private respondent's demurrer, which consequently resulted in her acquittal. Holding that the prosecution

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[23] CA *rollo*, p. 172.

[24] *Id.* at 184.

[25] Penned by CA Associate Justice Myrna Dimaranan Vidal and concurred in by CA Associate Justices Andres B. Reyes, Jr. and Rosalinda Asuncion-Vicente.

[26] Penned by CA Associate Justice Myrna Dimaranan Vidal and concurred in by then Court of Appeals Associate Justice Martin S. Villarama, Jr. and CA Associate Justice Rosalinda Asuncion-Vicente.

was able to present sufficient evidence to prove the elements of the crimes in the Information filed against private respondent, the appellate court ruled as follows:

A careful reading of the 19 December 2007 Order, *supra*, showed that the court *a quo* in granting the Respondent's demurrer to evidence relied heavily on the ground that the Petitioner miserably failed to show that the Respondent had any direct participation in the actual withdrawal of the goods. This may be gleaned from the pertinent portion of the 19 December 2007 Order, *supra*, to wit:

> xxx There is no denying that the prosecution, after presenting all its witnesses and documentary evidence has miserably failed to prove the guilt of the accused Carmelita Zafra beyond reasonable doubt. The prosecution has never proven any direct participation of the herein accused to the actual withdrawal of the goods. The prosecution witnesses presented testified during cross-examination that they have no personal knowledge nor did they see that the accused Carmelita Zafra actually withdraw (sic) or cause[d] the withdrawal of the goods from VABROC. The prosecution proved the relationship between Carmelita Zafra and a Ofelia Saclayan, the fact that Carmelita Zafra coordinated with the prosecution witness Ruby Crescencio for the return of the 200 cases of Bear Brand Powdered Milk which were alleged to be near expiry but it did not proved (sic) that on the day when the goods were withdrawn from VABROC[,] accused Carmelita Zafra had a direct participation for its withdrawal.
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> xxx xxx xxx

It bears to emphasize that the crime of malversation may be committed either through a positive act of misappropriation of public funds or property or passively through negligence by allowing another to commit such misappropriation. Thus, the Petitioner's alleged failure to prove the Respondent's direct participation in the withdrawal of the 200 cases of milk did not altogether rule out malversation as the *dolo* or *culpa* in malversation is only a modality in the perpetration of the felony.

Besides, even if the Information in Criminal Case No. 02-0372, *supra*, alleges willful malversation, this does not preclude conviction of malversation through negligence if the evidence sustains

malversation through negligence. On this score, let US refer to the explicit pronouncement of the Supreme Court in *People v. Uy, Jr.*, thus:

> xxx Even when the information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves that mode of commission of the offense.

Likewise, We find that the court *a quo* committed grave abuse of discretion in acquitting the Respondent for violation of Section 3(e) of RA 3019 ...

xxx xxx xxx

As earlier discussed, the court *a quo* acquitted the Respondent of the offense charged mainly because of the alleged lack of any proof of her direct participation in the withdrawal of the 200 cases of Bear Brand powdered milk. However, in view of the People's evidence showing Respondent's inexcusable negligence in the withdrawal of the goods in question, Respondent cannot likewise be acquitted of violation of Section 3(e) of RA 3019 since inexcusable negligence is one of the elements of the said offense.

In sum, We hold that the court *a quo* committed grave abuse of discretion in granting the Respondent's demurrer to evidence, which resulted to her untimely acquittal.

WHEREFORE, instant Petition is hereby GRANTED. The court *a quo*'s challenged Orders are REVOKED and SET ASIDE. The case is hereby REMANDED to the court *a quo* for further proceedings.

SO ORDERED.[27]

Petitioner Zafra filed a Motion for Reconsideration[28] dated 31 March 2009 praying that the 19 March 2009 Decision of the CA reversing the lower court's grant of her demurrer to evidence be set aside. She further prayed that the criminal cases filed against her be dismissed with prejudice.

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[27] CA *rollo*, p. 205.

[28] *Id.* at 206.

[29] *Id.* at 223.

On 09 June 2009, the OSG filed its Comment[29] on the Motion for Reconsideration of petitioner Zafra. It moved for the denial of her Motion for Reconsideration and prayed that the assailed Decision of the Court of Appeals in CA-G.R. SP No. 105199 be affirmed.

The CA, through its former Third Division, issued a Resolution[30] on 28 August 2009 denying petitioner's Motion for Reconsideration. The appellate court found that the issues she raised had been sufficiently considered and discussed in its 19 March 2009 Decision.

On 19 October 2009, petitioner Zafra filed her Petition for Review on *Certiorari*[31] under Rule 45 of the Rules on Civil Procedure. She assailed the 19 March 2009 Decision of the Court of Appeals in CA-G.R. SP No. 105199, as well as the 28 August 2009 Resolution denying her Motion for Reconsideration.

We **AFFIRM** the entire ruling of the Court of Appeals.

After a thorough review of the records of this case, particularly the issues proffered by petitioner, we adopt the findings of the appellate court. We find no reversible error in the ruling which is eloquently supported by existing jurisprudence.[32]

We agree with the CA's disquisition that the lower court's grant of the demurrer to evidence of petitioner Zafra was attended by grave abuse of discretion. The prosecution's evidence was, *prima facie*, sufficient to prove the criminal charges filed against her for her inexcusable negligence, subject to the defense that she may present in the course of a full-blown trial. The lower court improperly examined the prosecution's evidence in the

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[30] *Id.* at 233.

[31] *Rollo*, p. 13.

[32] The Court of Appeals correctly cited the cases of *People v. Uy, Jr.*, G.R. No. 157399, 17 November 2005, 475 SCRA 248 and *People v. Pajaro*, G.R. Nos. 167860-865, 17 June 2008, 554 SCRA 572 that provides "inexcusable negligence" as an element of the crime of malversation under Section 3 (e) of R.A. 3019.

light of only one mode of committing the crimes charged; that is, through positive acts. The appellate court correctly concluded that the crime of malversation may be committed either through a positive act of misappropriation of public funds or passively through negligence by allowing another to commit such misappropriation.[33]

As a general rule, an order granting the accused's demurrer to evidence amounts to an acquittal. There are certain exceptions, however, as when the grant thereof would not violate the constitutional proscription on double jeopardy. For instance, this Court ruled that when there is a finding that there was grave abuse of discretion on the part of the trial court in dismissing a criminal case by granting the accused's demurrer to evidence, its judgment is considered void, as this Court ruled in *People v. Laguio, Jr.*:[34]

> By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. **This may be done *via* the special civil action of *certiorari* under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction.** Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action *via certiorari*, the right of the accused against double jeopardy is not violated.[35]

In the instant case, having affirmed the CA finding grave abuse of discretion on the part of the trial court when it granted the accused's demurrer to evidence, we deem its consequent order of acquittal void.

Further, we do not find any pronouncement by the trial court on whether the act or omission of petitioner under the circumstances would entail civil liability. Therefore, the CA properly ordered the remand of the case to the lower court for further proceedings to determine whether petitioner is civilly liable for the loss of the milk cartons.

WHEREFORE, we *DENY* the Petition and affirm *in toto* the 19 March 2009 Decision of the Court of Appeals and its 28

[33] *Rollo*, p. 41.

[34] G.R. No. 128597, 16 March 2007, 518 SCRA 393.

[35] *Id.*

August 2009 Resolution. Let the name of Judge Jesus B. Mupas be stricken off as petitioner, as such appellation unilaterally made by petitioner Carmelita F. Zafra, is improper.

SO ORDERED.

Carpio (Chairperson), Brion, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 192164. October 12, 2011]

ANSELMO DE LEON CUYO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; NEITHER MISJOINDER NOR NON-JOINDER OF PARTIES IS A GROUND FOR THE DISMISSAL OF AN ACTION.— While it may be correct to say that petitioner failed to comply with the rule cited above, it would not be correct to dismiss the petition based on this provision. Rule 3, Sec. 11 states that neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. Thus, the trial court should have ordered petitioner to add private complainant as a respondent to the case.

2. ID.; CRIMINAL PROCEDURE; JUDGMENTS; WHERE THE ACCUSED FAILED TO APPEAR ON THE SCHEDULED DATE OF PROMULGATION DESPITE NOTICE, AND THE FAILURE TO APPEAR WAS WITHOUT JUSTIFIABLE CAUSE, THE ACCUSED SHALL LOSE

[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated 3 October 2011.

ALL REMEDIES AVAILABLE IN THE RULES AGAINST THE JUDGMENT.— Petitioner was charged with and found guilty of perjury. He was sentenced to suffer imprisonment of 4 months and 1 day to 1 year, a period which is considered as a correctional penalty. Under Article 9 of the Revised Penal Code, light felonies are those infractions of law for the commission of which the penalty of *arresto menor* (one to thirty days of imprisonment) or a fine not exceeding two hundred pesos (₱200), or both are imposable. Thus, perjury is not a light felony or offense contemplated by Rule 120, Sec. 6. It was therefore mandatory for petitioner to be present at the promulgation of the judgment.To recall, despite notice, petitioner was absent when the MTCC promulgated its judgment on 25 August 2009. Pursuant to Rule 120, Sec. 6, it is only when the accused is convicted of a light offense that a promulgation may be pronounced in the presence of his counsel or representative. In case the accused failed to appear on the scheduled date of promulgation despite notice, and the failure to appear was without justifiable cause, the accused shall lose all the remedies available in the Rules against the judgment. One such remedy was the Motion for Reconsideration of the judgment of the MTCC filed by petitioner on 28 August 2009. Absent a motion for leave to avail of the remedies against the judgment, the MTCC should not have entertained petitioner's Motion for Reconsideration. Thus, petitioner had only 15 days from 25 August 2009 or until 9 September 2009 to file his Motion for Probation. The MTCC thus committed grave abuse of discretion when it entertained the motion instead of immediately denying it.

3. ID.; ID.; ID.; ID.; SINCE PETITIONER BELATEDLY QUESTIONS THE PROPRIETY OF THE PROMULGATION, HE IS BARRED BY ESTOPPEL FOR FAILING TO RAISE THE ISSUE AT THE EARLIEST OPPORTUNITY, THAT IS, WHEN THE CASE WAS STILL PENDING WITH THE TRIAL COURT.— Petitioner asserts that his failure to appear during the promulgation was for a justifiable cause. He alleges that he was on board an international vessel as a seaman at the time of the promulgation. He further alleges that the MTCC was informed of this fact. He insists that his absence was justified, thus exempting him from the application of Rule 120, Sec. 6. Petitioner, however,

did not file a motion for leave to avail himself of the remedies prior to filing his Motion for Reconsideration. The hearing on the motion for leave would have been the proper opportunity for the parties to allege and contest whatever cause prevented petitioner from appearing on 25 August 2009, and whether that cause was indeed justifiable. If granted, petitioner would have been allowed to avail himself of other remedies under the Rules of Court, including a motion for reconsideration. Moreover, in his Reply filed on 14 October 2010, petitioner belatedly questions the propriety of the promulgation. In so doing, petitioner is barred by estoppel for failing to raise the issue at the earliest possible opportunity, that is, when the case was still pending with the MTCC.

4. ID.; ID.; APPEALS; THE "FRESH PERIOD RULE" IN *NEYPES* IS NOT APPLICABLE IN CASE AT BAR CONSIDERING THAT PETITIONER'S MOTION FOR PROBATION WAS FILED OUT OF TIME.— As a final point, while we held in *Yu v. Samson-Tatad* that the rule in *Neypes* is also applicable to criminal cases regarding appeals from convictions in criminal cases under Rule 122 of the Rules of Court, nevertheless, the doctrine is not applicable to this case, considering that petitioner's Motion for Probation was filed out of time.

APPEARANCES OF COUNSEL

Ronella Balbib-Concepcion for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for Review under Rule 45 assailing the Order[1] issued by Branch 28 of the Regional Trial Court of San Fernando City, La Union, in Special Civil Action Case No. 0001-10.

The antecedent facts are as follows:

[1] *Rollo*, pp. 23-27, penned by Judge Victor M. Viloria.

Petitioner Anselmo Cuyo and Alejo Cuyo are estranged brothers. Petitioner filed a complaint for illegal possession of firearms against Alejo. On 20 November 2003, petitioner appeared before Judge Samuel H. Gaerlan of the Regional Trial Court (RTC), Branch 26, San Fernando City, La Union with regard to the application for a search warrant by the Criminal Investigation and Detective Group (CIDG) for the search of the house of Alejo, and, in the course of the proceedings, made untruthful statements under oath. Consequently, Alejo filed a complaint for perjury against petitioner.

On 25 August 2009, Branch 1 of the Municipal Trial Court in Cities (MTCC) in San Fernando City, La Union, found petitioner guilty beyond reasonable doubt of the offense of perjury under Article 183 of the Revised Penal Code and sentenced him to imprisonment of four (4) months and one (1) day to one (1) year. He was likewise ordered to pay private complainant Alejo Cuyo the amount of ₱10,000 for attorney's fees and litigation expenses.[2] Petitioner was not present during the promulgation of the judgment and was represented by his counsel instead.

On 28 August 2009, petitioner filed a Motion for Reconsideration[3] of the Decision, but the motion was subsequently denied[4] by the MTCC on 19 October 2009.

Petitioner received the Order of the MTCC denying his Motion for Reconsideration on 23 October 2009. He subsequently filed a Motion for Probation[5] on 5 November 2009.

On 6 January 2010, the MTCC issued an Order[6] denying petitioner's latter motion on the ground that it had been filed beyond the reglementary period of fifteen (15) days as provided by Section 4 of Presidential Decree No. 968, as amended, or

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[2] *Id.* at 52-61, penned by Judge Manuel R. Aquino.

[3] *Id.* at 62-71.

[4] *Id.* at 72.

[5] *Id.* at 73-74.

[6] *Id.* at 49.

the Probation Law of 1976.[7] The reckoning date used by the MTCC in computing the 15 day period was the day of promulgation on 25 August 2009, tolled by the period from the filing of the Motion for Reconsideration to the receipt of the Order denying the motion on 23 October 2009. Thus, the MTCC stated:

> It is note worthy (sic) that four (4) days has (sic) lapsed from August 25, 2009 when the decision was entered in the criminal docket of this court and the time the motion for reconsideration was filed.
>
> Since the period to apply for probation as provided for by law in (sic) only fifteen (15) days, the accused has only the remaining eleven (11) days of the fifteen (15) days reglamentary period to apply for probation. The 11 day period from October 23, 2009 when he received the denial of his motion ended on November 3, 2009.
>
> The Motion for Probation was received by the court on November 5, 2009 when the decision has already become Final and Executory as of November 3, 2009.

On 7 January 2010, petitioner moved for the reconsideration[8] of the latter order, asking for a liberal interpretation of the rules

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[7] Sec. 4. Grant of Probation. – Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period of perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best: *Provided*, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable. (Sec. 1 of P.D. 1990)

The provisions of Section 4 of Presidential Decree No. 968 as above amended, shall not apply to those who have already filed their respective applications for probation at the time of the effectivity of this Decree. (Sec. 3 of P.D. 1990).

[8] *Rollo*, pp. 75-78.

with regard to the computation of the period for applying for probation. He also filed on 10 January 2010 a Supplemental Motion[9] to the Motion for Reconsideration praying for the deferment of the issuance of the Warrant of Arrest or the recall of the warrant if one had already been issued.

The MTCC, however, denied the motion on 3 February 2010. Reference was made to *Neypes v. Court of Appeals*,[10] wherein the appeal period was sought to be standardized, by establishing the rule that a fresh period of 15 days was allowed within which to file a notice of appeal, counted from the receipt of the order dismissing a motion for new trial or a motion for reconsideration. The MTCC, however, did not view *Neypes* as applicable to the case of petitioner. It believed that Neypes applied only to Rules 40, 42, 43 and 45 appeals and not to a Rule 122 appeal, all under the Rules of Court.

Petitioner filed a Petition[11] under Rule 65 before the Regional Trial Court (RTC) of San Fernando City, La Union alleging that the MTCC had committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied his Motion for Probation. He asserted that the "fresh period rule" established in *Neypes* should also be applied to criminal cases. Petitioner prayed for a liberal construction and application of the rules. He also prayed that the RTC stay the execution of the Decision dated 25 August 2009, and that it recall the warrant of arrest issued pending the resolution of the issues.

On 26 April 2010, the RTC denied the Petition and ruled that the application period had lapsed when petitioner neither surrendered nor filed a motion for leave to avail himself of the remedies under the Rules of Court. In addition, the RTC ruled that petitioner failed to implead private complainant Alejo Cuyo in violation of Rule 65, Section 5. This rule mandates that petitioner should join as private respondent the person interested in sustaining the proceedings of the court.

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[9] *Id.* at 79-84.

[10] G.R. No. 141524, 14 September 2005, 469 SCRA 633.

[11] *Rollo,* pp. 28-42.

Petitioner filed the present Rule 45 Petition for Review, assailing the Order of the RTC. He contends that the RTC erred in computing the 15-day period provided in the Probation Law; and in dismissing the petition on procedural issues without determining whether petitioner is entitled to avail himself of the benefits of probation.

We find some merit in the petition, but only with respect to the additional ground for dismissal of the *certiorari* petition cited by the RTC – the failure to implead private complainant as a respondent in the Petition for *Certiorari* filed before the RTC. We uphold the rest of the RTC Decision, and in doing so, fully affirm its dispositive portion.

The RTC held that petitioner failed to observe Rule 65, Sec. 5, which states:

> *Respondents and costs in certain cases.* – When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.
>
> Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondent shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear of participate in the proceedings therein.

While it may be correct to say that petitioner failed to comply with the rule cited above, it would not be correct to dismiss the petition based on this provision. Rule 3, Sec. 11 states that

neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. Thus, the trial court should have ordered petitioner to add private complainant as a respondent to the case.

Nevertheless, we agree with the RTC that the Motion for Probation was filed out of time.

Sec. 6 of Rule 120 of the Rules of Court provides:

> *Promulgation of judgment.* – The judgment is promulgated by reading it in the presence of the accused and any judge of the Court in which it was rendered. **However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.**
>
> xxx xxx xxx
>
> In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgement in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.
>
> **If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest.** Within fifteen (15) days from promulgation of judgment, **however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.** (Emphasis supplied.)

Petitioner was charged with and found guilty of perjury. He was sentenced to suffer imprisonment of 4 months and 1 day to 1 year, a period which is considered as a correctional penalty. Under Article 9 of the Revised Penal Code, light felonies are those infractions of law for the commission of which the penalty of *arresto menor* (one to thirty days of imprisonment) or a fine

not exceeding two hundred pesos (₱200), or both are imposable. Thus, perjury is not a light felony or offense contemplated by Rule 120, Sec. 6. It was therefore mandatory for petitioner to be present at the promulgation of the judgment.

To recall, despite notice, petitioner was absent when the MTCC promulgated its judgment on 25 August 2009. Pursuant to Rule 120, Sec. 6, it is only when the accused is convicted of a light offense that a promulgation may be pronounced in the presence of his counsel or representative. In case the accused failed to appear on the scheduled date of promulgation despite notice, and the failure to appear was without justifiable cause, the accused shall lose all the remedies available in the Rules against the judgment. One such remedy was the Motion for Reconsideration of the judgment of the MTCC filed by petitioner on 28 August 2009. Absent a motion for leave to avail of the remedies against the judgment, the MTCC should not have entertained petitioner's Motion for Reconsideration. Thus, petitioner had only 15 days from 25 August 2009 or until 9 September 2009 to file his Motion for Probation. The MTCC thus committed grave abuse of discretion when it entertained the motion instead of immediately denying it.

In *People of the Philippines v. De Grano*,[12] we stated:

When the Decision dated April 25, 2002 was promulgated, only Estanislao Lacaba was present. **Subsequently thereafter, without surrendering and explaining the reasons for their absence, Joven, Armando, and Domingo joined Estanislao in their Joint Motion for Reconsideration. In blatant disregard of the Rules, the RTC not only failed to cause the arrest of the respondents who were at large, it also took cognizance of the joint motion.**

The RTC clearly exceeded its jurisdiction when it entertained the joint Motion for Reconsideration with respect to the respondents who were at large. It should have considered the joint motion as a motion for reconsideration that was solely filed by Estanislao. Being at large, Joven and Domingo have not regained their standing in court. Once an accused jumps bail or flees to a foreign country, or escapes from prison or confinement, he loses

[12] G.R. No. 167710, 5 June 2009, 588 SCRA 550, 570.

his standing in court; and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court. (Emphasis supplied.)

Petitioner asserts that his failure to appear during the promulgation was for a justifiable cause. He alleges that he was on board an international vessel as a seaman at the time of the promulgation. He further alleges that the MTCC was informed of this fact. He insists that his absence was justified, thus exempting him from the application of Rule 120, Sec. 6.

Petitioner, however, did not file a motion for leave to avail himself of the remedies prior to filing his Motion for Reconsideration. The hearing on the motion for leave would have been the proper opportunity for the parties to allege and contest whatever cause prevented petitioner from appearing on 25 August 2009, and whether that cause was indeed justifiable. If granted, petitioner would have been allowed to avail himself of other remedies under the Rules of Court, including a motion for reconsideration.

Moreover, in his Reply[13] filed on 14 October 2010, petitioner belatedly questions the propriety of the promulgation. In so doing, petitioner is barred by estoppel for failing to raise the issue at the earliest possible opportunity, that is, when the case was still pending with the MTCC.

As a final point, while we held in *Yu v. Samson-Tatad*[14] that the rule in *Neypes* is also applicable to criminal cases regarding appeals from convictions in criminal cases under Rule 122 of the Rules of Court, nevertheless, the doctrine is not applicable to this case, considering that petitioner's Motion for Probation was filed out of time.

WHEREFORE, in view of foregoing, the Petition is *DENIED.* The Order issued by the Regional Trial Court in Special Civil Action Case No. 0001-10 is *AFFIRMED*.

SO ORDERED.

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[13] *Rollo,* p. 148.

[14] G.R. No. 170979, 9 February 2011.

Carpio (Chairperson), Brion, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 193185. October 12, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO MONDEJAR *y* BOCARILI,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT OF CREDIBILITY IS ENTITLED TO GREAT RESPECT, AND EVEN FINALITY, UNLESS FACTS OF WEIGHT AND SUBSTANCE BEARING ON THE ELEMENTS OF THE CRIME HAVE BEEN OVERLOOKED, MISAPPREHENDED OR MISAPPLIED.— It has been held that in a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of credibility of witnesses and their testimonies. Since it was the trial court that had the opportunity to observe the witnesses' demeanor and deportment while testifying, the rule is that the trial court's assessment of their credibility is entitled to great respect, and even finality, unless facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.

2. ID.; ID.; ID.; IN THE ABSENCE OF A GLARING MISAPPREHENSION OF FACTS ON THE PART OF THE TRIAL COURT, THE APPELLATE COURT PLACES

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[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated 3 October 2011.

GREAT RELIANCE ON ITS FINDINGS OF FACTS.— Accused-appellant initially testified that the plastic sachet was shown to him while he was in an alley in Isla Puting Bato, with the police threatening to use it as evidence against him. On the other hand, in accused-appellant's declaration above, he stated that he had been shown the plastic sachet when he was brought to the City Hall for inquest. On its face, there does not seem to be a real contradiction between the two declarations, considering that accused-appellant has not described either instance as the first time the plastic sachet was shown to him. Moreover, it is not impossible that the sachet was shown to him on more than one occasion. We nevertheless note that the Court "reads only in cold print the testimony of witnesses which is usually translated from the local dialect into English. In the process of translation, 'not only the fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the written translated words.' Necessarily, the appellate court is placed at a disadvantage in this regard. Hence, in the absence of a glaring misapprehension of facts on the part of the trial court, the appellate court places great reliance on its findings of facts." Hence, while accused-appellant was not conclusively shown to have contradicted himself as regards the time when the plastic sachet was shown to him by the police, we have to rely on the perception of the trial court on the matter. At any rate, the court *a quo* cites this as only one of several material inconsistencies and incredible statements made by accused-appellant during the trial.

3. ID.; ID.; DEFENSES OF ALIBI AND FRAME UP; GENERALLY VIEWED WITH CAUTION BECAUSE IT EASY TO CONTRIVE AND DIFFICULT TO DISPROVE AND A COMMON AND STANDARD LINE OF DEFENSE IN PROSECUTIONS OF VIOLATIONS OF THE DANGEROUS DRUGS ACT.— Accused-appellant argues that the presumption of innocence cannot be overturned by the presumption of regularity in the performance of official duties. This is correct. However, both are mere disputable presumptions, which can be overcome by evidence to the contrary. In the present case, accused-appellant has not presented any evidence to support his defense of frame-up apart from his uncorroborated testimony. He could have at least presented another witness

or some other evidence to corroborate his claim that the accusation against him was a mere fabrication. After all, "frame-up, like alibi, is generally viewed with caution by this Court, because it is easy to contrive and difficult to disprove. Moreover, it is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act."

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165); CHAIN OF CUSTODY OF THE SEIZED DRUG SUFFICIENTLY PROVEN BY THE PROSECUTION.— It is true that, as pointed out by accused-appellant, the procedure under Section 21(1) of R.A. No. 9165 was not strictly followed by the police. The records show that the plastic sachet seized from accused-appellant was marked at the police station; and that no elected public official, media or representative from the Department of Justice was present during the inventory. Nevertheless, xxx we have held in several cases that non-compliance with Section 21, Article II of Republic Act No. 9165 is not fatal and 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. In the case at bar, the integrity of the drug seized from appellants was preserved. The chain of custody of the drug subject matter of the instant case was shown not to have been broken. xxx Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellants in this case bear the burden of showing that the evidence was tampered or meddled with to overcome a presumption that there was regularity in the handling of exhibits by public officers, and that the latter properly discharged their duties. Appellants failed to produce convincing proof that the evidence submitted by the prosecution had been tampered with. xxx As earlier discussed, the only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the dangerous drug seized as evidence. Both were satisfactorily proved in the present case." Applying the foregoing points to the present case, we note that accused-appellant has not adduced any evidence to show that the integrity of the evidence has been compromised. On the other hand, the

seized plastic sachet and marked money were properly presented and identified in court. The prosecution was able to sufficiently prove the chain of custody of the seized item from the time it was obtained from accused-appellant and marked by SPO2 Casuple, until it was delivered by PO2 Garcia to SPI Reyes of the PNP Crime Laboratory who made the laboratory examination thereof and the corresponding Laboratory Report. Earlier, during pre-trial, the parties had dispensed with the testimony of SPI Reyes after stipulating on her position and qualifications and on the results of her examination of the item submitted for testing.

5. ID.; ID.; FACT THAT THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA) WAS NOT NOTIFIED OF THE BUY-BUST OPERATION, CANNOT BY ITSELF EXCULPATE ACCUSED; POLICE OFFICERS ARE AUTHORIZED TO EFFECT A WARRANTLESS ARREST.— The fact that the PDEA was not notified of the buy-bust operation, as shown in the Pre-Operation and Coordination Report, cannot by itself exculpate accused-appellant. In the first place, the police are authorized to effect a warrantless arrest. Second, R.A. No. 9165 does not invalidate a buy-bust operation in which the PDEA is not notified. Third, the PDEA actually had some knowledge of the operation against one who had the *alias* "Danny" (albeit only for "casing" and "surveillance"), as the Pre-Operation and Coordination Report had been sent to and confirmed by it prior to the buy-bust operation.

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.*:

On 29 August 2006, an Information was filed against Ricardo Mondejar (accused-appellant) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165 in the following manner:

That on or about August 27, 2006, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell to a poseur-buyer ZERO POINT ZERO ONE ONE (0.011) GRAM of white crystalline substance placed in one (1) heat sealed transparent plastic sachet marked as "RMB" containing methylamphetamine hydrochloride known as "*SHABU*", a dangerous drug.

CONTRARY TO LAW.

The case was docketed as Criminal Case No. 06-246328 on 12 October 2006 and raffled to Branch 35 of the Regional Trial Court, Manila.

On 12 October 2006, accused-appellant pleaded not guilty to the offense charged upon arraignment in Filipino.

During trial, the prosecution presented the testimonies of Senior Police Officer 2 (SPO2) Federico Casuple and PO2 Elymar Garcia, while the defense presented accused-appellant himself as its sole witness.

The first prosecution witness was SPO2 Casuple, a police officer assigned at the Station Anti-Illegal Drug Special Operation Task Unit (SAID-SOTU), Police Station 2 of the Manila Police District. He testified that a female informant went to their office on 26 August 2006 to report that a certain person known by the *alias* "Danny" was selling illegal drugs at the Manila International Container Port ("MICP") in Tondo, Manila.[1] In view thereof, the police officers prepared the corresponding Pre-Operation and Coordination Report.[2] The police undertook surveillance at the site that night but they did not see accused-appellant. This was the only surveillance they conducted on the matter.[3] The informant explained that accused-appellant sold drugs only in the daytime.[4]

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[1] TSN, 17 July 2007, p. 4.

[2] Exhibit "G", folder of exhibits, p.5.

[3] TSN, *supra* at 8.

[4] *Id.* at 5.

Accordingly, the police instructed the informant to report back to their office the next day should accused-appellant be seen around the area. The next day or on 27 August 2006, at around 1 p.m., the informant returned to their office to inform the police that accused-appellant was again selling drugs in the area.[5] The Chief of the SAID designated SPO2 Casuple as the poseur-buyer and gave him ₱100[6] which the latter marked "PS2" at the upper left corner.[7] SPO2 Casuple then went to the site together with the informant, PO2 Roman Jimenez, and PO2 Garcia. SPO2 Casuple and the informant went on foot to look for accused-appellant. They were informed that he had already gone home. SPO2 Casuple relayed this information to his fellow police officers.

Thereafter, the informant reported that accused-appellant could be found at his home in Purok 2, Isla Puting Bato. As the area was just beside MICP, they decided to proceed to the said address.[8] Upon reaching the place, the informant immediately recognized and approached accused-appellant, telling the latter that SPO2 Casuple wanted to buy "*shabu*" (methylamphetamine hydrochloride). Accused-appellant asked how much SPO2 Casuple would buy, and the latter replied, "*piso*" or ₱100 worth.

SPO2 Casuple claimed that accused-appellant did not suspect anything and demanded immediate payment. SPO2 Casuple gave the money and immediately pressed the "call" key of his cellphone, as this was the pre-arranged signal to his fellow officers that the buy-bust operation had been consummated.[9] SPO2 Casuple then introduced himself as a police officer. Soon his fellow officers arrived and they all brought accused-appellant to the police station.[10] At the police station, SPO2 Casuple personally marked the confiscated item with the initials "RMB," which

[5] *Id.* at 6.

[6] Exhibit "F", folder of exhibits, p. 8.

[7] TSN, *supra* at 7; Exhibit "F-1", folder of exhibits, p. 8.

[8] *Id.* at 9.

[9] *Id.* at 11.

[10] *Id.* at 12.

stands for accused-appellant's name (Ricardo Mondejar *y* Bocarili) and then handed it to the investigator.

SPO2 Casuple later testified that the investigator had requested a laboratory examination[11] of the item which was then brought to the Crime Laboratory.[12] SPO2 Casuple stated that after receiving the Chemistry Report[13] on the item seized, he, together with PO2 Garcia, executed an "Affidavit of Apprehension/Poseur-Buyer."[14]

On cross-examination, SPO2 Casuple admitted that they had not coordinated with the Philippine Drug Enforcement Agency (PDEA) regarding the buy-bust operation on 27 August 2006, as the box beside the word "Buy-Bust" was not checked in the Pre-Operation and Coordination Report.[15] SPO2 Casuple confirmed that an inventory of seized items was prepared, but that he was unaware of whether a photograph of the plastic sachet confiscated from accused-appellant had been taken, because he "just turned over the plastic sachet to the investigator and he knows what to do."[16] SPO2 Casuple also confirmed that he was aware of Section 21 of R.A. No. 9165, having been briefed that it refers to "planting of evidence against the accused."[17]

PO2 Garcia, who was a "perimeter back up," testified that around 2:30 or 2:50 in the afternoon of 27 August 2006, they were deployed at the MICP compound at Parola, Tondo, Manila by the Chief of the SAID, Senior Police Inspector (SPI) Arnulfo Ibanez for an anti-illegal drug operation.[18] PO2 Garcia testified that he stayed inside the vehicle while SPO2 Casuple and the informant went around to look for accused-appellant. When

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[11] Exhibit "B", folder of exhibits, p. 37.

[12] *Supra* at 12.

[13] Exhibit "D", folder of exhibits, p. 38.

[14] *Supra* note 1 at 13.

[15] Exhibit "G", folder of exhibits, p. 5.

[16] TSN, *supra* at 20.

[17] *Id.* at 21.

[18] TSN, 19 July 2007, p. 7.

SPO2 Casuple and the informant proceeded to Isla Puting Bato and entered an alley, PO2 Garcia stayed out of the street until he received the pre-arranged signal.[19] Upon receiving the signal, he approached SPO2 Casuple and found him already accosting accused-appellant.[20]

PO2 Garcia provided security for the arresting officer and brought accused-appellant to the SAID office. At the police station, PO2 Garcia witnessed SPO2 Casuple recover from accused-appellant the buy-bust money and "one small transparent plastic sachet containing white crystalline substance," which SPO2 Casuple marked with the letters "RMB."[21] Later on cross-examination, PO2 Garcia confirmed that he did not have any personal knowledge of the ultimate source of the plastic sachet.[22]

The prosecution presented an accomplished Pre-Operation Report/Coordination Sheet[23] dated 26 August 2006 showing that the SAID Chief, SPI Arnulfo Ibanez, had created a team consisting of six (6) police officers and three (3) confidential informants "to conduct police operation against @ Maribel, Charing, Gina, Danny, Lani involved in illegal drug activities in AOR." Specifically, the team was to undertake surveillance and casing to run from "1830H 26 Aug 06 to 1830H 27 Aug 06" in the area of operation specified as "Tindalo, Jas, Parola, Bambang, Del Pan Sts. Tondo, PS2 AOR." A facsimile copy of the Certificate of Coordination issued by the PDEA dated 26 August 2006 was also presented to show the coordination between PDEA and the police prior to the conduct of the buy bust.[24] The prosecution also offered as evidence the Request for Laboratory Examination[25] of the seized item marked "RMB" dated 27 August

[19] *Id.* at 9.

[20] *Id.*

[21] *Id.* at 10.

[22] *Id.* at 13.

[23] Exhibit "G", folder of exhibits, p. 5.

[24] Exhibit "E", folder of exhibits, p. 39.

[25] Exhibit "B", folder of exhibits, p. 37.

2006 issued by Station Commander Police Superintendent Ricardo Layug, Jr. The written request was shown to have been delivered by PO2 Garcia to "SPI Reyes" of the Philippine National Police (PNP) Crime Laboratory. PNP Crime Laboratory Chemistry Report No. D-1007-06,[26] which confirmed that the plastic sachet delivered to it had tested positive for methylamphetamine hydrochloride or "*shabu*", was likewise offered in evidence. It showed that the examination had been made by "Elisa G. Reyes, Police Senior Inspector, Forensic Chemical Officer," approved by the Chief of the Chemical Section of the Crime Laboratory, noted by the Police Chief Inspector, and sworn to before an administering officer.

The defense did not present any documentary evidence.

The defense presented the accused-appellant as lone witness. In his testimony, accused-appellant claimed that on 27 August 2006, at about 2:30 p.m., he was alone in Purok 2, walking along the alley which he estimated to be about three to four meters wide.[27] He was leaving home with a basin about three feet in circumference[28] and full of the corn he was going to sell.[29] When he turned back, he saw that three police officers behind him were chasing someone.[30] He knew they were police officers, because they were wearing blue t-shirts (as opposed to polo shirts) with collars and name tags stating their surnames.[31] The unknown person being chased bumped accused-appellant, causing the latter to drop the basin and accidentally spill the corn. The police tripped on the basin and had to stop the chase.[32] Before they resumed the chase, SPO2 Casuple uttered invectives[33]

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[26] Exhibit "D", folder of exhibits, p. 38.

[27] TSN, 9 October 2007, p. 11.

[28] *Id.* at 13.

[29] *Id.* at 10.

[30] *Id.* at 3.

[31] *Id.* at 14-15.

[32] *Supra* at 13.

[33] Accused-appellant recalled that the exact words of SPO2 Casuple were "*Putang ina mo! Babalikan ka namin pag di namin inabutan ang hinahabol namin*"; TSN, *supra* at 13.

against accused-appellant, threatening to get back at the latter, should they fail to catch the person they were chasing.[34] Accused-appellant claimed that the police officers were unable to overtake the person they were chasing. So they went back, picked him up, and showed him a plastic sachet while saying, *"Eto gagawin kong ebidensya laban sa iyo."*[35]

Accused-appellant stated that apart from the failure of the police officers to catch the person they were after when they tripped on his basin of corn, he knew of no other reason why SPO2 Casuple would falsely testify against him. He claimed he did not file any countercharge against SPO2 Casuple, because he was unfamiliar with the law but, given the chance, he would do so.[36]

On 9 April 2008, the trial court issued its Decision,[37] the dispositive portion of which reads in part:

> Wherefore, finding accused Ricardo Mondejar *y* Bocarili @ "Danny" GUILTY beyond reasonable doubt of the offense charged, he is hereby sentenced to suffer the penalty of life imprisonment; to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos; and the cost of suit.

On 22 May 2008, accused-appellant, through counsel Public Attorney's Office, filed a Notice of Appeal with the Court of Appeals (CA). In his Appellant's Brief, accused-appellant argued that the presumption of regularity in the performance of duty cannot, by itself, affect the constitutional presumption of innocence of the accused.[38] Further, credence is given to police officers as prosecution witnesses unless there is evidence suggesting ill

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[34] *Id.* at 14.

[35] *Id.* at 4.

[36] *Id.* at 5.

[37] The Decision of the Regional Trial Court, Branch 35, Manila in Crim.Case No. 06-246328 was penned by Judge Eugenio Mendinueto.

[38] Citing *People v. Padilla*, G.R. No. 172603, 24 August 2007, 531 SCRA 185 and *Valdez v. People*, G.R. No. 170180, 23 November 2007, 538 SCRA 611.

motives on their part or a deviation from the regular performance of their duties.[39] Accused-appellant thereafter pointed out that the confiscated plastic sachet was not immediately marked at the place where it was allegedly seized; nor were photographs taken or inventories made in the presence of any elected public official, media, or representative from the Department of Justice, in contravention of Section 21 (1) of R.A. No. 9165.

On 18 December 2009, the CA issued its Decision,[40] the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant appeal is denied for lack of merit, and accordingly, the assailed April 9, 2008 Decision of the trial court convicting Ricardo Bocarili Mondejar of violation of Section 5, Article II of R.A. No. 9165, including the penalties imposed against him, is hereby AFFIRMED *IN TOTO*.
>
> SO ORDERED.

In its Decision, the CA held:

> Under the circumstances, We see no break in trail of confiscation, marking, identification, custody, control, examination and disposition of the prohibited drugs, in the same manner that We find no confusion or uncertainty over the fact that the 0.011 gram of *shabu* that was marked at the police station, then tested and examined positive for *shabu* at the PNP Crime Laboratory, and eventually adduced in evidence in court against Mondejar is the same *shabu* that was seized from Mondejar during the entrapment operation. (Decision, pp. 10-11)[41]

The CA held that accused-appellant's defense that he had merely been framed up failed to persuade. It cannot believe that the police would be so "brazenly unreasonable" as to subject

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[39] Citing *People v. de Guzman*, G.R. No. 177569, 28 November 2007, 539 SCRA 306.

[40] The Decision of the Court of Appeals Thirteenth Division in CA G.R. HC No. 03423 was penned by Justice Rosmari Carandang and concurred in by Justices Arturo Tayag and Michael Elbinias; *rollo*, pp. 2-15.

[41] *Rollo*, pp. 11-12.

accused-appellant to a false charge only because they failed to catch the person they intended to arrest when they tripped on his basin of corn.[42]

Accused-appellant comes to this Court seeking a reversal of the CA Decision sustaining the trial court's finding that he is guilty beyond reasonable doubt of violation of Section 5 of R.A. No. 9165.

We rule to affirm the appealed Decision.

It has been held that in a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of credibility of witnesses and their testimonies.[43] Since it was the trial court that had the opportunity to observe the witnesses' demeanor and deportment while testifying, the rule is that the trial court's assessment of their credibility is entitled to great respect,[44] and even finality, unless facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.[45]

In arriving at its Decision, the trial court reasoned:

> The testimony of the accused is replete with material inconsistencies and incredible statements which render it unworthy of belief. Thus, at one point, he claims that when he was picked up by the police a plastic sachet was shown to him by PO2 Capsule and the latter told him it will be used as evidence against him. (TSN, October 9, 2007, p. 4). Later, however, he testified that the plastic sachet was shown to him only when he was brought to the City Hall for inquest. (TSN, October 9, 2007, p. 9). Being contradictory of each other, it is indicative of accused's propensity to prevaricate. (Decision, p. 4)

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[42] Decision of the Court of Appeals, *rollo*, p. 13.

[43] *People v. Evangelista*, G.R. No. 175281, 27 September 2007, 534 SCRA 241; *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430.

[44] *People v. Bato*, G.R. No. 134939, 16 February 2000, 325 SCRA 671; *People v. Juntilla*, G.R. No. 130604, 16 September 1999, 314 SCRA 568.

[45] *People v. Magbanua*, G.R. No. 170137, 27 August 2009, 597 SCRA 287; *People v. Encila*, G.R. No. 182419, 10 February 2009, 578 SCRA 341; *People v. Cabacaba*, G.R. No. 171310, 9 July 2008, 557 SCRA 475.

We have gone over the transcripts and note that the trial court was referring to the following portion of accused-appellant's testimony:

Q Now, you said that police officer Casuple showed you a plastic sachet and told you that they are going to use the plastic sachet to file a case against you, did I hear you right?

A That is correct, sir.

Q Where did the plastic sachet come from?

A I do not know, sir, they immediately showed that to me.

Q At the police station before you were brought there were you frisked?

A No, sir, but they mauled me, sir.

Q At the police station, did they frisk you?

A Yes, sir.

Q After the frisking they showed you the plastic sachet?

A Not yet, sir.

Q When was the plastic sachet shown to you?

A When they brought me to City Hall, sir.

Q That was on the same day?

A Yes, sir.

Q Why were you brought to the City Hall?

A I was to be presented for inquest, sir.[46]

Accused-appellant initially testified that the plastic sachet was shown to him while he was in an alley in Isla Puting Bato, with the police threatening to use it as evidence against him. On the other hand, in accused-appellant's declaration above, he stated that he had been shown the plastic sachet when he was brought to the City Hall for inquest. On its face, there does not seem to

[46] TSN, *supra* note 27 at 7-9.

be a real contradiction between the two declarations, considering that accused-appellant has not described either instance as the first time the plastic sachet was shown to him. Moreover, it is not impossible that the sachet was shown to him on more than one occasion.

We nevertheless note that the Court "reads only in cold print the testimony of witnesses which is usually translated from the local dialect into English. In the process of translation, 'not only the fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the written translated words.' Necessarily, the appellate court is placed at a disadvantage in this regard. Hence, in the absence of a glaring misapprehension of facts on the part of the trial court, the appellate court places great reliance on its findings of facts."[47] Hence, while accused-appellant was not conclusively shown to have contradicted himself as regards the time when the plastic sachet was shown to him by the police, we have to rely on the perception of the trial court on the matter. At any rate, the court *a quo* cites this as only one of several material inconsistencies and incredible statements made by accused-appellant during the trial.

Accused-appellant argues that the presumption of innocence cannot be overturned by the presumption of regularity in the performance of official duties. This is correct. However, both are mere disputable presumptions, which can be overcome by evidence to the contrary.

In the present case, accused-appellant has not presented any evidence to support his defense of frame-up apart from his uncorroborated testimony. He could have at least presented another witness or some other evidence to corroborate his claim that the accusation against him was a mere fabrication. After all, "frame-up, like alibi, is generally viewed with caution by this Court, because it is easy to contrive and difficult to disprove. Moreover, it is a common and standard line of defense in

[47] *People v. Sacristan*, G.R. No. 74298, 4 June 1993, 223 SCRA 140.

[48] *People v. Eugenio*, 443 Phil. 411 (2003).

prosecutions of violations of the Dangerous Drugs Act."[48]

In contrast, the prosecution has adduced testimonial and documentary evidence, which we have reviewed.

It is true that, as pointed out by accused-appellant, the procedure under Section 21(1) of R.A. No. 9165 was not strictly followed by the police. The records show that the plastic sachet seized from accused-appellant was marked at the police station; and that no elected public official, media or representative from the Department of Justice was present during the inventory. Nevertheless,

> x x x we have held in several cases that non-compliance with Section 21, Article II of Republic Act No. 9165 is not fatal and 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. In the case at bar, the integrity of the drug seized from appellants was preserved. The chain of custody of the drug subject matter of the instant case was shown not to have been broken. xxx Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellants in this case bear the burden of showing that the evidence was tampered or meddled with to overcome a presumption that there was regularity in the handling of exhibits by public officers, and that the latter properly discharged their duties. Appellants failed to produce convincing proof that the evidence submitted by the prosecution had been tampered with. xxx As earlier discussed, the only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the dangerous drug seized as evidence. Both were satisfactorily proved in the present case."[49]

Applying the foregoing points to the present case, we note that accused-appellant has not adduced any evidence to show that the integrity of the evidence has been compromised. On the other hand, the seized plastic sachet and marked money were properly presented and identified in court. The prosecution

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[49] *People v. Hernandez*, G.R. No. 184804, 18 June 2009, 589 SCRA 625.

was able to sufficiently prove the chain of custody of the seized item from the time it was obtained from accused-appellant and marked by SPO2 Casuple, until it was delivered by PO2 Garcia to SPI Reyes of the PNP Crime Laboratory who made the laboratory examination thereof and the corresponding Laboratory Report. Earlier, during pre-trial, the parties had dispensed with the testimony of SPI Reyes after stipulating on her position and qualifications and on the results of her examination of the item submitted for testing.[50]

We did observe that the police failed to check the box marked "buy-bust operation" in its Pre-Operation and Coordination Report. However, standing alone, this minor omission does not affect the finding of guilt of accused-appellant. As ruled by the Court in *People v. Sta. Maria*,[51]

> xxx [Cursorily] read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible.
>
> It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.
>
> As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, "shall be

[50] Order of RTC, Branch 35, Manila, dated 12 October 2006, p. 1-2.

[51] G.R. No. 171019, 23 February 2007, 516 SCRA 621.

responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, *i.e.*, the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. To be sure, Section 86 (a) of the IRR emphasizes this point by providing:

> (a) Relationship/Coordination between PDEA and Other Agencies — The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the [National Bureau of Investigation (NBI)] and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA . . . . Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court. (Underscoring supplied.)

In other words, the fact that the PDEA was not notified of the buy-bust operation, as shown in the Pre-Operation and Coordination Report, cannot by itself exculpate accused-appellant. In the first place, the police are authorized to effect a warrantless arrest. Second, R.A. No. 9165 does not invalidate a buy-bust operation in which the PDEA is not notified. Third, the PDEA actually had some knowledge of the operation against one who had the *alias* "Danny" (albeit only for "casing" and "surveillance"), as the Pre-Operation and Coordination Report had been sent to and confirmed by it prior to the buy-bust operation.

In fine, after going over the records of the case and the evidence adduced by the parties, we do not find sufficient basis to reverse the ruling of the Court of Appeals affirming the trial court's conviction of accused-appellant for violation of Section 5 of R.A. No. 9165.

WHEREFORE, the assailed Court of Appeals Decision is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Brion, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 195033. October 12, 2011]

AGG TRUCKING AND/OR ALEX ANG GAEID, *petitioners, vs.* **MELANIO B. YUAG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A REMEDY TO CORRECT ERRORS OF JURISDICTION FOR WHICH REASON IT MUST CLEARLY SHOW THAT PUBLIC RESPONDENT HAS NO JURISDICTION TO ISSUE AN ORDER OR TO ISSUE A DECISION.— A writ of *certiorari* is a remedy to correct errors of jurisdiction, for which reason it must clearly show that the public respondent has no jurisdiction to issue an order or to render a decision. Rule 65 of the Rules of Court has instituted the petition for *certiorari* to correct acts of any tribunal, board or officer exercising judicial or quasi-judicial functions with grave abuse of discretion amounting to lack or excess of jurisdiction. This remedy serves as a check on acts, either of excess or passivity, that constitute grave abuse of discretion of a judicial or quasi-judicial function. x x x Petitioner is correct in its argument that there must first be a finding on whether

[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated October 3, 2011.

the NLRC committed grave abuse of discretion and on what these acts were. In this case, the CA seemed to have forgotten that its function in resolving a petition for *certiorari* was to determine whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent NLRC. The CA proceeded to review the records and to rule on issues that were no longer disputed during the appeal to the NLRC, such as the existence of an employer-employee relationship. The pivotal issue before the NLRC was whether petitioner's telling respondent to take a rest, or to have a break, was already a positive act of dismissing him. This issue was not discussed by the CA.

2. ID.; ID.; ID.; A MOTION FOR RECONSIDERATION FILED OUT OF TIME CANNOT REOPEN A FINAL AND EXECUTORY DECISION JUDGMENT OF THE NLRC; UNTIMELINESS IN FILING MOTIONS OR PETITIONS IS NOT A MERE TECHNICAL OR PROCEDURAL DEFECT, AS LENIENCY REGARDING THIS REQUIREMENT WILL IMPINGE ON THE RIGHT OF THE WINNING LITIGANT TO PEACE OF MIND RESULTING FROM THE LAYING TO REST OF THE CONTROVERSY.— When respondent failed to file a Motion for Reconsideration of the NLRC's 30 November 2006 Resolution within the reglementary period, the Resolution attained finality and could no longer be modified by the Court of Appeals. The Court has ruled as follows: [I]t is a fundamental rule that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The only recognized exceptions are the correction of clerical errors or the making of so-called *nunc pro tunc* entries which cause no prejudice to any party, and, of course, where the judgment is void. Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. It cannot be argued that prescriptive periods are mere procedural rules and technicalities, which may be brushed aside at every cry of injustice, and may be bent and broken by every appeal to pity.

The Court's ruling in *Videogram Regulatory Board v. Court of Appeals* finds application to the present case: There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules. The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case. These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits. Similarly, a motion for reconsideration filed out of time cannot reopen a final and executory judgment of the NLRC. Untimeliness in filing motions or petitions is not a mere technical or procedural defect, as leniency regarding this requirement will impinge on the right of the winning litigant to peace of mind resulting from the laying to rest of the controversy.

3. ID.; ID.; ID.; SINCE THE COURT OF APPEALS COULD NO LONGER MODIFY THE NLRC RESOLUTION, IT LOGICALLY FOLLOWS THAT THE MODIFICATION OF THE AWARD CANNOT BE DONE EITHER.— Since the CA could no longer modify the NLRC Resolution, it logically follows that the modification of the award cannot be done either. Had the Resolution not yet attained finality, the CA could have granted some other relief, even if not specifically sought by petitioner, if such ruling is proper under the circumstances. Rule 65 of the Rules of Court provides: Section 8. Proceedings after comment is filed. After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or filing of memoranda or upon the expiration of the period for filing,

the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled. However, the NLRC Resolution sought to be set aside had become final and executory 25 days before respondent filed his Motion for Reconsideration. Thus, subsequent proceedings and modifications are not allowed and are deemed null and void.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; IT IS MOST DISTURBING TO SEE HOW THE COURT OF APPEALS REGARDED THE LABOR TERMS "PAID ON COMMISSION," "*PAKYAW*" AND "SEASONAL WORKER" AS ONE AND THE SAME.— A reading of the assailed Decision will readily reveal the patent errors of the CA. On page 11 of its Decision, it held as follows: "*The NLRC likewise concluded that petitioner was not entitled to separation pay because he was not a regular employee of private respondent, he (the petitioner) being paid on purely 'commission' or 'pakyaw' basis*." The CA took off from that point to give a discussion on regular employment and further held: To Us, private respondent's "advice to take a rest" theory is nothing but a mere ploy to reinforce his hypothesis that the petitioner is not a regular employee. What makes this worse is that the NLRC bought private respondent's aforesaid theory hook, line and sinker and ruled that the petitioner was neither dismissed from work, he (the petitioner) being considered merely on "leave of absence without pay", nor is he (the petitioner) entitled to separation pay on the ground that he was paid on purely "commission" or "*pakyaw*" basis which is in legal parlance, in effect, implies that the petitioner is not a regular employee of the private respondent, but a mere seasonal worker or independent contractor. It is most disturbing to see how the CA regarded labor terms "paid on commission," "*pakyaw*" and "seasonal worker" as one and the same. In labor law, they are different and have distinct meanings, which we do not need to elaborate on in this Petition as they are not the issue here. It should also be remembered that a regular status of employment is not based on how the salary is paid to an employee. An employee may be paid purely on commission and still be considered a regular employee. Moreover, a seasonal employee may also be considered a regular employee.

5. ID.; ID.; THE REFUSAL BY THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) TO GRANT

SEPARATION PAY IS CONSISTENT WITH ITS RULING THAT THERE WAS NO DISMISSAL.— The appreciation by the CA of the NLRC Resolution was erroneous. The fact is that the refusal by the NLRC to grant separation pay was merely consistent with its ruling that there was no dismissal. Since respondent was not dismissed, much less illegally dismissed, separation pay was unnecessary. The CA looked at the issue differently and erroneously, as it held that the NLRC refused to grant the award of separation pay because respondent had not been found to be a regular employee. The NLRC had in fact made no such ruling. These are flagrant errors that are reversible by this Court. They should be corrected for the sake not only of the litigants, but also of the CA, so that it would become more circumspect in its appreciation of the records before it. We reviewed the NLRC Resolution that reversed the LA Decision and found nothing in it that was whimsical, unreasonable or patently violative of the law. It was the CA which erred in finding faults that were inexistent in the NLRC Resolution.

APPEARANCES OF COUNSEL

Vedad Naduma Moreno Arubio Pelarada Ortiz and Associates Law Office for petitioners.

Public Attorney's Office for respondent.

D E C I S I O N

SERENO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 with Prayer for Issuance of Writ of Temporary and/or Permanent Injunction, assailed is the 23 June 2010 Decision of the Court of Appeals (CA), Cagayan de Oro City, in CA-G.R. SP No. 01854-MIN.[1] Reversing the 30 November 2006 Resolution of the National Labor Relations Commission and reinstating, with modification, the 30 August 2006 Decision of the labor arbiter, the CA disposed as follows:

[1] Penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justices Edgardo A. Camello and Nina G. Antonio-Valenzuela.

WHEREFORE, premises considered, the instant Petition is hereby GRANTED, and the Resolution dated November 30, 2006 is hereby REINSTATED subject to MODIFICATION, thus:

Private respondent Alex Ang Gaeid and/or AAG Trucking is hereby ORDERED to pay petitioner Melanio B. Yuag or his heirs or assigns the following:

(1) FULL BACKWAGES, inclusive of all allowances, other benefits or their monetary equivalent computed from the time petitioner's compensation was withheld from him starting December 6, 2004 until the time he was employed by his new employer (Bernie Ragandang), instead of the date of his supposed reinstatement which We no longer require as explained above.

(2) SEPARATION PAY (in lieu of the supposed reinstatement) equivalent to one-half (½) month pay for every year of service. A fraction of at least six (6) months shall be considered one (1) whole year.

(3) TEMPERATE DAMAGES in the amount of Five Thousand Pesos (Php5,000.00) for the financial loss suffered by the petitioner when he was abruptly dismissed as a truck driver on December 6, 2004 (during or around the Christmas season), although the exact amount of such damage is incapable of exact determination); and

(4) EXEMPLARY DAMAGES in the amount of Five Thousand Pesos (Php5,000.00) as a corrective measure in order to set out an example to serve as a negative incentive or deterrent against socially deleterious actions.

Considering that a person's wage is his/her means of livelihood *i.e.*, equivalent to life itself, this decision is deemed immediately executory pending appeal, should the private respondent decide to elevate this case to the Supreme Court.

SO ORDERED.[2]

The Motion for Reconsideration filed by petitioner was denied by the CA.[3] Hence, this Petition.

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[2] *Rollo*, pp. 99-100.

[3] *Id.* at 39.

The facts of the case are simple. Petitioner Alex Ang Gaeid had employed respondent Melanio Yuag as a driver since 28 February 2002. He alleged that he had a trucking business, for which he had 41 delivery trucks driven by 41 drivers, one of whom was respondent.[4] His clients were Busco Sugar Milling Co., Inc., operating in Quezon, Bukidnon; and Coca-cola Bottlers Company in Davao City and Cagayan de Oro City.[5] Respondent received his salary on commission basis of 9% of his gross delivery per trip. He was assigned to a ten-wheeler truck and was tasked to deliver sacks of sugar from the Busco Sugar Mill to the port of Cagayan de Oro.[6] Petitioner noticed that respondent had started incurring substantial shortages since 30 September 2004, when he allegedly had a shortage of 32 bags, equivalent to ₱48,000; followed by 50 bags, equivalent to ₱75,000, on 11 November 2004.[7] It was also reported that he had illegally sold bags of sugar along the way at a lower price, and that he was banned from entering the premises of the Busco Sugar Mill.[8] Petitioner asked for an explanation from respondent who remained quiet.[9]

Alarmed at the delivery shortages, petitioner took it upon himself to monitor all his drivers, including respondent, by instructing them to report to him their location from time to time through their mobile phones.[10] He also required them to make their delivery trips in convoy, in order to avoid illegal sale of cargo along the way.[11]

Respondent, along with 20 other drivers, was tasked to deliver bags of sugar from Cagayan de Oro City to Coca-Cola Bottlers

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[4] *Id.* at 9.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* at 10.

[9] *Id.* at 9.

[10] *Id.* at 10.

[11] *Id.*

Plant in Davao City on 4 December 2004.[12] All drivers, with the exception of Yuag who could not be reached through his cellphone, reported their location as instructed. Their reported location gave evidence that they were indeed in convoy.[13] Afterwards, everyone, except Yuag, communicated that the delivery of their respective cargoes had been completed.[14] The Coca-Cola Plant in Davao later reported that the delivery had a suspiciously enormous shortage.[15]

Respondent reported to the office of the petitioner on 6 December 2004. Allegedly in a calm and polite manner, petitioner asked respondent to explain why the latter had not contacted petitioner for two days, and he had not gone in convoy with the other trucks, as he was told to do.[16] Respondent replied that the battery of his cellphone had broken down.[17] Petitioner then confronted him allegedly still in a polite and civilized manner, regarding the large shortages, but the latter did not answer.[18] Petitioner afterwards told him to "just take a rest" or, in their vernacular, "*pahulay lang una*."[19] This exchange started the dispute since respondent construed it as a dismissal. He demanded that it be done in writing, but petitioner merely reiterated that respondent should just take a rest in the meanwhile.[20] The former alleged that respondent had offered to resign and demanded separation pay. At that time, petitioner could not grant the demand, as it would entail computation which was the duty of the cashier.[21] Petitioner asked him to come back the next day.

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.* at 11.

[16] *Id.* at 11.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 12.

[21] *Id.*

Instead of waiting for another day to go back to his employer, Respondent went to the Department of Labor-Regional Arbitration Board X, that very day of the confrontation or on 6 December 2004. There he filed a Complaint for illegal dismissal, claiming his separation pay and 13th month pay.[22] Subsequently, after the delivered goods to the Coca-Cola Plant were weighed on 9 December 2004, it was found out that there was a shortage of 111 bags of sugar, equivalent to ₱166,000.[23]

Respondent argued that he was whimsically dismissed, just because he had not been able to answer his employer's call during the time of the delivery.[24] His reason for not answering was that the battery pack of his cellphone had broken down.[25] Allegedly enraged by that incident, his employer, petitioner herein, supposedly shouted at him and told him, "*pahuway naka*."[26] When he asked for a clarification, petitioner allegedly told him, "*wala nay daghan istorya, pahulay na*!" This statement was translated by the CA thus: "No more talking! Take a rest!"[27] He then realized that he was being dismissed. When he asked for his separation pay, petitioner refused.[28] Respondent thus filed a Complaint for illegal dismissal.

Ruling of the Labor Arbiter

On 30 August 2006, labor arbiter Nicodemus G. Palangan rendered his Decision sustaining respondent's Complaint for illegal dismissal.[29] The labor arbiter made a discourse on the existence of an employer-employee relationship between the parties. In granting the relief sought by petitioner, the labor arbiter held as follows:

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[22] *Id.* at 41.

[23] *Id.* at 12.

[24] *Id.* at 146.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 147.

[29] *Id.* at 44-51.

For failure on the part of the respondent to substantially prove the alleged infraction (shortages) committed by complainant and to afford him the due process mandated by law before he was eventually terminated, complainant's dismissal from his employment is hereby declared illegal and the respondent is liable to reinstate him with backwages for one (1) year but in view of the strained relationship that is now prevailing between the parties, this Arbitration Branch finds it more equitable to grant separation pay instead equivalent to one (1) month per year of service based on the average income for the last year of his employment CY 2004 which is ₱9,974.51, as hereby computed: …[30]

Thus, the labor arbiter awarded respondent separation pay and proportionate 13th month pay for 2004 and 13th month pay differential for 2003.[31]

Petitioner appealed to the NLRC, alleging that the latter erred in finding that respondent had been illegally dismissed and that the utterance of "*pahulay lang una*" meant actual dismissal.[32] He also alleged that the pecuniary awards of separation pay, backwages, proportionate 13th month pay and differential were erroneous. He argued that *pahulay lang una* was not an act of dismissal; rather, he merely wanted to give respondent a break, since the company's clients had lost confidence in respondent. Thus, the latter allegedly had to wait for clients other than Busco Sugar Mill and Coca-Cola, which had banned respondent from entering their premises.

Ruling of the NLRC

In a Resolution dated 30 November 2006,[33] the NLRC reversed the labor arbiter's ruling, holding as follows:

While the general rule in dismissal cases is that the employer has the burden to prove that the dismissal was for just or authorized causes and after due process, said burden is necessarily shifted to

[30] *Id.* at 50.

[31] *Id.*

[32] *Id.* at 52-62.

[33] *Id.* at 67-71.

the employee if the alleged dismissal is denied by the employer, as in this case, because a dismissal is supposedly a positive and unequivocal act by the employer. Accordingly, it is the employee that bears the burden of proving that in fact he was dismissed. It was then incumbent upon complainant to prove that he was in fact dismissed from his job by individual respondent Alex V. Ang Gaeid effective December 6, 2004 when the latter told him: *Pahuway naka*!" (You take a rest). Sadly, he failed to discharge that burden. Even assuming that Mr. Gaeid had the intention at that time of dismissing complainant from his job when he uttered the said words to him, there is no proof showing of any overt act subsequently done by Mr. Gaeid that would suggest he carried out such intention. There is no notice of termination served to complainant. Literally construing the remarks of Mr. Gaeid as having been dismissed from his job, complainant immediately filed the instant complaint for illegal dismissal on the same day without first ascertaining the veracity of the same. The how, why and the wherefore of his alleged dismissal should be clearly demonstrated by substantial evidence. Complainant failed to do so; hence, he cannot claim that he was illegally dismissed from employment."[34]

The NLRC further held thus:

At best, complainant should be considered on leave of absence without pay pending his new assignment. Not having been dismissed much less illegally, complainant is not entitled to the awarded benefits of backwages and separation pay for lack of legal and factual basis."[35]

The NLRC likewise held that the complainant was not entitled to 13th month pay, since he was paid on purely commission basis, an exception under Presidential Decree No. 851 – the law requiring employers to pay 13th month pay to their employees.[36]

Respondent moved for reconsideration,[37] in effect arguing that petitioner should not be allowed to change the latter's theory. Supposedly, the argument in the position paper of petitioner

[34] *Id.* at 70.

[35] *Id.* at 70-71.

[36] *Id.* at 71.

[37] *Id.* at 72-75.

was that there was no employer-employee relationship between them, and that he was compelled to dismiss respondent because of the heavy losses the latter was bringing to petitioner. In this Motion for Reconsideration, respondent admitted that his wife had received the Resolution on 12 January 2007, but that he learned of it much later, on 7 February 2007, justifying the untimely filing of the motion.[38]

The NLRC denied the Motion for Reconsideration for being filed out of time.[39] He and his counsel each received notice of the NLRC's Resolution dated 30 November 2006, reversing the labor arbiter's Decision on 11 January 2007,[40] but they only filed the motion 25 days after the period to file had already lapsed.[41] Respondent, thus, sought recourse from the CA through a Petition for a Writ of *Certiorari* under Rule 65.

The CA Ruling

On 23 June 2010, brushing aside the "technicality" issue, the CA proceeded to resolve the substantive issues which it deemed important, such as whether there was an employer-employee relationship between petitioner and respondent, and whether it was correct for the NLRC to declare that respondent was not illegally dismissed.[42] It completely reversed the NLRC and came up with the dispositive portion mentioned at the outset.

The Issues

Petitioner is now before us citing factual errors that the CA allegedly committed, such as not appreciating petitioner's lack of intention to dismiss respondent. These factual errors, however, are beyond this Court to determine, especially because the records of the proceedings at the level of the labor arbiter were not

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[38] *Id.* at 74.

[39] *Id.* at 77-78.

[40] Respondent claimed that his wife had received it on 12 January 2007. The NLRC, however, based the date of 11 January 2007 on the registry receipt.

[41] *Rollo* at 77.

[42] *Id.* at 85-89.

attached to the Petition. The Court is more interested in the legal issues raised by petitioner and rephrased by the Court as follows:

I

THE COURT OF APPEALS ERRED IN REVERSING THE NLRC WITHOUT ANY FINDING OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;

II

THE COURT OF APPEALS ERRED IN ENTERTAINING RESPONDENT'S PETITION NOTWITHSTANDING THE FACT THAT HIS MOTION FOR RECONSIDERATION OF THE NLRC'S DECISION WAS FILED OUT OF TIME;

III

THE COURT OF APPEALS ERRED IN GRANTING AWARDS BEYOND WHAT WAS PRAYED FOR IN THE COMPLAINT SUCH AS THE AWARD OF TEMPERATE AND EXEMPLARY DAMAGES

The Court's Ruling

We find the Petition impressed with merit.

A writ of *certiorari* is a remedy to correct errors of jurisdiction, for which reason it must clearly show that the public respondent has no jurisdiction to issue an order or to render a decision. Rule 65 of the Rules of Court has instituted the petition for *certiorari* to correct acts of any tribunal, board or officer exercising judicial or quasi-judicial functions with grave abuse of discretion amounting to lack or excess of jurisdiction. This remedy serves as a check on acts, either of excess or passivity, that constitute grave abuse of discretion of a judicial or quasi-judicial function. This Court, in *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation and Dominic G. Aquino*,[43] explained thus:

Certiorari is a remedy narrow in its scope and inflexible in character. It is not a general utility tool in the legal workshop.

[43] G.R. No. 168088, 3 April 2007, 520 SCRA 564.

Certiorari will issue only to correct errors of jurisdiction and not to correct errors of judgment. An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.

A *cert*[*iorari*] writ may be issued if the court or quasi-judicial body issues an order with grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. Mere abuse of discretion is not enough. Moreover, a party is entitled to a writ of *certiorari* only if there is no appeal nor any plain, speedy or adequate relief in the ordinary course of law.

The *raison d'etre* for the rule is that when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a situation, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for *certiorari*.[44] (citations omitted)

Petitioner is correct in its argument that there must first be a finding on whether the NLRC committed grave abuse of discretion and on what these acts were. In this case, the CA seemed to have forgotten that its function in resolving a petition

[44] *Id.* at 591-592.

for *certiorari* was to determine whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent NLRC. The CA proceeded to review the records and to rule on issues that were no longer disputed during the appeal to the NLRC, such as the existence of an employer-employee relationship. The pivotal issue before the NLRC was whether petitioner's telling respondent to take a rest, or to have a break, was already a positive act of dismissing him. This issue was not discussed by the CA.

A reading of the assailed Decision will readily reveal the patent errors of the CA. On page 11 of its Decision, it held as follows: "*The NLRC likewise concluded that petitioner was not entitled to separation pay because he was not a regular employee of private respondent, he (the petitioner) being paid on purely 'commission' or 'pakyaw' basis*." The CA took off from that point to give a discussion on regular employment and further held:

> To Us, private respondent's "advice to take a rest" theory is nothing but a mere ploy to reinforce his hypothesis that the petitioner is not a regular employee. What makes this worse is that the NLRC bought private respondent's aforesaid theory hook, line and sinker and ruled that the petitioner was neither dismissed from work, he (the petitioner) being considered merely on "leave of absence without pay", nor is he (the petitioner) entitled to separation pay on the ground that he was paid on purely "commission" or "*pakyaw*" basis which is in legal parlance, in effect, implies that the petitioner is not a regular employee of the private respondent, but a mere seasonal worker or independent contractor.

It is most disturbing to see how the CA regarded labor terms "paid on commission," "*pakyaw*" and "seasonal worker" as one and the same. In labor law, they are different and have distinct meanings, which we do not need to elaborate on in this Petition as they are not the issue here. It should also be remembered that a regular status of employment is not based on how the salary is paid to an employee. An employee may be paid purely on commission and still be considered a regular employee.[45]

[45] 332 Phil. 804 (1996).

Moreover, a seasonal employee may also be considered a regular employee.[46]

Further, the appreciation by the CA of the NLRC Resolution was erroneous. The fact is that the refusal by the NLRC to grant separation pay was merely consistent with its ruling that there was no dismissal. Since respondent was not dismissed, much less illegally dismissed, separation pay was unnecessary. The CA looked at the issue differently and erroneously, as it held that the NLRC refused to grant the award of separation pay because respondent had not been found to be a regular employee. The NLRC had in fact made no such ruling. These are flagrant errors that are reversible by this Court. They should be corrected for the sake not only of the litigants, but also of the CA, so that it would become more circumspect in its appreciation of the records before it.

We reviewed the NLRC Resolution that reversed the LA Decision and found nothing in it that was whimsical, unreasonable or patently violative of the law. It was the CA which erred in finding faults that were inexistent in the NLRC Resolution.

On the issue of the propriety of entertaining the Petition for *Certiorari* despite the prescribed Motion for Reconsideration with the NLRC, we find another error committed by the CA. The pertinent provisions of the 2005 Rules of Procedure of the NLRC are as follows:

Rule VII, Section 14. Motions for Reconsideration. — Motions for reconsideration of any order, resolution or decision of the Commission shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party and provided further, that only one such motion from the same party shall be entertained.

Rule VIII, Section 2. Finality of decisions of the Commission. — (a) Finality of the decisions, resolutions or orders of the Commission. Except as provided in Rule XI, Section 10, the decisions, resolutions

[46] 344 Phil. 268 (1997); 360 Phil. 218 (1998).

orders of the Commission/Division shall become executory after (10) calendar days from receipt of the same.

When respondent failed to file a Motion for Reconsideration of the NLRC's 30 November 2006 Resolution within the reglementary period, the Resolution attained finality and could no longer be modified by the Court of Appeals. The Court has ruled as follows:

> [I]t is a fundamental rule that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The only recognized exceptions are the correction of clerical errors or the making of so-called *nunc pro tunc* entries which cause no prejudice to any party, and, of course, where the judgment is void. Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.[47]

It cannot be argued that prescriptive periods are mere procedural rules and technicalities, which may be brushed aside at every cry of injustice, and may be bent and broken by every appeal to pity. The Court's ruling in *Videogram Regulatory Board v. Court of Appeals* finds application to the present case:

> There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules. The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. Furthermore, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect the appeal renders the judgment of the court final and executory. Just

[47] 360 Phil. 122 (1998).

as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case.

These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits.

Similarly, a motion for reconsideration filed out of time cannot reopen a final and executory judgment of the NLRC. Untimeliness in filing motions or petitions is not a mere technical or procedural defect, as leniency regarding this requirement will impinge on the right of the winning litigant to peace of mind resulting from the laying to rest of the controversy.

As to the third issue, since the CA could no longer modify the NLRC Resolution, it logically follows that the modification of the award cannot be done either. Had the Resolution not yet attained finality, the CA could have granted some other relief, even if not specifically sought by petitioner, if such ruling is proper under the circumstances. Rule 65 of the Rules of Court provides:

Section. 8. Proceedings after comment is filed. After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.

However, the NLRC Resolution sought to be set aside had become final and executory 25 days before respondent filed his Motion for Reconsideration. Thus, subsequent proceedings and modifications are not allowed and are deemed null and void.

IN VIEW OF THE FOREGOING, the Petition is *GRANTED*. The assailed 23 June 2010 Decision of the Court of Appeals and its 20 December 2010 Resolution are hereby *SET ASIDE*. The 30 November 2006 and 30 March 2010 Resolutions of the NLRC are *AFFIRMED* and sustained.

SO ORDERED.

Carpio (Chairperson), Brion, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 195419. October 12, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HADJA JARMA LALLI *y* PURIH, RONNIE ARINGOY *y* MASION, and NESTOR RELAMPAGOS (at large),** *accused.* **HADJA JARMA LALLI *y* PURIH and RONNIE ARINGOY *y* MASION,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES RELATING TO MINOR DETAILS OR IMMATERIAL FACTS DO NOT DESTROY CREDIBILITY OF WITNESSES.— Both Aringoy and Lalli, in their respective Appeal Briefs, assail the testimony of Lolita due to its alleged inconsistency on immaterial facts, such as the status of Lolita's grandfather, the name of the village she was in, the date she was brought to Labuan, Malaysia, and the like. In a long line of cases, the Court has ruled that inconsistencies pointed out by the accused in the testimony of prosecution witnesses relating to minor details do not destroy the credibility of witnesses. On the contrary, they indicate that the witnesses were telling the truth and not previously rehearsed.

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[*] Designated as additional member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated October 3, 2011.

2. ID.; ID.; ID.; IT IS NOT THE WITNESS' TESTIMONY THAT IS MATERIALLY INCONSISTENT, BUT THE TESTIMONIES OF ACCUSED-APPELLANTS.— The clear material inconsistency in this case, however, lies in the testimonies of accused Aringoy and Lalli. Aringoy admitted that he referred Lolita to a certain Hadja Jarma Lalli, his neighbor who frequents Malaysia and with whom Lolita could ask pertinent information on job opportunities. Lalli, on the other hand, denies having met Lolita prior to their meeting on board M/V Mary Joy on 6 June 2005, and claims that her meeting with Lolita was purely coincidental. Lalli admits that, even if she met Relampagos, Lolita and their companions only on that day on board M/V Mary Joy, she allowed these people to ride with her in Malaysia using the van driven by the friend of Lalli's son-in-law. Lastly, Lalli claims that she often goes to Malaysia to visit her daughter and son-in-law. However, this does not explain why Lalli purchased boat tickets, not only for herself, but for the other women passengers going to Malaysia. From March 2004 to June 2005, Lalli traveled to Malaysia no less than nine (9) times. Nora Mae Adling, ticketing clerk of Aleson Shipping Lines, owner of the vessel M/V Mary Joy 2 plying Zamboanga City to Sandakan, Malaysia route and of M/V Kristel Jane 3, testified in open court that "Hadja Jarma Lalli bought passenger tickets for her travel to Sandakan, not only for herself but also for other women passengers." Clearly, it is not Lolita's testimony that is materially inconsistent, but the testimonies of Lalli and Aringoy.

3. ID.; ID.; ID.; FACT THAT COMPLAINANT WORKED IN A KARAOKE BAR AND MASSAGE PARLOR AND THAT SHE HAD FOUR CHILDREN FROM DIFFERENT MEN, CANNOT CONSTITUTE EXEMPTING OR MITIGATING CIRCUMSTANCES TO RELIEVE THE ACCUSED FROM THEIR CRIMINAL LIABILITIES; IT DOES NOT ALSO CHANGE THE FACT THAT THEY RECRUITED COMPLAINANT TO WORK IN MALAYSIA WITHOUT THE REQUISITE POEA LICENSE.— Aringoy presented his witnesses Rachel, Mercedita and Estrella to impeach the credibility of Lolita by alleging that Lolita was a Massage Attendant and GRO in a massage parlor and videoke bar. His witness Rachel further declared that Lolita, at the young age of 23 years, already had four children sired by four different

men, and had been previously travelling to Malaysia to work in bars. These bare allegations were not supported by any other evidence. Assuming, for the sake of argument, that Lolita previously worked in a Karaoke Bar and Massage Parlor and that she had four children from different men, such facts cannot constitute exempting or mitigating circumstances to relieve the accused from their criminal liabilities. It does not change the fact that the accused recruited Lolita to work in Malaysia without the requisite POEA license, thus constituting the crime of illegal recruitment. Worse, the accused deceived her by saying that her work in Malaysia would be as restaurant entertainer, when in fact, Lolita would be working as a prostitute, thus, constituting the crime of trafficking.

4. ID.; ID.; ID.; ABSENCE OF IMPROPER MOTIVE TO FALSELY TESTIFY AGAINST THE ACCUSED ENTITLES TESTIMONY OF WITNESS TO FULL FAITH AND CREDIT.— Aringoy claims and admits that he only referred Lolita to Lalli for job opportunities to Malaysia. Such act of referring, whether for profit or not, in connivance with someone without a POEA license, is already considered illegal recruitment, given the broad definition of recruitment and placement in the Labor Code. Lalli, on the other hand, completely denies any involvement in the recruitment and placement of Lolita to Malaysia, and claims she only met Lolita for the first time by coincidence on board the ship M/V Mary Joy. Lalli's denial does not deserve credence because it completely conflicts with the testimony of Aringoy who claims he referred Lolita to Lalli who had knowledge of the job opportunities in Malaysia. The conflicting testimonies of Lalli and Aringoy on material facts give doubt to the truth and veracity of their stories, and strengthens the credibility of the testimony of Lolita, despite allegations of irrelevant inconsistencies. No improper motive could be imputed to Lolita to show that she would falsely testify against the accused. The absence of evidence as to an improper motive entitles Lolita's testimony to full faith and credit.

5. D.; ID.; ID.; EXCEPTIONS TO THE GENERAL RULE ON CONCLUSIVENESS OF FACTS; NOT APPLICABLE IN CASE AT BAR.— The facts found by the trial court, as affirmed *in toto* by the Court of Appeals, are, as a general rule, conclusive upon this Court, in the absence of any showing of grave abuse

of discretion. The Court, however, may determine the factual milieu of cases or controversies under specific circumstances, such as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. In this case, none of these exceptions to the general rule on conclusiveness of facts are applicable. The Court gives weight and respect to the trial court's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial. For this reason, the Court adopts the findings of fact of the trial court, as affirmed *in toto* by the Court of Appeals, there being no grave abuse of discretion on the part of the lower courts.

6. ID.; ID.; FLIGHT OF ACCUSED; AN INDICATION OF GUILT IN THE CRIMES HE HAS BEEN CHARGED.— Flight in criminal law is the evading of the course of justice by voluntarily withdrawing oneself in order to avoid arrest or detention or the institution or continuance of criminal proceedings. The unexplained flight of an accused person may as a general rule be taken into consideration as evidence having a tendency to establish his guilt. Clearly, in this case, the flight of accused Relampagos, who is still at-large, shows an indication of guilt in the crimes he has been charged.

7. ID.; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; DOUBLE JEOPARDY; DOES NOT APPLY WHEN AN ACT OR ACTS VIOLATE TWO OR MORE

DIFFERENT LAWS AND CONSTITUTES TWO DIFFERENT OFFENSES; A PROSECUTION UNDER ONE WILL NOT BAR A PROSECUTION UNDER THE OTHER.— When an act or acts violate two or more different laws and constitute two different offenses, a prosecution under one will not bar a prosecution under the other. The constitutional right against double jeopardy only applies to risk of punishment twice for the same offense, or for an act punished by a law and an ordinance. The prohibition on double jeopardy does not apply to an act or series of acts constituting different offenses.

8. CRIMINAL LAW; ILLEGAL RECRUITMENT; DEFINITION OF "ILLEGAL RECRUITMENT" UNDER SECTION 6 OF REPUBLIC ACT NO. 8042; DEFINITION OF "AUTHORITY" UNDER THE LABOR CODE OF THE PHILIPPINES (PRESIDENTIAL DECREE NO. 442).— Section 6 of Republic Act No. 8042 (RA 8042) defines illegal recruitment, as follows: [I]llegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes **referring,** contact services, promising or advertising for employment abroad, **whether for profit or not, when undertaken by a non-licensee or non-holder of authority** contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines. x x x Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage. x x x Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, defines "authority" as follows: "Authority" means a document issued by the Department of Labor authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity. Section 7 of RA 8042 provides for the penalty of illegal recruitment committed by a syndicate (which constitutes economic sabotage), as follows: (b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

9. ID.; ID.; A PERSON OR ENTITY ENGAGED IN RECRUITMENT AND PLACEMENT ACTIVITIES WITHOUT THE REQUISITE AUTHORITY FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE), WHETHER FOR PROFIT OR NOT, IS ENGAGED IN ILLEGAL RECTRUITMENT.— It is clear that a person or entity engaged in recruitment and placement activities without the requisite authority from the Department of Labor and Employment (DOLE), whether for profit or not, is engaged in illegal recruitment. The Philippine Overseas Employment Administration (POEA), an agency under DOLE created by Executive Order No. 797 to take over the duties of the Overseas Employment Development Board, issues the authority to recruit under the Labor Code. The commission of illegal recruitment by three or more persons conspiring or confederating with one another is deemed committed by a syndicate and constitutes economic sabotage, for which the penalty of life imprisonment and a fine of not less than ₱500,000 but not more than ₱1,000,000 shall be imposed. The penalties in Section 7 of RA 8042 have already been amended by Section 6 of Republic Act No. 10022, and have been increased to a fine of not less than ₱2,000,000 but not more than ₱5,000,000. However, since the crime was committed in 2005, we shall apply the penalties in the old law, RA 8042.

10. ID.; ID.; THE BROAD DEFINITION OF RECRUITMENT AND PLACEMENT INCLUDE THE MERE ACT OF REFERRING SOMEONE FOR PLACEMENT ABROAD; ELEMENTS OF SYNDICATED ILLEGAL RECRUITMENT; ESTABLISHED IN CASE AT BAR.— In *People v. Gallo*, the Court enumerated the elements of syndicated illegal recruitment, to wit: (1) the offender undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13(b), or any of the prohibited practices enumerated under Art. 34 of the Labor Code; (2) he has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and (3) the illegal recruitment is committed by a group of three (3) or more persons conspiring or confederating with one another. Article 13(b) of the Labor Code of the Philippines defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and **includes**

referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not, provided, that any person or entity which, in any manner, offers or promises for a fee, employment to two or more persons shall be deemed engaged in recruitment and placement." Clearly, given the broad definition of recruitment and placement, even the mere act of referring someone for placement abroad can be considered recruitment. Such act of referral, in connivance with someone without the requisite authority or POEA license, constitutes illegal recruitment. In its simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes. In this case, the trial court, as affirmed by the appellate court, found Lalli, Aringoy and Relampagos to have conspired and confederated with one another to recruit and place Lolita for work in Malaysia, without a POEA license. The three elements of syndicated illegal recruitment are present in this case, in particular: (1) the accused have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers; (2) the accused engaged in this activity of recruitment and placement by actually recruiting, deploying and transporting Lolita to Malaysia; and (3) illegal recruitment was committed by three persons (Aringoy, Lalli and Relampagos), conspiring and confederating with one another.

11. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; DEDUCED FROM THE MANNER IN WHICH THE CRIME WAS PERPETRATED, EACH ACCUSED PLAYED A PIVOTAL ROLE EVINCING A JOINT COMMON PURPOSE AND DESIGN, CONCERTED ACTION AND COMMUNITY OF INTEREST.— Under Article 8 of the Revised Penal Code, there is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." In *People v. Lago,* the Court discussed conspiracy in this wise: The elements of conspiracy are the following: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of a felony, and (3) the execution of the felony was decided upon. Proof of the conspiracy need not be based on direct evidence, because it may be inferred

from the parties' conduct indicating a common understanding among themselves with respect to the commission of the crime. Neither is it necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or objective to be carried out. The conspiracy may be deduced from the mode or manner in which the crime was perpetrated; it may also be inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest. x x x It is clear that through the concerted efforts of Aringoy, Lalli and Relampagos, Lolita was recruited and deployed to Malaysia to work as a prostitute. Such conspiracy among Aringoy, Lalli and Relampagos could be deduced from the manner in which the crime was perpetrated – each of the accused played a pivotal role in perpetrating the crime of illegal recruitment, and evinced a joint common purpose and design, concerted action and community of interest. For these reasons, this Court affirms the CA Decision, affirming the RTC Decision, declaring accused Ronnie Aringoy *y* Masion and Hadja Jarma Lalli *y* Purih guilty beyond reasonable doubt of the crime of illegal recruitment committed by a syndicate in Criminal Case No. 21930, with a penalty of life imprisonment and a fine of ₱500,000 imposed on each of the accused.

12. ID.; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA 9208); DEFINITION OF "TRAFFICKING IN PERSONS"; PROHIBITED ACTS OF TRAFFICKING IN PERSONS.— Section 3(a) of Republic Act No. 9208 (RA 9208), otherwise known as the Anti-Trafficking in Persons Act of 2003, defines Trafficking in Persons, as follows: *Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons **with or without the victim's consent or knowledge**, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. x x x Section 4 of RA 9208 enumerates the prohibited acts

of Trafficking in Persons, one of which is: (a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage. The crime of Trafficking in Persons is qualified when committed by a syndicate, as provided in Section 6(c) of RA 9208: (c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group. Section 10(c) of RA 9208 provides for the penalty of qualified trafficking: (c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00). The Anti-Trafficking in Persons Act is a new law passed last 26 May 2003, designed to criminalize the act of trafficking in persons for prostitution, sexual exploitation, forced labor and slavery, among others.

13. ID.; ID.; TRAFFICKING IN PERSONS IS NOT LIMITED TO TRANSPORTATION OF VICTIMS, BUT ALSO INCLUDES THE ACT OF RECRUITMENT OF VICTIMS FOR TRAFFICKING; TRAFFICKING IN PERSONS AS A PROSTITUTE COMMITTED IN CASE AT BAR.— In this case, Aringoy claims that he cannot be convicted of the crime of Trafficking in Persons because he was not part of the group that transported Lolita from the Philippines to Malaysia on board the ship M/V Mary Joy. In addition, he presented his niece, Rachel, as witness to testify that Lolita had been travelling to Malaysia to work in bars. On the other hand, Lalli denies any involvement in the recruitment and trafficking of Lolita, claiming she only met Lolita for the first time on board M/V Mary Joy going to Malaysia. The testimony of Aringoy's niece, Rachel, that Lolita had been travelling to Malaysia to work in bars cannot be given credence. Lolita did not even have a passport to go to Malaysia and had to use her sister's passport when Aringoy, Lalli and Relampagos first recruited her. It is questionable how she could have been

travelling to Malaysia previously without a passport, as Rachel claims. Moreover, even if it is true that Lolita had been travelling to Malaysia to work in bars, the crime of Trafficking in Persons can exist even with the victim's consent or knowledge under Section 3(a) of RA 9208. Trafficking in Persons under Sections 3(a) and 4 of RA 9208 is not only limited to transportation of victims, but also includes the act of recruitment of victims for trafficking. In this case, since it has been sufficiently proven beyond reasonable doubt, as discussed in Criminal Case No. 21930, that all the three accused (Aringoy, Lalli and Relampagos) conspired and confederated with one another to illegally recruit Lolita to become a prostitute in Malaysia, it follows that they are also guilty beyond reasonable doubt of the crime of Qualified Trafficking in Persons committed by a syndicate under RA 9208 because the crime of recruitment for prostitution also constitutes trafficking.

14. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; NON-AWARD OF PLACEMENT FEE JUSTIFIED DUE TO INCONSISTENT STATEMENTS OF COMPLAINANT ON THE PAYMENT THEREOF.— Lolita claimed actual damages of ₱28,000, which she allegedly paid to the accused as placement fee for the work of restaurant entertainer in Malaysia. The trial court did not award this amount to Lolita. We agree and affirm the trial court's non-award due to Lolita's inconsistent statements on the payment of placement fee. In her sworn statement, Lolita alleged that she paid ₱28,000 as placement fee to Lalli. On cross-examination, however, she admitted that she never paid ₱28,000 to the accused.

15. ID.; ID.; MORAL AND EXEMPLARY DAMAGES; AMOUNTS AWARDED BY THE TRIAL COURT, MODIFIED.— We, however, modify and increase the payment of damages in the crime of Trafficking in Persons from ₱50,000 to ₱500,000 as moral damages and ₱50,000 to ₱100,000 as exemplary damages. The Civil Code describes moral damages in Article 2217: Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act for omission. Exemplary damages, on the other hand, are awarded in addition to the

payment of moral damages, by way of example or correction for the public good, as stated in the Civil Code: 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. The payment of ₱500,000 as moral damages and ₱100,000 as exemplary damages for the crime of Trafficking in Persons as a Prostitute finds basis in Article 2219 of the Civil Code, which states: Art. 2219. Moral damages may be recovered in the following and analogous cases: (1) A criminal offense resulting in physical injuries; (2) Quasi-delicts causing physical injuries; (3) Seduction, abduction, rape, or other lascivious acts; (4) Adultery or concubinage; (5) Illegal or arbitrary detention or arrest; (6) Illegal search; (7) Libel, slander or any other form of defamation; (8) Malicious prosecution; (9) Acts mentioned in Article 309; (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35. The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages. The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

16. ID.; ID.; EXEMPLARY DAMAGES; AWARD JUSTIFIED IN THE CRIME OF TRAFFICKING IN PERSONS COMMITTED BY A SYNDICATE.— The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. In fact, it is worse. To be trafficked as a prostitute without one's consent and to be sexually violated four to five times a day by different strangers is horrendous and atrocious. There is no doubt that Lolita experienced physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, and social humiliation when she was trafficked as a prostitute in Malaysia. Since the crime of Trafficking in Persons was aggravated, being committed by a syndicate, the award of exemplary damages is likewise justified.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Faundo Esguerra and Associates Law Firm for Ronnie Aringoy.
Public Attorney's Office for Hadja Jarma Lalli.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a consolidated criminal case filed against the accused-appellants for the crimes of Illegal Recruitment (Criminal Case No. 21930) and Trafficking in Persons (Criminal Case No. 21908).

The Regional Trial Court (RTC) of Zamboanga City, in its Decision dated 29 November 2005 (RTC Decision),[1] found accused-appellants guilty beyond reasonable doubt of the crimes of Illegal Recruitment and Trafficking in Persons committed by a syndicate, and sentenced each of the accused to suffer the penalty of life imprisonment plus payment of fines and damages. On appeal, the Court of Appeals (CA) in Cagayan de Oro, in its Decision dated 26 February 2010 (CA Decision),[2] affirmed *in toto* the RTC Decision. The accused-appellants appealed to this Court by filing a Notice of Appeal[3] in accordance with Section 3(c), Rule 122 of the Rules of Court.

The Facts

The findings of fact of the RTC, which were affirmed *in toto* by the CA, are as follows:

In the evening of June 3, 2005, while Lolita Sagadsad Plando, 23 years old, single, was in Tumaga, Zamboanga City on her way to the house of her grandfather, she met Ronnie Masion Aringoy and Rachel Aringoy Cañete. Ronnie greeted Lolita, "Oy, it's good

[1] CA *rollo*, pp. 40-58.

[2] *Id.* at 209-222.

[3] *Id.* at 224-225, 255-256.

you are here" ("*oy, maayo kay dia ka*"). Rachel asked Lolita if she is interested to work in Malaysia. x x x Lolita was interested so she gave her cellphone number to Ronnie. After their conversation, Lolita proceeded to her grandfather's house.

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On June 4, 2005, at about 7:00 o'clock in the morning, Lolita received a text message from Ronnie Aringoy inviting her to go to the latter's house. At 7:30 in the morning, they met at Tumaga on the road near the place where they had a conversation the night before. Ronnie brought Lolita to the house of his sister in Tumaga. Lolita inquired what job is available in Malaysia. Ronnie told her that she will work as a restaurant entertainer. All that is needed is a passport. She will be paid 500 Malaysian ringgits which is equivalent to ₱7,000.00 pesos in Philippine currency. Lolita told Ronnie that she does not have a passport. Ronnie said that they will look for a passport so she could leave immediately. Lolita informed him that her younger sister, Marife Plando, has a passport. Ronnie chided her for not telling him immediately. He told Lolita that she will leave for Malaysia on June 6, 2005 and they will go to Hadja Jarma Lalli who will bring her to Malaysia. Ronnie sent a text message to Lalli but the latter replied that she was not in her house. She was at the city proper.

On June 5, 2005, at about 6:00 o'clock in the evening, Ronnie Aringoy and Rachel Aringoy Cañete arrived on board a tricycle driven by Ronnie at the house where Lolita was staying at Southcom Village. Ronnie asked if Lolita already had a passport. Lolita said that she will borrow her sister's passport. Ronnie, Rachel and Lolita went to Buenavista where Lolita's other sister, Gina Plando was staying. Her sister Marife Plando was there at that time. Lolita asked Marife to let her use Marife's passport. Marife refused but Lolita got the passport. Marife cried. Ronnie, Rachel and Lolita proceeded to Tumaga. Ronnie, Rachel and Lolita went to the house of Hadja Jarma Lalli just two hundred meters away from the house of Ronnie in Tumaga. Ronnie introduced Lolita to Hadja Jarma, saying "Ji, she is also interested in going to Malaysia." Lolita handed a passport to Hadja Jarma telling her that it belongs to her sister Marife Plando. Hadja Jarma told her it is not a problem because they have a connection with the DFA (Department of Foreign Affairs) and Marife's picture in the passport will be substituted with Lolita's picture. Nestor Relampagos arrived driving an owner-type jeep. Hadja Jarma

introduced Nestor to Lolita as their financier who will accompany them to Malaysia. x x x Lolita noticed three other women in Hadja Jarma's house. They were Honey, about 20 years old; Michele, 19 years old, and another woman who is about 28 years old. The women said that they are from Ipil, Sibugay Province. Ronnie told Lolita that she will have many companions going to Malaysia to work. They will leave the next day, June 6, and will meet at the wharf at 2:30 in the afternoon.

On June 6, 2005, Lolita went to Zamboanga City wharf at 2:00 o'clock in the afternoon bringing a bag containing her make-up and powder. She met at the wharf Hadja Jarma Lalli, Ronnie Aringoy, Honey and Michele. Ronnie gave to Lolita her boat ticket for the vessel M/V Mary Joy bound for Sandakan, Malaysia; a passport in the name of Marife Plando but with Lolita's picture on it, and ₱1,000.00 in cash. Hadja Jarma, Lolita, Honey, Michele and two other women boarded the boat M/V Mary Joy bound for Sandakan. Ronnie Aringoy did not go with them. He did not board the boat. x x x After the boat sailed, Hadja Jarma Lalli and Nestor Relampagos approached Lolita and her companions. Nestor told them that they will have a good job in Malaysia as restaurant entertainers. They will serve food to customers. They will not be harmed.

M/V Mary Joy arrived at the port of Sandakan, Malaysia at 10:00 o'clock in the morning of June 7, 2005. After passing through the immigration office, Hadja Jarma Lalli, Nestor Relampagos, Lolita, Honey, Michele and two other women boarded a van for Kota Kinabalu. x x x At the hotel, Nestor Relampagos introduced to Lolita and her companions a Chinese Malay called "Boss" as their employer. After looking at the women, "Boss" brought Lolita, Honey, Diane and Lorraine to a restaurant near the hotel. Diane and Lorraine were also on baord M/V Mary Joy when it left the port of Zamboanga for Sandakan on June 6, 2005. When they were already at the restaurant, a Filipina woman working there said that the place is a prostitution den and the women there are used as prostitutes. Lolita and her companions went back to the hotel. They told Hadja Jarma and Nestor that they do not like to work as prostitutes. x x x After about five minutes, another person called "boss" arrived. x x x [T]hey were fetched by a van at about 7:00 o'clock in the evening and brought to Pipen Club owned by "Boss Awa", a Malaysian. At the club, they were told that they owe the club 2,000 ringgits each as payment for the amount given by the club to Hadja Jarma Lalli and Nestor Relampagos. They will pay for the said amount by entertaining

customers. The customers will pay 300 ringgits for short time services of which 50 ringgits will go to the entertainer, and 500 ringgits for over night service of which 100 ringgits will be given to the entertainer. Pipen Club is a big club in a two-storey building. There were about 100 women working in the club, many of them were Filipina women.

Lolita Plando was forced to work as entertainer at Pipen Club. She started working at 8:30 in the evening of June 14, 2005. She was given the number 60 which was pinned on her. That night, she had her first customer who selected her among the other women at the club. He was a very big man, about 32 years old, a Chinese-Malay who looked like a wrestler. The man paid for short time service at the counter. Lolita was given by the cashier a small pink paper. She was instructed to keep it. A small yellow paper is given to the entertainer for overnight services. The customer brought Lolita to a hotel. She did not like to go with him but a "boss" at the club told her that she could not do anything. At the hotel, the man poked a gun at Lolita and instructed her to undress. She refused. The man boxed her on the side of her body. She could not bear the pain. The man undressed her and had sexual intercourse with her. He had sexual intercourse with her every fifteen minutes or four times in one hour. When the customer went inside the comfort room, Lolita put on her clothes and left. The customer followed her and wanted to bring her back to the hotel but Lolita refused. At about 1:00 o'clock in the morning of June 15, 2005, Lolita was chosen by another customer, a tall dark man, about 40 years old. The customer paid for an overnight service at the counter and brought Lolita to Mariner Hotel which is far from Pipen Club. At the hotel, the man told Lolita to undress. When she refused, the man brought her to the comfort room and bumped her head on the wall. Lolita felt dizzy. The man opened the shower and said that both of them will take a bath. Lolita's clothes got wet. She was crying. The man undressed her and had sexual intercourse with her. They stayed at the hotel until 11:00 o'clock in the morning of June 15, 2005. The customer used Lolita many times. He had sexual intercourse with her every hour.

Lolita worked at Pipen Club from June 14 to July 8, 2005. Every night, a customer used her. She had at least one customer or more a night, and at most, she had around five customers a night. They all had sexual intercourse with her. On July 9, 2005, Lolita was able to contact by cellphone at about 10:00 o'clock in the morning her sister Janet Plando who is staying at Sipangkot Felda x x x. Janet is married to Said Abubakar, an Indonesian national who is

working as a driver in the factory. x x x Lolita told Janet that she is in Labuan, Malaysia and beg Janet to save her because she was sold as a prostitute. Janet told Lolita to wait because her husband will go to Pipen Club to fetch Lolita at 9:00 o'clock that evening of that day. x x x She told Janet to instruct her husband to ask for No. 60 at Pipen Club. x x x At 9:00 o'clock in the evening, Lolita was told by Daddy Richard, one of the bosses at the club, that a customer requested for No. 60. The man was seated at one of the tables. Lolita approached the man and said, "good evening." The man asked her is she is the sister of Janet Plando. Lolita replied that she is, and asked the man if he is the husband of her sister. He said, "yes." The man had already paid at the counter. He stood up and left the place. Lolita got her wallet and followed him. x x x Lolita told her sister about her ordeal. She stayed at her sister's house until July 22, 2005. On July 21, 2005 at 7:00 o'clock in the evening, a policeman went to her sisters house and asked if there is a woman staying in the house without a passport. Her sister told the policeman that she will send Lolita home on July 22. At dawn on July 22, Lolita and her brother-in-law took a taxi from Sipangkot Felda to Mananamblas where Lolita will board a speedboat to Sibuto, Tawi-Tawi. x x x

Upon arrival in Zamboanga City on July 24, 2005, Lolita went directly to the house of her eldest sister Alejandra Plando Maywila at Sta. Catalina, Zamboanga City. She left her things at her sister's house and immediately went to the sister of Ronnie Aringoy in Tumaga. Ronnie was not there. She asked Russel, niece of Ronnie, to call for the latter. Ronnie arrived and said to her, "so you are here, you arrived already." He said he is not involved in what happened to her. Lolita asked Ronnie to accompany her to the house of Nestor Relampagos because she has something to get from him. Ronnie refused. He told Lolita not to let them know that she had already arrived from Malaysia.

Lolita was advised to file a complaint with the police regarding her ordeal in Malaysia. On August 2, 2005, at past 9:00 o'clock in the morning, Lolita Plando went to Zamboanga Police Office at Gov. Lim Avenue to file her complaint. x x x

In her Counter-Affidavit (Exh. "1"; "1-A"-Lalli), Hadja Jarma Lalli admitted that she met Lolita Plando on June 6, 2005 on board M/V Mary Joy while the said vessel was at sea on its way to Sandakan, Malaysia. The meeting was purely coincidental. By coincidence also, Hadja Jarma, Nestor Relampagos and Lolita Plando boarded the

same van for Kota Kinabalu, Malaysia. Upon arrival, they parted ways. They did not see each other anymore at Kota Kinabalu, Malaysia. She did not know what happened to them. She went to Kota Kinabalu to visit his son-in-law. She denied having recruited Lolita Plando for employment abroad (Exh. "1"; "1-A"). x x x

In his Counter-Affidavit (Exh. "1"-Aringoy), Ronnie Aringoy affirmed that he personally knows Lolita Plando since she was a teenager and he knows for a fact that her name is Cristine and not Marife "as she purports it to appear." Sometime in the first week of June 2005, Lolita borrowed ₱1,000.00 from Ronnie because she wanted to go to Malaysia to work as a guest relation officer (GRO). Ronnie lent her ₱1,000.00. He told her that he knows "a certain Hadja Jarma Lalli, distant neighbor, who frequents to Malaysia and with whom she can ask pertinent information on job opportunities." The entries in Philippine Passport No. MM401136 issued to Hadja Jarma Lalli on January 29, 2004 (Exh. "2"; "2-A" to "2-Q") showed that she traveled to Malaysia no less than nine (9) times within the period from March 2004 to June 2005.

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Nora Mae Adling, ticketing clerk of Aleson Shipping Lines, owner of the vessel M/V Mary Joy 2 plying Zamboanga City to Sandakan, Malaysia route and of M/V Kristel Jane 3, testified that Hadja Jarma Lalli bought passenger tickets for her travel to Sandakan, not only for herself but also for other women passengers.

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Ronnie Aringoy submitted the Affidavit of his witness Rachel Cañete (Exh. "2") and the Joint Affidavits of witnesses Mercedita Salazar and Estrella Galgan. Rachel Canete declared that Lolita Plando whom she knows as Cristine Plando worked as a GRO (guest relation officer) and massage attendant at Magic 2 Videoke and Massage Parlor, that Lolita Plando has four children sired by different men; and that she knows for a fact that Lolita Plando has been going to and from Malaysia to work in bars. When she testified in court, Rachel did not present other evidence to substantiate her allegations. Mercedita Salazar and Estrella Galgan declared in their Joint Affidavit that Lolita Plando who is known to them as Marife Plando was their co-worker as massage attendant and GRO (guest relation officer) at Magic 2 Massage Parlor and Karaoke bar where she used the names Gina Plando and Cristine Plando. She worked

in the said establishment for nine months from February to October 2002. She has four children from four different men. No other evidence was submitted in court to prove their assertions.[4]

The Decision of the Trial Court

The Regional Trial Court rendered its Decision on 29 November 2005, with its dispositive portion declaring:

> WHEREFORE, the Court finds accused HADJA JARMA LALLI *y* PURIH and RONNIE ARINGOY *y* MASION GUILTY beyond reasonable doubt in Criminal Case No. 21908 of the Crime of Trafficking in Persons defined in Section 3(a) and penalized under Section 10(c) in relation to Sections 4(a) and 6(c) of Republic Act No. 9208 known as the "Anti-Trafficking in Persons Act of 2003" and in Criminal Case No. 21930 of the crime of Illegal Recruitment defined in Section 6 and penalized under Section 7(b) of Republic Act No. 8042 known as the "Migrant Workers and Overseas Filipinos Act of 1995" and SENTENCES each of said accused:
>
> 1. In Criminal Case No. 21908, to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱2,000,000.00 pesos;
>
> 2. In Criminal Case No. 21930, to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00 pesos;
>
> 3. To pay the offended party Lolita Plando *y* Sagadsad, jointly and severally, the sum of ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages; and
>
> 4. To pay the costs.
>
> SO ORDERED.[5]

The trial court did not find credible the denials of the accused-appellants over the candid, positive and convincing testimony of complainant Lolita Plando (Lolita). The accused, likewise, tried to prove that Lolita was a Guest Relations Officer (GRO) in the Philippines with four children fathered by four different men. However, the trial court found these allegations irrelevant and immaterial to the criminal prosecution. These circumstances,

[4] *Id.* at 42-53.

[5] *Id.* at 58.

even if true, would not exempt or mitigate the criminal liability of the accused. The trial court found that the accused, without a POEA license, conspired in recruiting Lolita and trafficking her as a prostitute, resulting in crimes committed by a syndicate.[6] The trial court did not pronounce the liability of accused-at-large Nestor Relampagos (Relampagos) because jurisdiction was not acquired over his person.

The Decision of the Court of Appeals

On 26 February 2010, the Court of Appeals affirmed *in toto* the RTC Decision and found accused-appellants guilty beyond reasonable doubt of the crimes of Illegal Recruitment and Trafficking in Persons.

The Issue

The only issue in this case is whether the Court of Appeals committed a reversible error in affirming *in toto* the RTC Decision.

The Ruling of this Court

We dismiss the appeal for lack of merit.

We modify and increase the payment of damages in the crime of Trafficking in Persons from ₱50,000 to ₱500,000 for moral damages and ₱50,000 to ₱100,000 for exemplary damages.

Grounds for Appeal

In his Appeal Brief,[7] Ronnie Aringoy (Aringoy) admits that he referred Lolita to a certain Hadja Jarma Lalli (Lalli), Aringoy's neighbor who frequents Malaysia and from whom Lolita could ask pertinent information on job opportunities.[8] Aringoy claims that he learned later that Lolita left for Malaysia.[9] He denies knowing Relampagos to whom Lolita paid ₱28,000 as placement fee for finding her work in Malaysia.[10]

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[6] *Id.* at 53-57.

[7] *Id.* at 167-179.

[8] *Id.* at 171.

[9] *Id.* at 172.

[10] *Id.*

Aringoy presented three witnesses: his niece Rachel Aringoy Cañete (Rachel), Mercedita Salazar (Mercedita), and Estrella Galgan (Estrella). In her testimony, Rachel declared that: (1) Lolita is a GRO and Massage Attendant at Magic 2 Videoke and Massage Parlor; (2) Lolita has four children sired by different men; and (3) Lolita has been travelling to Malaysia to work in bars. Mercedita and Estrella, on the other hand, declared in their testimonies that Lolita was their co-worker as Massage Attendant and GRO in Magic 2 Massage Parlor and Karaoke Bar from February to October 2002.[11]

Aringoy assailed the credibility of Lolita's testimony because of inconsistencies with regard to: (1) Lolita's grandfather's status and name; (2) the persons (Ronnie and Rachel) who approached Lolita to talk about the job opportunity in Malaysia; (3) certain statements in Lolita's testimony that were not alleged in her Sworn Statement; (4) payment of placement fee of ₱28,000; and (5) names of the other female recruits who were with Lolita in the boat going to Sandakan and Kota Kinabalu.[12] Aringoy likewise claims that he was never included in the initial complaint filed by Lolita, and Lolita's statements about her meetings with him, Lalli and Relampagos on 3, 4, 5 and 6 June 2005 were not corroborated by any witness.[13]

On the other hand, in her Appeal Brief,[14] Lalli claims that she simply met Lolita on 6 June 2005 on board the ship M/V Mary Joy bound for Sandakan, Malaysia.[15] Lalli denies having met Lolita prior to their meeting on board M/V Mary Joy.[16] Lalli claims she was going to Malaysia to visit her daughter and son-in-law who was a Malaysian national.[17] Lalli further

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[11] *Id.*

[12] *Id.* at 173-174.

[13] *Id.* at 175.

[14] *Id.* at 64-85.

[15] *Id.* at 77.

[16] *Id.*

[17] *Id.*

claims that she only spoke to Lolita aboard the ship for idle conversation to pass away the time.[18] In this conversation, she learned that Lolita was with a party of girls accompanied by Relampagos, and the latter was bringing them to Malaysia to work as sales ladies.[19] Lalli admits that Lolita, Relampagos and the other girls rode in Lalli's van in Sandakan, driven by a friend of Lalli's son-in-law.[20] They all rode together because Relampagos talked to the van driver, requesting if he and his party of girls could board the van and pay their fare when they reach the city proper of Kota Kinabalu.[21] Lalli boarded the van with Lolita, Relampagos and their companions.[22] Upon reaching her destination, Lalli got off the van, leaving Lolita, Relampagos and their other companions to continue their journey towards the city proper of Kota Kinabalu.[23] After spending several days in Malaysia with her daughter and son-in-law, Lalli went to Brunei to visit a cousin on 12 June 2005, and headed back to Malaysia on 14 June 2005.[24]

Lalli assails the credibility of Lolita due to inconsistencies in her testimony with regard to: (1) Lolita not being in Southcom Village on 5 June 2005 at 6:00 p.m., as she claimed, but in Buenavista Village; and (2) Lolita's claim that Lalli and Relampagos on 12 June 2005 brought the girls to Labuan, when in fact, Lalli was already in Brunei on 12 June 2005, as evidenced by the stamp in her passport.[25]

Credibility of Testimonies

Both Aringoy and Lalli, in their respective Appeal Briefs, assail the testimony of Lolita due to its alleged inconsistency

[18] *Id.* at 78.

[19] *Id.*

[20] *Id.* at 79.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at 80-83.

on immaterial facts, such as the status of Lolita's grandfather, the name of the village she was in, the date she was brought to Labuan, Malaysia, and the like. In a long line of cases, the Court has ruled that inconsistencies pointed out by the accused in the testimony of prosecution witnesses relating to minor details do not destroy the credibility of witnesses.[26] On the contrary, they indicate that the witnesses were telling the truth and not previously rehearsed.[27]

The clear material inconsistency in this case, however, lies in the testimonies of accused Aringoy and Lalli. Aringoy admitted that he referred Lolita to a certain Hadja Jarma Lalli, his neighbor who frequents Malaysia and with whom Lolita could ask pertinent information on job opportunities.[28] Lalli, on the other hand, denies having met Lolita prior to their meeting on board M/V Mary Joy on 6 June 2005,[29] and claims that her meeting with Lolita was purely coincidental.[30] Lalli admits that, even if she met Relampagos, Lolita and their companions only on that day on board M/V Mary Joy, she allowed these people to ride with her in Malaysia using the van driven by the friend of Lalli's son-in-law.[31] Lastly, Lalli claims that she often goes to Malaysia to visit her daughter and son-in-law.[32] However, this does not explain why Lalli purchased boat tickets, not only for herself, but for the other women passengers going to Malaysia.[33] From March 2004 to June 2005, Lalli traveled to Malaysia no less than nine (9) times.[34] Nora Mae Adling, ticketing clerk of Aleson Shipping Lines, owner of the vessel M/V Mary Joy 2 plying

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[26] *People v. Martinada*, G.R. Nos. 66401-03, 13 February 1991, 194 SCRA 36, 44.

[27] *Id.*

[28] CA *rollo*, p. 171.

[29] *Id.* at 77.

[30] *Id.* at 78.

[31] *Id.* at 79.

[32] *Id.* at 77.

[33] *Id.* at 52.

[34] *Id.* at 51.

Zamboanga City to Sandakan, Malaysia route and of M/V Kristel Jane 3, testified in open court that "Hadja Jarma Lalli bought passenger tickets for her travel to Sandakan, not only for herself but also for other women passengers."[35] Clearly, it is not Lolita's testimony that is materially inconsistent, but the testimonies of Lalli and Aringoy.

Aringoy presented his witnesses Rachel, Mercedita and Estrella to impeach the credibility of Lolita by alleging that Lolita was a Massage Attendant and GRO in a massage parlor and videoke bar. His witness Rachel further declared that Lolita, at the young age of 23 years, already had four children sired by four different men, and had been previously travelling to Malaysia to work in bars. These bare allegations were not supported by any other evidence. Assuming, for the sake of argument, that Lolita previously worked in a Karaoke Bar and Massage Parlor and that she had four children from different men, such facts cannot constitute exempting or mitigating circumstances to relieve the accused from their criminal liabilities. It does not change the fact that the accused recruited Lolita to work in Malaysia without the requisite POEA license, thus constituting the crime of illegal recruitment. Worse, the accused deceived her by saying that her work in Malaysia would be as restaurant entertainer, when in fact, Lolita would be working as a prostitute, thus, constituting the crime of trafficking.

The facts found by the trial court, as affirmed *in toto* by the Court of Appeals, are, as a general rule, conclusive upon this Court, in the absence of any showing of grave abuse of discretion.[36] The Court, however, may determine the factual milieu of cases or controversies under specific circumstances, such as:

(1) when the inference made is manifestly mistaken, absurd or impossible;

(2) when there is a grave abuse of discretion;

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[35] *Id.* at 52.

[36] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, 4 March 2008, 547 SCRA 571, 584, citing *The Philippine American Life and General Insurance Co. v. Gramaje*, 484 Phil. 880 (2004).

(3) when the finding is grounded entirely on speculations, surmises or conjectures;

(4) when the judgment of the Court of Appeals is based on misapprehension of facts;

(5) when the findings of fact are conflicting;

(6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) when the findings of the Court of Appeals are contrary to those of the trial court;

(8) when the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[37]

In this case, none of these exceptions to the general rule on conclusiveness of facts are applicable. The Court gives weight and respect to the trial court's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial.[38] For this reason, the Court adopts the findings of fact of the trial court, as affirmed *in toto* by the Court of Appeals, there being no grave abuse of discretion on the part of the lower courts.

Criminal Case No. 21930 (Illegal Recruitment)

Section 6 of Republic Act No. 8042 (RA 8042) defines illegal recruitment, as follows:

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[37] *Reyes v. Court of Appeals (Ninth Division)*, 328 Phil. 171, 180 (1996) citing *Floro v. Llenado*, 314 Phil. 715 (1995).

[38] *Supra* note 26 at 41.

[I]llegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes **referring,** contact services, promising or advertising for employment abroad, **whether for profit or not, when undertaken by a non-licensee or non-holder of authority** contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines.

xxx xxx xxx

Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

xxx xxx xxx

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. (Emphasis supplied)

Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, defines "authority" as follows:

"Authority" means a document issued by the Department of Labor authorizing a person or association to engage in recruitment and placement activities as a private recruitment entity.

Section 7 of RA 8042 provides for the penalty of illegal recruitment committed by a syndicate (which constitutes economic sabotage), as follows:

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

It is clear that a person or entity engaged in recruitment and placement activities without the requisite authority from the Department of Labor and Employment (DOLE), whether for profit or not, is engaged in illegal recruitment.[39] The Philippine Overseas Employment Administration (POEA), an agency under DOLE created by Executive Order No. 797 to take over the

[39] Section 6, Republic Act No. 8042.

duties of the Overseas Employment Development Board, issues the authority to recruit under the Labor Code. The commission of illegal recruitment by three or more persons conspiring or confederating with one another is deemed committed by a syndicate and constitutes economic sabotage,[40] for which the penalty of life imprisonment and a fine of not less than ₱500,000 but not more than ₱1,000,000 shall be imposed.[41]

The penalties in Section 7 of RA 8042 have already been amended by Section 6 of Republic Act No. 10022, and have been increased to a fine of not less than ₱2,000,000 but not more than ₱5,000,000. However, since the crime was committed in 2005, we shall apply the penalties in the old law, RA 8042.

In *People v. Gallo*,[42] the Court enumerated the elements of syndicated illegal recruitment, to wit:

1. the offender undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13(b), or any of the prohibited practices enumerated under Art. 34 of the Labor Code;

2. he has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and

3. the illegal recruitment is committed by a group of three (3) or more persons conspiring or confederating with one another.[43]

Article 13(b) of the Labor Code of the Philippines defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and **includes referrals**, contract services, promising or advertising for employment, locally or abroad, whether for profit or not, provided, that any person or entity which, in any manner, offers

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[40] *Id.*

[41] Section 7, Republic Act No. 10022.

[42] G.R. No. 187730, 29 June 2010, 622 SCRA 439.

[43] *Id.* at 451, citing *People v. Soliven*, 418 Phil. 777 (2001) and *People v. Buli-e*, 452 Phil. 129 (2003).

or promises for a fee, employment to two or more persons shall be deemed engaged in recruitment and placement."

Clearly, given the broad definition of recruitment and placement, even the mere act of referring someone for placement abroad can be considered recruitment. Such act of referral, in connivance with someone without the requisite authority or POEA license, constitutes illegal recruitment. In its simplest terms, illegal recruitment is committed by persons who, without authority from the government, give the impression that they have the power to send workers abroad for employment purposes.[44]

In this case, the trial court, as affirmed by the appellate court, found Lalli, Aringoy and Relampagos to have conspired and confederated with one another to recruit and place Lolita for work in Malaysia, without a POEA license. The three elements of syndicated illegal recruitment are present in this case, in particular: (1) the accused have no valid license or authority required by law to enable them to lawfully engage in the recruitment and placement of workers; (2) the accused engaged in this activity of recruitment and placement by actually recruiting, deploying and transporting Lolita to Malaysia; and (3) illegal recruitment was committed by three persons (Aringoy, Lalli and Relampagos), conspiring and confederating with one another.

Aringoy claims and admits that he only referred Lolita to Lalli for job opportunities to Malaysia. Such act of referring, whether for profit or not, in connivance with someone without a POEA license, is already considered illegal recruitment, given the broad definition of recruitment and placement in the Labor Code.

Lalli, on the other hand, completely denies any involvement in the recruitment and placement of Lolita to Malaysia, and claims she only met Lolita for the first time by coincidence on board the ship M/V Mary Joy. Lalli's denial does not deserve credence because it completely conflicts with the testimony of Aringoy who claims he referred Lolita to Lalli who had knowledge of the job opportunities in Malaysia.

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[44] *People v. Lapis*, 439 Phil. 729, 740 (2002).

The conflicting testimonies of Lalli and Aringoy on material facts give doubt to the truth and veracity of their stories, and strengthens the credibility of the testimony of Lolita, despite allegations of irrelevant inconsistencies.

No improper motive could be imputed to Lolita to show that she would falsely testify against the accused. The absence of evidence as to an improper motive entitles Lolita's testimony to full faith and credit.[45]

Aringoy claims that no conspiracy existed in illegal recruitment, as he denies even knowing Relampagos, who is currently at-large. Lalli denies any involvement in the illegal recruitment, and claims that she only met Relampagos through Lolita on board the ship M/V Mary Joy on 6 June 2005, and learned that Relampagos was bringing Lolita and their other girl companions to Malaysia to work as sales ladies.

Under Article 8 of the Revised Penal Code, there is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."

In *People v. Lago*,[46] the Court discussed conspiracy in this wise:

The elements of conspiracy are the following: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of a felony, and (3) the execution of the felony was decided upon. Proof of the conspiracy need not be based on direct evidence, because it may be inferred from the parties' conduct indicating a common understanding among themselves with respect to the commission of the crime. Neither is it necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or objective to be carried out. The conspiracy may be deduced from the mode or manner in which the crime was perpetrated; it may also be inferred

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[45] *People v. Bodozo*, G.R. No. 96621, 21 October 1992, 215 SCRA 33, 37, citing *Araneta, Jr. v. Court of Appeals*, G.R. No. L-43527, 3 July 1990, 187 SCRA 123.

[46] 411 Phil. 52 (2001).

from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[47]

In this case, Lolita would not have been able to go to Malaysia if not for the concerted efforts of Aringoy, Lalli and Relampagos. First, it was Aringoy who knew Lolita, since Aringoy was a neighbor of Lolita's grandfather. It was Aringoy who referred Lolita to Lalli, a fact clearly admitted by Aringoy. Second, Lolita would not have been able to go to Malaysia if Lalli had not purchased Lolita's boat ticket to Malaysia. This fact can be deduced from the testimony of Nora Mae Adling (Nora), ticketing clerk of Aleson Shipping Lines, owner of the vessel M/V Mary Joy 2 plying Zamboanga City to Sandakan, Malaysia route and of M/V Kristel Jane 3. Nora testified in open court that "Hadja Jarma Lalli bought passenger tickets for her travel to Sandakan, not only for herself but also for other women passengers." Lalli's claim that she only goes to Malaysia to visit her daughter and son-in-law does not explain the fact why she bought the boat tickets of the other women passengers going to Malaysia. In fact, it appears strange that Lalli visited Malaysia nine (9) times in a span of one year and three months (March 2004 to June 2005) just to visit her daughter and son-in-law. In Malaysia, it was Relampagos who introduced Lolita and her companions to a Chinese Malay called "Boss" as their first employer. When Lolita and her companions went back to the hotel to tell Relampagos and Lalli that they did not want to work as prostitutes, Relampagos brought Lolita and the girls on board a van to Sangawan China Labuan, where they stayed in a room for one night. The next day, they were picked up by a van and brought to Pipen Club, where Lolita and her companions worked as prostitutes. To date, accused Relampagos is at large and has not been brought under the jurisdiction of the courts for his crimes.

Flight in criminal law is the evading of the course of justice by voluntarily withdrawing oneself in order to avoid arrest or detention or the institution or continuance of criminal

[47] *Id.* at 59, citing *People v. Fegidiro*, 392 Phil. 36 (2000) and *People v. Francisco*, 388 Phil. 94 (2000).

proceedings.[48] The unexplained flight of an accused person may as a general rule be taken into consideration as evidence having a tendency to establish his guilt.[49] Clearly, in this case, the flight of accused Relampagos, who is still at-large, shows an indication of guilt in the crimes he has been charged.

It is clear that through the concerted efforts of Aringoy, Lalli and Relampagos, Lolita was recruited and deployed to Malaysia to work as a prostitute. Such conspiracy among Aringoy, Lalli and Relampagos could be deduced from the manner in which the crime was perpetrated – each of the accused played a pivotal role in perpetrating the crime of illegal recruitment, and evinced a joint common purpose and design, concerted action and community of interest.

For these reasons, this Court affirms the CA Decision, affirming the RTC Decision, declaring accused Ronnie Aringoy *y* Masion and Hadja Jarma Lalli *y* Purih guilty beyond reasonable doubt of the crime of illegal recruitment committed by a syndicate in Criminal Case No. 21930, with a penalty of life imprisonment and a fine of ₱500,000 imposed on each of the accused.

Criminal Case No. 21908 (Trafficking in Persons)

Section 3(a) of Republic Act No. 9208 (RA 9208), otherwise known as the Anti-Trafficking in Persons Act of 2003, defines Trafficking in Persons, as follows:

Trafficking in Persons – refers to the recruitment, transportation, transfer or harboring, or receipt of persons **with or without the victim's consent or knowledge**, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. x x x (Emphasis supplied)

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[48] *United States v. Alegado*, 25 Phil. 510, 511 (1913).

[49] *Id.*

Section 4 of RA 9208 enumerates the prohibited acts of Trafficking in Persons, one of which is:

(a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.

The crime of Trafficking in Persons is qualified when committed by a syndicate, as provided in Section 6(c) of RA 9208:

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group.

Section 10(c) of RA 9208 provides for the penalty of qualified trafficking:

(c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00).

The Anti-Trafficking in Persons Act is a new law passed last 26 May 2003, designed to criminalize the act of trafficking in persons for prostitution, sexual exploitation, forced labor and slavery, among others.

In this case, Aringoy claims that he cannot be convicted of the crime of Trafficking in Persons because he was not part of the group that transported Lolita from the Philippines to Malaysia on board the ship M/V Mary Joy. In addition, he presented his niece, Rachel, as witness to testify that Lolita had been travelling to Malaysia to work in bars. On the other hand, Lalli denies any involvement in the recruitment and trafficking of Lolita, claiming she only met Lolita for the first time on board M/V Mary Joy going to Malaysia.

The testimony of Aringoy's niece, Rachel, that Lolita had been travelling to Malaysia to work in bars cannot be given credence. Lolita did not even have a passport to go to Malaysia and had to use her sister's passport when Aringoy, Lalli and Relampagos first recruited her. It is questionable how she could have been travelling to Malaysia previously without a passport, as Rachel claims. Moreover, even if it is true that Lolita had been travelling to Malaysia to work in bars, the crime of Trafficking in Persons can exist even with the victim's consent or knowledge under Section 3(a) of RA 9208.

Trafficking in Persons under Sections 3(a) and 4 of RA 9208 is not only limited to transportation of victims, but also includes the act of recruitment of victims for trafficking. In this case, since it has been sufficiently proven beyond reasonable doubt, as discussed in Criminal Case No. 21930, that all the three accused (Aringoy, Lalli and Relampagos) conspired and confederated with one another to illegally recruit Lolita to become a prostitute in Malaysia, it follows that they are also guilty beyond reasonable doubt of the crime of Qualified Trafficking in Persons committed by a syndicate under RA 9208 because the crime of recruitment for prostitution also constitutes trafficking.

When an act or acts violate two or more different laws and constitute two different offenses, a prosecution under one will not bar a prosecution under the other.[50] The constitutional right against double jeopardy only applies to risk of punishment twice for the same offense, or for an act punished by a law and an ordinance.[51] The prohibition on double jeopardy does not apply to an act or series of acts constituting different offenses.

DAMAGES

Lolita claimed actual damages of ₱28,000, which she allegedly paid to the accused as placement fee for the work of restaurant entertainer in Malaysia. The trial court did not award this amount to Lolita. We agree and affirm the trial court's non-award due to Lolita's inconsistent statements on the payment of placement

[50] *People v. Tac-an*, 261 Phil. 728, 746 (1990).

[51] Section 21, Article III, 1987 Philippine Constitution.

fee. In her sworn statement, Lolita alleged that she paid ₱28,000 as placement fee to Lalli.[52] On cross-examination, however, she admitted that she never paid ₱28,000 to the accused.[53]

We, however, modify and increase the payment of damages in the crime of Trafficking in Persons from ₱50,000 to ₱500,000 as moral damages and ₱50,000 to ₱100,000 as exemplary damages.

The Civil Code describes moral damages in Article 2217:

> Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act for omission.

Exemplary damages, on the other hand, are awarded in addition to the payment of moral damages, by way of example or correction for the public good, as stated in the Civil Code:

> 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.

The payment of ₱500,000 as moral damages and ₱100,000 as exemplary damages for the crime of Trafficking in Persons as a Prostitute finds basis in Article 2219 of the Civil Code, which states:

> Art. 2219. Moral damages may be recovered in the following and analogous cases:
>
> (1) A criminal offense resulting in physical injuries;
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> (2) Quasi-delicts causing physical injuries;

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[52] CA *rollo*, p. 174.

[53] *Id.*

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. In fact, it is worse. To be trafficked as a prostitute without one's consent and to be sexually violated four to five times a day by different strangers is horrendous and atrocious. There is no doubt that Lolita experienced physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, and social humiliation when she was trafficked as a prostitute in Malaysia. Since the crime of Trafficking in Persons was aggravated, being committed by a syndicate, the award of exemplary damages is likewise justified.

WHEREFORE, we *AFFIRM* the Decision of the Court of Appeals dated 26 February 2010, affirming the Decision of the Regional Trial Court of Zamboanga City dated 29 November 2005, finding accused Lalli and Aringoy guilty beyond reasonable doubt of the crimes of Illegal Recruitment and Trafficking in Persons committed by a syndicate, with the following *MODIFICATIONS*:

1. In Criminal Case No. 21908, each of the accused is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱2,000,000;

2. In Criminal Case No. 21930, each of the accused is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱500,000;

3. Each of the accused is ordered to pay the offended party Lolita Plando *y* Sagadsad, jointly and severally, the sum of ₱500,000 as moral damages, and ₱100,000 as exemplary damages for the crime of Trafficking in Persons; and to pay the costs.

The Court cannot pronounce the liability of accused-at-large Nestor Relampagos as jurisdiction over his person has not been acquired.

SO ORDERED.

Brion, Sereno, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

THIRD DIVISION

[A.C. No. 7241. October 17, 2011]
(Formerly CBD Case No.05-1506)

ATTY. FLORITA S. LINCO, *complainant, vs.* **ATTY. JIMMY D. LACEBAL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; BREACH OF NOTARIAL LAW AND CODE OF PROFESSIONAL RESPONSIBILITY;

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[*] Designated Acting Member per Special Order No. 1114 dated 3 October 2011.

THE FACT THAT THE AFFIANT PREVIOUSLY APPEARED BEFORE RESPONDENT IN PERSON DOES NOT JUSTIFY HIS ACT OF NOTARIZING THE DEED OF DONATION WHEN AFFIANT IS ALREADY DEAD AT THE VERY DAY THE DOCUMENT WAS NOTARIZED.— There is no question as to respondent's guilt. The records sufficiently established that Atty. Linco was already dead when respondent notarized the deed of donation on July 30, 2003. Respondent likewise admitted that he knew that Atty. Linco died a day before he notarized the deed of donation. We take note that respondent notarized the document after the lapse of more than 20 days from July 8, 2003, when he was allegedly asked to notarize the deed of donation. The sufficient lapse of time from the time he last saw Atty. Linco should have put him on guard and deterred him from proceeding with the notarization of the deed of donation. However, respondent chose to ignore the basics of notarial procedure in order to accommodate the alleged need of a colleague. The fact that respondent previously appeared before him in person does not justify his act of notarizing the deed of donation, considering the affiant's absence on the very day the document was notarized. In the notarial acknowledgment of the deed of donation, respondent attested that Atty. Linco personally came and appeared before him on July 30, 2003. Yet obviously, Atty. Linco could not have appeared before him on July 30, 2003, because the latter died on July 29, 2003. Clearly, respondent made a false statement and violated Rule 10.01 of the Code of Professional Responsibility and his oath as a lawyer.

2. **ID.; ID.; RESPONDENT SHOULD BE HELD LIABLE FOR HIS ACTS, NOT ONLY AS A NOTARY PUBLIC, BUT ALSO AS A LAWYER.—**We will reiterate that faithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or jurat is sacrosanct. Respondent should not notarize a document unless the persons who signed the same are the very same persons who executed and **personally appeared before him** to attest to the contents and truth of what are stated therein. Time and again, we have repeatedly reminded notaries public of the importance attached to the act of notarization. Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act

as notaries public. Notarization converts a private document into a public document; thus, making that document admissible in evidence without further proof of its authenticity. 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 acknowledgment executed by a notary public and appended to a private instrument. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence, again, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein.

3. ID.; NOTARIAL LAW; IMPORTANCE ATTACHED TO THE ACT OF NOTARIZATION; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF WHAT ARE STATED THEREIN.— This responsibility is more pronounced when the notary public is a lawyer. A graver responsibility is placed upon him by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. He is mandated to the sacred duties appertaining to his office, such duties, being dictated by public policy and impressed with public interest. Respondent's failure to perform his duty as a notary public resulted not only in damaging complainant's rights over the property subject of the donation but also in undermining the integrity of a notary public. He should, therefore, be held liable for his acts, not only as a notary public but also as a lawyer. In *Lanuzo v. Atty. Bongon*, respondent having failed to discharge his duties as a notary public, the revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years and suspension from the practice of law for one year were imposed. We deem it proper to impose the same penalty.

D E C I S I O N

PERALTA, *J.*:

The instant case stemmed from an Administrative Complaint[1] dated June 6, 2005 filed by Atty. Florita S. Linco (complainant) before the Integrated Bar of the Philippines (IBP) against Atty. Jimmy D. Lacebal for disciplinary action for his failure to perform his duty as a notary public, which resulted in the violation of their rights over their property.

The antecedent facts are as follows:

Complainant claimed that she is the widow of the late Atty. Alberto Linco (Atty. Linco), the registered owner of a parcel of land with improvements, consisting of 126 square meters, located at No. 8, Macopa St., Phase I-A, B, C & D, Valley View Executive Village, Cainta, Rizal and covered by Transfer Certificate of Title (TCT) No. 259001.

Complainant alleged that Atty. Jimmy D. Lacebal (respondent), a notary public for Mandaluyong City, notarized a deed of donation[2] allegedly executed by her husband in favor of Alexander David T. Linco, a minor. The notarial acknowledgment thereof also stated that Atty. Linco and Lina P. Toledo (Toledo), mother of the donee, allegedly personally appeared before respondent on July 30, 2003, despite the fact that complainant's husband died on July 29, 2003.[3]

Consequently, by virtue of the purported deed of donation, the Register of Deeds of Antipolo City cancelled TCT No. 259001 on March 28, 2005[4] and issued a new TCT No. 29251[5] in the name of Alexander David T. Linco.

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

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

[3] *Id.* at 7.

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

[5] *Id.* at 10.

Aggrieved, complainant filed the instant complaint. She claimed that respondent's reprehensible act in connivance with Toledo was not only violative of her and her children's rights but also in violation of the law. Respondent's lack of honesty and candor is unbecoming of a member of the Philippine Bar.

In his Answer,[6] respondent admitted having notarized and acknowledged a deed of donation executed by the donor, Atty. Linco, in favor of his son, Alexander David T. Linco, as represented by Lina P. Toledo.

Respondent narrated that on July 8, 2003, he was invited by Atty. Linco, through an emissary in the person of Claire Juele-Algodon (Algodon), to see him at his residence located at Guenventille II D-31-B, Libertad Street, Mandaluyong City. Respondent was then informed that Atty. Linco was sick and wanted to discuss something with him.

Respondent pointed out that Atty. Linco appeared to be physically weak and sickly, but was articulate and in full control of his faculties. Atty. Linco showed him a deed of donation and the TCT of the property subject of the donation. Respondent claimed that Atty. Linco asked him a favor of notarizing the deed of donation in his presence along with the witnesses.

However, respondent explained that since he had no idea that he would be notarizing a document, he did not bring his notarial book and seal with him. Thus, he instead told Algodon and Toledo to bring to his office the signed deed of donation anytime at their convenience so that he could formally notarize and acknowledge the same.

On July 30, 2003, respondent claimed that Toledo and Algodon went to his law office and informed him that Atty. Linco had passed away on July 29, 2003. Respondent was then asked to notarize the deed of donation. Respondent admitted to have consented as he found it to be his commitment to a fellow lawyer. Thus, he notarized the subject deed of donation, which was actually signed in his presence on July 8, 2003.

[6] *Id.* at 12-17.

During the mandatory conference/hearing on September 7, 2005, it was established that indeed the deed of donation was presented to respondent on July 8, 2003.[7] Respondent, likewise, admitted that while he was not the one who prepared the deed of donation, he, however, performed the notarization of the deed of donation only on July 30, 2003, a day after Atty. Linco died.[8]

On November 23, 2005, in its Report and Recommendation,[9] the IBP-Commission on Bar Discipline (IBP-CBD) found respondent guilty of violating the Notarial Law and the Code of Professional Responsibility.

The IBP-CBD observed that respondent wanted it to appear that because the donor appeared before him and signed the deed of donation on July 8, 2003, it was just ministerial duty on his part to notarize the deed of donation on July 30, 2003, a day after Atty. Linco died. The IBP-CBD pointed out that respondent should know that the parties who signed the deed of donation on July 8, 2003, binds only the signatories to the deed and it was not yet a public instrument. Moreover, since the deed of donation was notarized only on July 30, 2003, a day after Atty. Linco died, the acknowledgement portion of the said deed of donation where respondent acknowledged that Atty. Linco "personally came and appeared before me" is false. This act of respondent is also violative of the Attorney's Oath "to obey the laws" and "do no falsehood."

The IBP-CBD, thus, recommended that respondent be suspended from the practice of law for a period of one (1) year, and that his notarial commission be revoked and he be disqualified from re-appointment as notary public for a period of two (2) years.

On April 27, 2006, in Resolution No. XVII-2006-215,[10] the IBP-Board of Governors resolved to adopt and approve the report and recommendation of the IBP-CBD.

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[7] *Id.* at 95.

[8] *Id.* at 95-96.

[9] *Id.* at 105-109.

[10] *Id.* at 104.

Respondent moved for reconsideration, but was denied.[11]

On July 29, 2009, considering respondent's petition for review dated May 19, 2009 of IBP Resolution No. XVII-2006-215 dated April 27, 2006 and IBP Resolution No. XVIII-2008-678 dated December 11, 2008, denying complainant's motion for reconsideration and affirming the assailed resolution, the Court resolved to require complainant to file her comment.[12]

In her Compliance,[13] complainant maintained that respondent has not stated anything new in his motion for reconsideration that would warrant the reversal of the recommendation of the IBP. She maintained that respondent violated the Notarial Law and is unfit to continue being commissioned as notary public; thus, should be sanctioned for his infractions.

On August 16, 2011, in view of the denial of respondent's motion for reconsideration, the Office of the Bar Confidant, Supreme Court, recommended that the instant complaint is now ripe for judicial adjudication.

RULING

The findings and recommendations of the IBP are well taken.

There is no question as to respondent's guilt. The records sufficiently established that Atty. Linco was already dead when respondent notarized the deed of donation on July 30, 2003. Respondent likewise admitted that he knew that Atty. Linco died a day before he notarized the deed of donation. We take note that respondent notarized the document after the lapse of more than 20 days from July 8, 2003, when he was allegedly asked to notarize the deed of donation. The sufficient lapse of time from the time he last saw Atty. Linco should have put him on guard and deterred him from proceeding with the notarization of the deed of donation.

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[11] *Id.* at 155.

[12] *Id.* at 256.

[13] *Id.* at 261-262.

However, respondent chose to ignore the basics of notarial procedure in order to accommodate the alleged need of a colleague. The fact that respondent previously appeared before him in person does not justify his act of notarizing the deed of donation, considering the affiant's absence on the very day the document was notarized. In the notarial acknowledgment of the deed of donation, respondent attested that Atty. Linco personally came and appeared before him on July 30, 2003. Yet obviously, Atty. Linco could not have appeared before him on July 30, 2003, because the latter died on July 29, 2003. Clearly, respondent made a false statement and violated Rule 10.01 of the Code of Professional Responsibility and his oath as a lawyer.

We will reiterate that faithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or jurat is sacrosanct.[14] Respondent should not notarize a document unless the persons who signed the same are the very same persons who executed and **personally appeared before him** to attest to the contents and truth of what are stated therein.[15]

Time and again, we have repeatedly reminded notaries public of the importance attached to the act of notarization. Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document; thus, making that document admissible in evidence without further proof of its authenticity. 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 acknowledgment executed by a notary public and appended to a private instrument.[16]

For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.

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[14] *Follosco v. Atty. Mateo*, 466 Phil. 305, 314 (2004).

[15] *Atty. Dela Cruz v. Atty. Zabala*, 485 Phil. 83, 88 (2004).

[16] *Bernardo v. Atty. Ramos*, 433 Phil. 8, 15-16 (2002).

Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[17] Hence, again, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein.

This responsibility is more pronounced when the notary public is a lawyer. A graver responsibility is placed upon him by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. He is mandated to the sacred duties appertaining to his office, such duties, being dictated by public policy and impressed with public interest.[18] Respondent's failure to perform his duty as a notary public resulted not only in damaging complainant's rights over the property subject of the donation but also in undermining the integrity of a notary public. He should, therefore, be held liable for his acts, not only as a notary public but also as a lawyer.

In *Lanuzo v. Atty. Bongon*,[19] respondent having failed to discharge his duties as a notary public, the revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years and suspension from the practice of law for one year were imposed. We deem it proper to impose the same penalty.

WHEREFORE, for breach of the Notarial Law and Code of Professional Responsibility, the notarial commission of respondent *ATTY. JIMMY D. LACEBAL*, is *REVOKED*. He is *DISQUALIFIED* from reappointment as Notary Public for a period of two years. He is also *SUSPENDED* from the practice of law for a period of one year, effective immediately. He is further *WARNED* that a repetition of the same or similar acts shall be dealt with more severely. He is *DIRECTED* to report the date

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[17] *Id.* at 16.

[18] *Gokioco v. Atty. Mateo*, 484 Phil. 626, 633 (2004).

[19] A.C. No. 6737, September 23, 2008, 566 SCRA 214, 218.

of receipt of this Decision in order to determine when his suspension shall take effect.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts all over the country. Let a copy of this Decision likewise be attached to the personal records of the respondent.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 171660. October 17, 2011]

CONTINENTAL CEMENT CORPORATION, *petitioner, vs.* **ASEA BROWN BOVERI, INC., BBC BROWN BOVERI, CORP., and TORD B. ERIKSON,**[*] *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; WHEN THE PROVISION THEREOF WAS NOT BINDING ON A PARTY.— Respondents contend that under Clause 7 of the General Conditions their liability "does not extend to consequential damages either direct or indirect." This contention, however, is unavailing because respondents failed to show that petitioner was duly furnished with a copy of said General Conditions. Hence, it is not binding on petitioner.

2. ID.; ID.; A PARTY WHO BREACHED THE CONTRACT IS LIABLE FOR DAMAGES.— Having breached the contract

[*] Sometimes referred as Tord B. Eriksson in some parts of the records.

it entered with petitioner, respondent ABB is liable for damages pursuant to Articles 1167, 1170, and 2201 of the Civil Code xxx a repairman who fails to perform his obligation is liable to pay for the cost of the execution of the obligation plus damages. Though entitled, petitioner in this case is not claiming reimbursement for the repair allegedly done by Newton Contractor, but is instead asking for damages for the delay caused by respondent ABB.

3. ID.; ID.; WHERE A PARTY IS ENTITLED TO PENALTIES FOR THE DELAY, THE PENALTIES COVER ALL OTHER DAMAGES.— As per Purchase Order Nos. 17136-37, petitioner is entitled to penalties in the amount of ₱987.25 per day from the time of delay, August 30, 1990, up to the time the Kiln Drive Motor was finally returned to petitioner. Records show that although the testing of Kiln Drive Motor was done on March 13, 1991, the said motor was actually delivered to petitioner as early as January 7, 1991. The installation and testing was done only on March 13, 1991 upon the request of petitioner because the Kiln was under repair at the time the motor was delivered; hence, the load testing had to be postponed. Under Article 1226 of the Civil Code, the penalty clause takes the place of indemnity for damages and the payment of interests in case of non-compliance with the obligation, unless there is a stipulation to the contrary. In this case, since there is no stipulation to the contrary, the penalty in the amount of ₱987.25 per day of delay covers all other damages (*i.e.* production loss, labor cost, and rental of the crane) claimed by petitioner.

4. ID.; ID.; ID.; AN OFFICER OF THE CORPORATION CANNOT BE MADE PERSONALLY LIABLE FOR PENALTIES.— Respondent Eriksson, however, cannot be made jointly and severally liable for the penalties. There is no showing that respondent Eriksson directed or participated in the repair of the Kiln Drive Motor or that he is guilty of bad faith or gross negligence in directing the affairs of respondent ABB. It is a basic principle that a corporation has a personality separate and distinct from the persons composing or representing it; hence, personal liability attaches only in exceptional cases, such as when the director, trustee, or officer is guilty of bad faith or gross negligence in directing the affairs of the corporation.

APPEARANCES OF COUNSEL

Britanico Sarmiento & Franco Law Offices for petitioner.
Sigioun Reyna Montecillo & Ongsiako for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages."[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the Decision[3] dated August 25, 2005 and the Resolution[4] dated February 16, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 58551.

Factual Antecedents

Sometime in July 1990, petitioner Continental Cement Corporation (CCC), a corporation engaged in the business of producing cement,[5] obtained the services of respondents[6] Asea Brown Boveri, Inc. (ABB) and BBC Brown Boveri, Corp. to repair its 160 KW Kiln DC Drive Motor (Kiln Drive Motor).[7]

On October 23, 1991, due to the repeated failure of respondents to repair the Kiln Drive Motor, petitioner filed with Branch

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[1] CIVIL CODE, Article 2199.

[2] *Rollo,* pp. 30-166 with Annexes "A" to "M" inclusive.

[3] *Id.* at 54-64; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr.

[4] *Id.* at 66-67.

[5] *Id.* at 30.

[6] The two corporations merged on June 10, 1988, with Asea Brown Boveri, Inc. as the surviving entity. (*Id.* at 88).

[7] *Id.* at 55.

101 of the Regional Trial Court (RTC) of Quezon City a Complaint[8] for sum of money and damages, docketed as Civil Case No. Q-91-10419, against respondent corporations and respondent Tord B. Eriksson (Eriksson), Vice-President of the Service Division of the respondent ABB.[9] Petitioner alleged that:

4. On July 11, 1990, the plaintiff delivered the 160 KW Kiln DC Drive Motor to the defendants to be repaired under PO No. 17136-17137, x x x

The defendant, Tord B. Eriksson, was personally directing the repair of the said Kiln Drive Motor. He has direction and control of the business of the defendant corporations. Apparently, the defendant Asea Brown Boveri, Inc. has no separate personality because of the 4,000 shares of stock, 3996 shares were subscribed by Honorio Poblador, Jr. The four other stockholders subscribed for one share of stock each only.

5. After the first repair by the defendants, the 160 KW Kiln Drive Motor was installed for testing on October 3, 1990. On October 4, 1990 the test failed. The plaintiff removed the DC Drive Motor and replaced it with its old motor. It was only on October 9, 1990 that the plaintiff resumed operation. The plaintiff lost 1,040 MTD per day from October 5 to October 9, 1990.

6. On November 14, 1990, after the defendants had undertaken the second repair of the motor in question, it was installed in the kiln. The test failed again. The plaintiff resumed operation with its old motor on November 19, 1990. The plaintiff suffered production losses for five days at the rate of 1,040 MTD daily.

7. The defendants were given a third chance to repair the 160 KW Kiln DC Drive Motor. On March 13, 1991, the motor was installed and tested. Again, the test failed. The plaintiff resumed operation on March 15, 1991. The plaintiff sustained production losses at the rate of 1,040 MTD for two days.

8. As a consequence of the failure of the defendants to comply with their contractual obligation to repair the 160 KW Kiln DC Drive Motor, the plaintiff sustained the following losses:

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[8] *Id.* at 79-81.

[9] *Id.* at 90.

(a)	Production and opportunity losses -	₱10,600,000.00

This amount represents only about 25% of the production losses at the rate of ₱72.00 per bag of cement.

(b)	Labor Cost and Rental of Crane -	26,965.78
(c)	Penalties (at ₱987.25 a day) for failure to deliver the motor from Aug. 29, 1990 to July 31, 1991. -	331,716.00
(d)	Cost of money interest of the ₱987.25 a day from July 18, 1990 to April 5, 1991 at 34% for 261 days -	24,335.59
	Total Damages	10,983,017.42

9. The plaintiff has made several demands on the defendants for the payment of the above-enumerated damages, but the latter refused to do so without valid justification.

10. The plaintiff was constrained to file this action and has undertaken to pay its counsel Twenty Percentum (20%) of the amount sought to be recovered as attorney's fees.[10]

Respondents, however, claimed that under Clause 7 of the General Conditions,[11] attached to the letter of offer[12] dated July

[10] *Id.* at 79-81.

[11] *Id.* at 95. Clause 7 provides:

Clause 7. GENERAL LIABILITY AND MAINTENANCE GUARANTEE

All machinery and apparatus for our manufacture is guaranteed to be of high grade material and of good and careful workmanship and we undertake to correct and make good any defect or defects which may develop under normal and proper use within the guarantee period and which are due solely to faulty design, material, or workmanship, provided always that we are notified immediately after the defect is discovered and that such defective parts are promptly returned. The repaired or new parts will be delivered free or in the case of goods for exports f.o.b. Defective parts thus replaced remain our property. Unless otherwise stated in the tender or order confirmation the guarantee period is twelve months for all ordinary machinery and apparatus operated under normal conditions. The guarantee period is reckoned from the date delivery is made, or if delivery cannot be made on account of delays caused by circumstances beyond our control, from the date the goods are ready for dispatch at our premises. All liability on our part ceases at the termination of the guarantee period.

4, 1990 issued by respondent ABB to petitioner, the liability of respondent ABB "does not extend to consequential damages either direct or indirect."[13] Moreover, as to respondent Eriksson, there is no lawful and tenable reason for petitioner to sue him in his personal capacity because he did not personally direct the repair of the Kiln Drive Motor.[14]

Ruling of the Regional Trial Court

On August 30, 1995, the RTC rendered a Decision[15] in favor of petitioner. The RTC rejected the defense of limited liability interposed by respondents since they failed to prove that petitioner received a copy of the General Conditions.[16] Consequently, the RTC granted petitioner's claims for production loss, labor cost and rental of crane, and attorney's fees.[17] Thus:

> WHEREFORE, premises above considered, finding the complaint substantiated by plaintiff, judgment is hereby rendered in favor of plaintiff and against defendants, hereby ordering the latter to pay jointly and severally the former, the following sums:
>
> ₱10,600,00.00 for loss of production;
>
> ₱ 26,965.78 labor cost and rental of crane;
>
> ₱ 100,000.00 attorney's fees and cost.
>
> SO ORDERED.[18]

Ruling of the Court of Appeals

On appeal, the CA reversed the ruling of the RTC. The CA applied the exculpatory clause in the General Conditions and

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Our liability is in all cases limited as provided in these conditions and does not extend to consequential loss either direct or indirect, nor to expenses for repair or replacements or otherwise paid or incurred without our written authority.

[12] *Id.* at 93-94.

[13] *Id.* at 95.

[14] *Id.* at 90-91.

[15] *Id.* at 97-107; penned by Judge Pedro T. Santiago.

[16] *Id.* at 106.

[17] *Id.*

[18] *Id.*

ruled that there is no implied warranty on repair work; thus, the repairman cannot be made to pay for loss of production as a result of the unsuccessful repair.[19] The *fallo* of the CA Decision[20] reads:

> WHEREFORE, premises considered, the assailed August 30, 1995 Decision of the Regional Trial Court of Quezon City, Branch 101 is hereby **REVERSED and SET ASIDE.** The October 23, 1991 Complaint is hereby **DISMISSED.**
>
> SO ORDERED.[21]

Petitioner moved for reconsideration[22] but the CA denied the same in its Resolution[23] dated February 16, 2006.

Issues

Hence, the present recourse where petitioner interposes the following issues:

1. Whether x x x the [CA] gravely erred in applying the terms of the "General Conditions" of Purchase Orders Nos. 17136 and 17137 to exculpate the respondents x x x from liability in this case.
2. Whether x x x the [CA] seriously erred in applying the concepts of 'implied warranty' and 'warranty against hidden defects' of the New Civil Code in order to exculpate the respondents x x x from its contractual obligation.[24]

Petitioner's Arguments

Petitioner reiterates that the General Conditions cannot exculpate respondents because petitioner never agreed to be bound by it nor did petitioner receive a copy of it.[25] Petitioner also

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[19] *Id.* at 59-63.

[20] *Id.* at 54-64

[21] *Id.* at 63.

[22] *Id.* at 68-78.

[23] *Id.* at 66-67.

[24] *Id.* at 276.

[25] *Id.* at 277-279.

imputes error on the part of the CA in applying the concepts of warranty against hidden defects and implied warranty.[26] Petitioner contends that these concepts are not applicable because the instant case does not involve a contract of sale.[27] What applies are Articles 1170 and 2201 of the Civil Code.[28]

Respondents' Arguments

Conversely, respondents insist that petitioner is bound by the General Conditions.[29] By issuing Purchase Order Nos. 17136-37, petitioner in effect accepted the General Conditions appended to respondent ABB's letter of offer.[30] Respondents likewise defend the ruling of the CA that there could be no implied warranty on the repair made by respondent ABB as the warranty of the fitness of the equipment should be enforced directly against the manufacturer of the Kiln Drive Motor.[31] Respondents also deny liability for damages claiming that they performed their obligation in good faith.[32]

Our Ruling

The petition has merit.

Petitioner and respondent ABB entered into a contract for the repair of petitioner's Kiln Drive Motor, evidenced by Purchase Order Nos. 17136-37,[33] with the following terms and conditions:

a) Total Price: ₱197,450.00

b) Delivery Date: August 29, 1990 or six (6) weeks from receipt of order and down payment[34]

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[26] *Id.* at 279.

[27] *Id.*

[28] *Id.* at 280-282.

[29] *Id.* at 248.

[30] *Id.*

[31] *Id.* at 255.

[32] *Id.* at 259.

[33] *Id.* at 82-83.

[34] Down payment was made on July 18, 1990; TSN dated July 27, 1994, Direct Examination of Jessica Alonzo, p. 12.

c) Penalty: One half of one percent of the total cost or Nine Hundred Eighty Seven Pesos and Twenty five centavos (₱987.25) per day of delay.

Respondent ABB, however, not only incurred delay in performing its obligation but likewise failed to repair the Kiln Drive Motor; thus, prompting petitioner to sue for damages.

Clause 7 of the General Conditions is not binding on petitioner

Respondents contend that under Clause 7 of the General Conditions their liability "does not extend to consequential damages either direct or indirect."[35] This contention, however, is unavailing because respondents failed to show that petitioner was duly furnished with a copy of said General Conditions. Hence, it is not binding on petitioner.

Having breached the contract it entered with petitioner, respondent ABB is liable for damages pursuant to Articles 1167, 1170, and 2201 of the Civil Code, which state:

Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone.

Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

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[35] *Rollo,* p. 89.

Based on the foregoing, a repairman who fails to perform his obligation is liable to pay for the cost of the execution of the obligation plus damages. Though entitled, petitioner in this case is not claiming reimbursement for the repair allegedly done by Newton Contractor,[36] but is instead asking for damages for the delay caused by respondent ABB.

Petitioner is entitled to penalties under Purchase Order Nos. 17136-37

As per Purchase Order Nos. 17136-37, petitioner is entitled to penalties in the amount of ₱987.25 per day from the time of delay, August 30, 1990, up to the time the Kiln Drive Motor was finally returned to petitioner. Records show that although the testing of Kiln Drive Motor was done on March 13, 1991, the said motor was actually delivered to petitioner as early as January 7, 1991.[37] The installation and testing was done only on March 13, 1991 upon the request of petitioner because the Kiln was under repair at the time the motor was delivered; hence, the load testing had to be postponed.[38]

Under Article 1226[39] of the Civil Code, the penalty clause takes the place of indemnity for damages and the payment of interests in case of non-compliance with the obligation, unless there is a stipulation to the contrary. In this case, since there is no stipulation to the contrary, the penalty in the amount of ₱987.25 per day of delay covers all other damages (*i.e.* production loss, labor cost, and rental of the crane) claimed by petitioner.

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[36] TSN dated June 15, 1994, Direct Examination of Engr. Juanito Fernando, p. 9.

[37] Records, p. 391.

[38] *Id.*

[39] Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

Petitioner is not entitled to recover production loss, labor cost and the rental of crane

Article 1226 of the Civil Code further provides that if the obligor refuses to pay the penalty, such as in the instant case,[40] damages and interests may still be recovered on top of the penalty. Damages claimed must be the natural and probable consequences of the breach, which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.[41]

Thus, in addition to the penalties, petitioner seeks to recover as damages production loss, labor cost and the rental of the crane.

Petitioner avers that every time the Kiln Drive Motor is tested, petitioner had to rent a crane and pay for labor to install the motor.[42] But except for the Summary of Claims for Damages,[43] no other evidence was presented by petitioner to show that it had indeed rented a crane or that it incurred labor cost to install the motor.

Petitioner likewise claims that as a result of the delay in the repair of the Kiln Drive Motor, its production from August 29, 1990 to March 15, 1991 decreased since it had to use its old motor which was not able to produce cement as much as the one under repair;[44] and that every time the said motor was installed and tested, petitioner had to stop its operations; thereby, incurring more production losses.[45] To support its claim, petitioner presented

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The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

[40] *Rollo*, pp. 81 and 88.

[41] Civil Code, Article 1174.

[42] TSN dated July 27, 1994, Direct Examination of Jessica Alonzo, p. 9.

[43] Records, p. 343.

[44] TSN dated July 27, 1994, Direct Examination of Jessica Alonzo, pp.4-11.

[45] *Id*.

its monthly production reports[46] for the months of April to June 1990 showing that on the average it was able to produce 1040 MT of cement per day. However, the production reports for the months of August 1990 to March 1991 were not presented. Without these production reports, it cannot be determined with reasonable certainty whether petitioner indeed incurred production losses during the said period. It may not be amiss to say that competent proof and a reasonable degree of certainty are needed to justify a grant of actual or compensatory damages; speculations, conjectures, assertions or guesswork are not sufficient.[47]

Besides, consequential damages, such as loss of profits on account of delay or failure of delivery, may be recovered only if such damages were reasonably foreseen or have been brought within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting.[48] Considering the nature of the obligation in the instant case, respondent ABB, at the time it agreed to repair petitioner's Kiln Drive Motor, could not have reasonably foreseen that it would be made liable for production loss, labor cost and rental of the crane in case it fails to repair the motor or incurs delay in delivering the same, especially since the motor under repair was a spare motor.[49]

For the foregoing reasons, petitioner is not entitled to recover production loss, labor cost and the rental of the crane.

Petitioner is not entitled to attorney's fees

Neither is petitioner entitled to the award of attorney's fees. Jurisprudence requires that the factual basis for the award of attorney's fees must be set forth in the body of the decision and

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[46] Records, pp. 340-342.

[47] *Citytrust Banking Corporation v. Villanueva*, 413 Phil. 776, 787 (2001).

[48] *Mendoza v. Philippine Air Lines, Inc.*, 90 Phil. 836, 844 (1952), citing *Chapman v. Fargo*, L.R.A. (1918 F) p. 1049.

[49] TSN dated June 15, 1994, Direct Examination of Engr. Juanito Fernando, pp. 4-5.

not in the dispositive portion only.[50] In this case, no explanation was given by the RTC in awarding attorney's fees in favor of petitioner. In fact, the award of attorney's fees was mentioned only in the dispositive portion of the decision.

Respondent Eriksson cannot be made jointly and severally liable for the penalties

Respondent Eriksson, however, cannot be made jointly and severally liable for the penalties. There is no showing that respondent Eriksson directed or participated in the repair of the Kiln Drive Motor or that he is guilty of bad faith or gross negligence in directing the affairs of respondent ABB. It is a basic principle that a corporation has a personality separate and distinct from the persons composing or representing it; hence, personal liability attaches only in exceptional cases, such as when the director, trustee, or officer is guilty of bad faith or gross negligence in directing the affairs of the corporation.[51]

In sum, we find petitioner entitled to penalties in the amount of ₱987.25 per day from August 30, 1990 up to January 7, 1991 (131 days) or a total amount of ₱129,329.75 for the delay caused by respondent ABB. Finally, we impose interest at the rate of six percent (6%) on the total amount due from the date of filing of the complaint until finality of this Decision. However, from the finality of judgment until full payment of the total award, the interest rate of twelve percent (12%) shall apply.[52]

WHEREFORE, the petition is hereby *GRANTED*. The assailed Decision dated August 25, 2005 and the Resolution dated February 16, 2006 of the Court of Appeals in CA-G.R.

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[50] *Mercury Drug Corporation v. Baking*, G.R. No. 156037, May 25, 2007, 523 SCRA 184, 192.

[51] *Queensland-Tokyo Commodities, Inc. v. George*, G.R. No. 172727, September 8, 2010, 630 SCRA 304, 315.

[52] *Duarte v. Duran*, G.R. No. 173038, September 14, 2011, citing *Tropical Homes, Inc. v. Court of Appeals*, 338 Phil. 930, 943-943 (1997), and *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

CV No. 58551 are hereby *REVERSED* and *SET ASIDE*. Respondent ABB is *ORDERED* to pay petitioner the amount of ₱129,329.75, with interest at 6% per annum to be computed from the date of the filing of the complaint until finality of this Decision and 12% per annum thereafter until full payment.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Peralta,[**] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 181861. October 17, 2011]

RAUL DAVID, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. 9165); ELEMENTS OF ILLEGAL POSSESSION OF DRUGS; PROVEN.— For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug. Based on the evidence presented by the prosecution, it was proven that all the elements for illegal possession of dangerous drugs are present in this case. PO3 Mario Flores, during the search in the house of petitioner, found six (6) sachets

[**] In lieu of Associate Justice Lucas P. Bersamin, per Special Order No. 1110 (Revised) dated September 30, 2011.

of *marijuana* and three (3) sachets of *shabu,* both classified as dangerous drugs under the pertinent law, on top of a padlocked cabinet underneath the stairs.

2. ID.; ID.; ID.; TESTIMONIES OF POLICE OFFICERS, GIVEN CREDENCE.— It is a settled rule 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. It must be emphasized that their testimonies in open court are considered in line with the presumption that law enforcement officers have performed their duties in a regular manner. In the absence of proof of motive to impute falsely a crime as serious as violation of the Comprehensive Dangerous Drugs Act, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of the prosecution witnesses, shall prevail over petitioner's self-serving and uncorroborated denial.

3. ID.; ID.; ID.; DEFENSES OF DENIAL AND FRAME-UP, NOT PROVEN.— Petitioner further contends that the testimonies of the defense witnesses were not considered; otherwise, it would have been proven that the dangerous drugs found on top of the *aparador* were planted. It must be remembered that the defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Dangerous Drugs Act. In this case, petitioner was not able to present any concrete or strong evidence that would support his allegation that he was the victim of a frame-up aside from his insinuation that had the trial court considered the testimonies of the witnesses he presented, the same court could have inferred the presence of a set-up or the planting of evidence on the part of the police operatives. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.

4. ID.; ID.; STRICT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF R.A. 9165 IS NOT REQUIRED IF THERE IS A CLEAR SHOWING THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS HAVE BEEN PRESERVED.— [I]t is

apparent from the above disquisition that the integrity and evidentiary value of the items seized were well-preserved. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as it would be utilized in the determination of the guilt or innocence of the accused. Anyway, this Court has consistently ruled that non-compliance with the requirements of Section 21 of R.A. No. 9165 will not necessarily render the items seized or confiscated in a buy-bust operation inadmissible. Strict compliance with the letter of Section 21 is not required if there is a clear showing that the integrity and the evidentiary value of the seized items have been preserved, *i.e.*, the items being offered in court as exhibits are, without a specter of doubt, the very same ones recovered in the buy-bust operation. Hence, once the possibility of substitution has been negated by evidence of an unbroken and cohesive chain of custody over the contraband, such contraband may be admitted and stand as proof of the *corpus delicti* notwithstanding the fact that it was never made the subject of an inventory or was photographed pursuant to Section 21(1) of Republic Act No. 9165.

5. ID.; ID.; THE DISTINCTION BETWEEN REGULATED AND PROHIBITED DRUGS HAS BEEN REMOVED AND BOTH ARE NOW CLASSIFIED AS DANGEROUS DRUGS.— Before the enactment of R.A. 9165, the governing law on dangerous drugs was R.A. 6425, which differentiated regulated drugs from prohibited drugs. It laid down different provisions for possession of regulated and prohibited drugs. Under R.A. 9165, the distinction between regulated and prohibited drugs has been removed and both are now classified as dangerous drugs. The eradication of such distinction was the real intention of the legislators.

6. ID.; ID.; ACCUSED MAY BE CONVICTED ONLY OF SINGLE OFFENSE OF POSSESSION OF DANGEROUS DRUGS IF HE WAS CAUGHT IN POSSESSION OF DIFFERENT KINDS OF DANGEROUS DRUGS IN ONE OCCASION.— In the present case, petitioner was charged under two Informations, one for illegal possession of six (6) plastic heat-sealed sachets containing dried *marijuana* leaves weighing more or less 3.865 grams and the other for illegal possession of three (3) plastic heat-sealed sachets containing *shabu* weighing more or less 0.327 gram. Under Section 11

of R.A. 9165, the corresponding penalty for each charge, based on the weight of the dangerous drugs confiscated, is imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of three hundred thousand pesos (₱300,000.00). The trial court imposed a single penalty of imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of three hundred thousand pesos (₱300,000.00), while the CA modified it by imposing the corresponding penalty for each charge. Absent any clear interpretation as to the application of the penalties in cases such as the present one, this Court shall construe it in favor of the petitioner for the subject provision is penal in nature. It is a well-known rule of legal hermeneutics that penal or criminal laws are strictly construed against the state and liberally in favor of the accused. Thus, an accused may only be convicted of a single offense of possession of dangerous drugs if he or she was caught in possession of different kinds of dangerous drugs in a single occasion. If convicted, the higher penalty shall be imposed, which is still lighter if the accused is convicted of two (2) offenses having two (2) separate penalties. This interpretation is more in keeping with the intention of the legislators as well as more favorable to the accused.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure dated April 11, 2008 of petitioner Raul David, assailing the Decision[2]

[1] *Rollo,* pp. 11-129.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring; *rollo*, pp. 94-109.

dated August 31, 2007 and Resolution[3] dated February 20, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 29746, affirming the Decision[4] dated April 27, 2005 of the Regional Trial Court, Branch 66, Capas, Tarlac in Criminal Cases No. 1811-1812, finding petitioner Raul David, guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) 9165.

As shown in the records, the following are the antecedent facts:

After receiving an information from a certain Victor Garcia that a person was selling illegal drugs at L. Cortez St., Brgy. San Jose, Concepcion, Tarlac, the Intelligence Operatives of the Concepcion Police Station, Concepcion, Tarlac, conducted a surveillance on the place from May 25, 2003 until June 23, 2003 when they applied for a search warrant which was granted on the same day. Before implementing the search warrant, the police officers conducted another surveillance from June 23 to June 24, 2003 during which, it was observed that several students were going inside the petitioner's house. It was also during that time that the poseur-buyer was able to buy *shabu* (methamphetamine hydrochloride) from the petitioner.

On June 29, 2003, around 1:00 p.m., the search team composed of PO3 Mario Flores, PO2 Henry Balabat, SPO1 Rustico Basco and PO1 Roger Paras, implemented the search warrant with the presence of *Barangay* Captain Antonio Canono. The search team, before conducting the search, sought permission from the petitioner. The two-storey house had two rooms — one downstairs and the other one upstairs. According to petitioner, the room downstairs was occupied by his brother, Rael David, who was not present during the search, and the room upstairs was occupied by the former.

PO3 Flores found six (6) sachets of *marijuana* and three (3) plastic sachets of substance suspected to be *shabu* on top of a padlocked cabinet underneath the stairs. During that time, appellant was around two (2) meters away in the sala.

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[3] *Id.* at 128-129.

[4] *Id.* at 61-68.

Thereafter, the police operatives took pictures of the items searched and the *barangay* captain signed a certificate of good search. The confiscated items were then turned over to Investigator Simplicio Cunanan of the Concepcion Police Station for investigation.

It was revealed in Chemistry Report No. D-143-2003[5] of Police Inspector Jessica R. Quilang that the specimens in the three (3) heat-sealed transparent plastic sachets with "RB-A," "RB-B," and "RB-C" markings were positive for 0.327 gram of *shabu*, a dangerous drug, while the specimen in the six (6) heat-sealed plastic sachets with markings "RB-1" up to "RB-6" were positive for 3.865 grams of *marijuana*.

Thus, appellant was charged in the following Informations:

Criminal Case No. 1811

That on or about 1:00 o'clock in the afternoon of 29 June 2003, at Brgy. San Jose, [M]unicipality of Concepcion, [P]rovince of Tarlac, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and criminally possessed Six (6) plastic heat-sealed sachets containing dried *marijuana* leaves weighing more or less 3.865 gram[s] without being authorized by law.

CONTRARY TO LAW.[6]

Criminal Case No. 1812

That on or about 1:00 o'clock in the afternoon of 29 June 2003, at Brgy. San Jose, [M]unicipality of Concepcion, [P]rovince of Tarlac, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and criminally possessed three (3) plastic heat-sealed sachets containing [METHAMPHETAMINE] HYDROCHLORIDE, better known as *Shabu*, weighing more or less 0.327 gram without being authorized by law.

CONTRARY TO LAW.[7]

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[5] Exhibit "C" for the prosecution, records, Vol. II.

[6] Records, Vol. I, p. 1.

[7] *Id.* at 2.

Upon arraignment on August 4, 2003, petitioner, assisted by his counsel, pleaded "not guilty" on both charges.[8] The trial on the merits ensued, where the facts earlier stated were testified to by the witnesses for the prosecution, namely: PO3 Mario Flores, SPO1 Rustico Basco and Officer Jessica Quilang. On the other hand, the defense presented the testimonies of the petitioner; his brother, Rael David, and his sister-in-law, Lilibeth David, the summary of which follows:

Police operatives arrived at the house of the petitioner in the afternoon of June 29, 2003. PO3 Flores grabbed the petitioner and pulled him through his clothes and announced their authority to search. This prompted the petitioner's sister-in-law, Lilibeth David, to get out of the room in order to prevent the said policeman from grabbing the petitioner. To avoid any implantation of evidence, petitioner took off his shirt. Lilibeth David summoned the *barangay* captain, afterwhich, policemen Basco, Flores and Paras conducted the search which lasted for about thirty (30) minutes, while the other police officer stayed outside with the *barangay* captain.

Police officers Basco and Paras searched the ground floor first and found nothing. Thereafter, police officer Flores allegedly saw *marijuana* on top of a cabinet inside the room downstairs. Upon the discovery, the item was photographed. Afterwards, petitioner was asked about the whereabouts of the *shabu*. At the time of the search, petitioner's brother, Rael David, was not present. Consequently, petitioner was taken to the police station for custodial investigation and during the interrogation, he was not informed of his right to counsel.

The trial court found the petitioner guilty in its Decision dated April 27, 2005, the dispositive portion of which follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crimes of Possession of 3.865 grams of *Marijuana* and 0.327 gram of [methamphetamine] hydrochloride (*shabu*), accused is hereby sentenced to suffer the indeterminate penalties of Twelve (12) years

[8] *Id.* at 11.

& one day, as minimum, to Fourteen years, as maximum, and to pay a fine of Three Hundred Thousand Pesos.

SO ORDERED.[9]

On appeal, the CA affirmed the conviction with modifications, the dispositive portion of its Decision dated August 31, 2007 reads as follows:

WHEREFORE, the Decision of the Regional Trial Court of Capas, Tarlac, Branch 66 in Criminal Cases No. 1811-1812, finding accused-appellant Raul David *y* Erese, GUILTY beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165 is hereby AFFIRMED with the following MODIFICATIONS:

1) In Criminal Case No. 1811 for illegal possession of *marijuana*, he is sentenced to suffer the penalty of Twelve (12) Years and One (1) day, as minimum, to Fourteen (14) Years, as maximum, and to pay a fine of THREE HUNDRED THOUSAND PESOS (₱300,000.00);

2) In Criminal Case No. 1812 for illegal possession of *shabu*, he is sentenced to suffer the penalty of Twelve (12) Years and One (1) day, as minimum, to Fourteen (14) Years, as maximum, and to pay a fine of THREE HUNDRED THOUSAND PESOS (₱300,000.00).

Costs *de oficio*.

SO ORDERED.[10]

The CA, in its Resolution[11] dated February 20, 2008, denied appellant's Motion for Reconsideration,[12] hence, the present petition where the appellant presented the following issues:

GROUND FOR THE ALLOWANCE OF THE PETITION

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING WITH MODIFICATION THE PETITIONER'S CONVICTION. THE

[9] *Rollo*, p. 68.

[10] *Id.* at 108.

[11] *Supra* note 3.

[12] *Rollo*, pp. 110-118.

ASSAILED DECISION IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE, AND IF NOT CORRECTED, IT WILL CAUSE GRAVE INJUSTICE AND [IRREPARABLE] INJURY TO HEREIN PETITIONER.

ISSUES PRESENTED FOR RESOLUTION

I

WHETHER THE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

WHETHER THE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THAT THE DANGEROUS DRUGS SUBMITTED FOR LABORATORY EXAMINATION AND PRESENTED AS EVIDENCE BEFORE THE TRIAL COURT WERE THE SAME ONES ALLEGEDLY SEIZED.

III

WHETHER THE COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE TRIAL COURT WHICH FOUND THE PETITIONER GUILTY OF A SINGLE CHARGE OF VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

The petition lacks merit.

The arguments presented in the petition are purely factual. This is contrary to what is allowed by law when filing a petition under Rule 45 of the Rules of Court.[13] Nevertheless, this Court, upon review of the records of this case, finds that the trial court and the CA's findings of facts should be accorded respect.

For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession

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

of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug.[14]

Based on the evidence presented by the prosecution, it was proven that all the elements for illegal possession of dangerous drugs are present in this case. PO3 Mario Flores, during the search in the house of petitioner, found six (6) sachets of *marijuana* and three (3) sachets of *shabu*, both classified as dangerous drugs under the pertinent law, on top of a padlocked cabinet underneath the stairs. Thus, PO3 Flores testified:

Q: According to you, you were able to discover or find six (6) teabags of *marijuana*, where did you see these teabags?
A: On top of their *aparador*, sir.

Q: And where is that *aparador* situated?
A: Underneath the stairs, sir.

Q: And according to you also, you found three (3) plastic bags of *shabu*, where did you discover these three (3) plastic sachets?
A: Also on top of the *aparador,* sir.

Q: The same *aparador* where you discovered the six (6) teabags of *marijuana*?
A: Yes, sir.[15]

The above testimony was corroborated by SPO1 Rustico Basco, who said:

Q: Upon entering the house, what did you do there?
A: Because we were already allowed by Lilibeth David to conduct the search, we started doing so, sir.

Q: By the way, who among your companions, or who among you in the group, actually entered the house?
A: Myself, PO3 Mario Flores and PO1 Roger Paras, sir.

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[14] *Dolera v. People,* G.R. No. 180693, September 4, 2009, 598 SCRA 484, 492, citing *People v. Tiu Won Chua*, 453 Phil. 177, 186 (2003).

[15] TSN, September 22, 2003, pp. 12-13.

COURT:

Q: At the time, where was the Barangay Captain?
A: He was then inside the house, you Honor, but he did not conduct the search.

Q: Who personally, what part of the house did he search?
A: I went upstairs, sir.

Q: How about your companions Flores and Paras?
A: PO3 Flores conducted the search downstairs, while PO1 Paras was with me, sir.

COURT:

Q: At the time when you were upstairs, where was Raul David?

WITNESS:

A: He was downstairs, your Honor, seated on the sofa beside Lilibeth.

Q: How about the wife of Raul David?
A: The wife was near the stairs, your Honor.

Q: When you entered the elevated room, who were your companions?
A: PO1 Roger Paras and Lilibeth David were the ones who went with me when I conducted the search upstairs since the room is only small.

FISCAL Llobrera:

Q: What happened to your search?
A: PO3 Mario Flores was able to find six sachet(s) of *marijuana*, three sachet(s) of *shabu*.

Q: Items were discovered by whom?
A: By Officer Flores and PO1 Paras, sir.[16]

However, petitioner questions the credibility of the witnesses for the prosecution. He argues that the testimony of PO3 Flores that he found six (6) teabags of *marijuana* and three (3) sachets of *shabu* remains uncorroborated as SPO1 Basco testified that he did not see PO3 Flores when the latter discovered the said dangerous drugs. Even so, this does not diminish the fact that

[16] TSN, July 14, 2005, pp. 5-6.

dangerous drugs were found during the search of the house. The Office of the Solicitor General (OSG), in its Comment[17] dated October 16, 2008, was correct in pointing out that during the operation, it is not incredible that only one of the operatives found the dangerous drugs because they were scattered throughout the house. The OSG stated:

> x x x The fact that PO3 Flores was the only one who discovered the illegal substances is not incredible. It must be considered that during the operation, the police operatives scattered themselves throughout the house in order to conduct the search. SPO1 Basco searched the upper room, while PO3 Flores searched the lower portion of the house. Noteworthy, the testimonies of SPO1 Basco and PO3 Flores jibed on material points, particularly on the illegal objects seized. SPO1 Basco corroborated PO3 Flores' testimony that he found six (6) sachets of *marijuana* and three sachets of *shabu* during the search. x x x[18]

Petitioner also claims that the prior surveillance before the issuance of a search warrant was not clearly established by the testimonies of the witnesses. He insists that SPO1 Basco testified that a surveillance was conducted by PO3 Flores and PO1 Joel Canlas from May 25, 2003 to June 24, 2003, but PO3 Flores denied having participated in the surveillance and pointed to PO1 Canlas as the one who conducted the surveillance. According to petitioner, such inconsistency in the testimony is damaging. This Court finds no significance in the said inconsistency as it is merely minor. What is important is that they were able to establish through their testimonies that a surveillance indeed took place before and even after the issuance of the search warrant. PO3 Flores testified during clarifications from the court that:

> COURT:
>
> Some questions from the court.
>
> Q: Prior to the application of search warrant, was there any surveillance conducted by your office?

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[17] *Rollo*, pp. 141-168.

[18] *Id.* at 155.

A: Yes, your Honor.

Q: Who conducted that surveillance?
A: PO1 Canlas, your Honor.

Q: Why did you still conduct surveillance after issuing the search warrant?
A: To collate concrete evidence against the suspects, sir.

COURT:

Q: Why? Are you not sure when you applied for search warrant that Raul and Rael were not in possession of the dangerous drugs?
A: We were certain, your Honor; however, we were afraid that the *shabu* and the *marijuana* in their possession had already been consumed that is why we waited for some more time, your Honor.[19]

Although the same witness above confirmed that he was not involved in the surveillance conducted prior to the issuance of the search warrant, he testified that he was involved in the surveillance *after* the issuance of the same search warrant, thus:

FISCAL LLOBRERA

Q: Officer, upon obtaining that search warrant, what did you do, if any?
A: We informed our Chief of Police that our application for the issuance of a search warrant was already approved, sir.

Q: After making that report, what else happened?
A: We ordered that a surveillance be conducted, sir.

Q: Do you know if that surveillance [was] actually conducted?
A: Not yet, sir.

Q: What actually finally – was there any surveillance made?
A: Yes, sir, we were the ones who conducted the surveillance, sir.[20]

xxx xxx xxx

ATTY. GARCIA

Q: How many times did you conduct surveillance?
A: Two (2) times, sir.

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[19] TSN, September 22, 2003, pp. 32-33, records, Vol. III.

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

Q: Can you tell us the specific date?
A: June 23 and 24, sir.

Q: And in your surveillance on June 23 and 24, you were able to see young students going to the house of the accused in buying dangerous drugs?
A: It was on June 24 when I saw students going there, sir.

Q: At that time, you did not have (sic) in possession of the search warrant?
A: We were already equipped or armed with the search warrant, sir.[21]

It is a settled rule 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.[22] It must be emphasized that their testimonies in open court are considered in line with the presumption that law enforcement officers have performed their duties in a regular manner.[23] In the absence of proof of motive to impute falsely a crime as serious as violation of the Comprehensive Dangerous Drugs Act, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of the prosecution witnesses, shall prevail over petitioner's self-serving and uncorroborated denial.[24] Moreover, the factual findings of the trial court, when affirmed by the Court of Appeals, are conclusive and binding on this Court.[25]

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[21] *Id.* at 22-23.

[22] *People v. Fabian*, G.R. No. 181040, March 15, 2010, 615 SCRA 432, 443, citing *People v. Navarro*, G.R. No. 173790, October 11, 2007, 535 SCRA 644, 649, citing *People v. Saludes*, G.R. No. 144157, June 10, 2003, 403 SCRA 590, 595-596.

[23] *Id.* at 444.

[24] *Id.* at 444-445.

[25] *Id.* at 443, citing *People v. Mateo*, G.R. No. 179478, July 28, 2008, 560 SCRA 397, 413; See *Teodosio v. Court of Appeals*, G.R. No. 124346, June 8, 2004, 431 SCRA 194, 203 and *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 546-547.

Petitioner further contends that the testimonies of the defense witnesses were not considered; otherwise, it would have been proven that the dangerous drugs found on top of the *aparador* were planted. It must be remembered that the defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Dangerous Drugs Act.[26] In this case, petitioner was not able to present any concrete or strong evidence that would support his allegation that he was the victim of a frame-up aside from his insinuation that had the trial court considered the testimonies of the witnesses he presented, the same court could have inferred the presence of a set-up or the planting of evidence on the part of the police operatives. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.[27]

In claiming that the identity of the drugs subject of the charges was not proven beyond reasonable doubt, petitioner states that there was no marking of the substances seized immediately after the search and there was no proof that the drugs presented in court were the same drugs seized from his house. Yet a close reading of the records shows the opposite.

Section 21, paragraph 1, Article II of R.A. 9165 provides:

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:

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[26] See *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

[27] *Id.,* citing *People v. Naquita,* G.R. No. 180511, July 28, 2008, 560 SCRA 430, 449; *People v. Concepcion,* G.R. No. 178876, June 27, 2008, 556 SCRA, 421, 440; *People v. Santiago,* G.R. No. 175326, November 28, 2007, 539 SCRA 198, 212 .

> (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;

The above provision is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, thus:

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

The prosecution was able to prove the unbroken chain of custody of the items seized. As earlier discussed, the witnesses for the prosecution were able to categorically testify that the dangerous drugs were found in the residence of the petitioner during their search. As shown in Chemistry Report No. D-143-2003, which was identified and testified on by Police Inspector Jessica Ramos Quilang, the three (3) plastic sachets containing a substance was positive for methamphetamine hydrochloride and marked as "RB-A," "RB-B," and "RB-C" and the six (6) plastic sachets were positive for *marijuana* and marked as "RB-1," "RB-2," "RB-3," "RB-4," "RB-5" and "RB-6."[28] Thereafter, as testified by PO3 Flores, the items were photographed and the *barangay* captain signed a certificate of good search, thus:

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[28] TSN, January 15, 2004, pp. 5-6.

FISCAL LLOBRERA:

Q: And then after discovering the *shabu* and *marijuana*, what else happened?
A: We took pictures of the *shabu* and *marijuana* sir inside their house and we showed said pictures to the *barangay* officials, sir.

Q: And where was Raul David when you were taking pictures of the *marijuana* and *shabu*?
A: He was inside their house seated, sir.

Q: How far was he from you?
A: Two (2) meters, sir.

Q: Was there any object that obstructed his view between you and him?
A: None, sir.

Q: After taking pictures of the *shabu* and *marijuana*, what else happened?
A: We requested the *barangay* captain to affix his signature on the certificate of good search, sir.

COURT:

Q: During the time of the search, where was the barangay captain?
A: He was with us, your Honor.

Q: In the conduct of your search, did you have any civilian component?
A: None, your Honor, only the *barangay* captain.

FISCAL LLOBRERA:

Q: Please give us the name of the *barangay* captain.
A: Barangay Captain Canono, sir.

Q: When you discovered the six (6) teabags of *marijuana* as well as the three (3) plastic sachets of *shabu*, where was [B]arangay [C]aptain Canono then?
A: He was inside the house, sir.

COURT:

Q: [And] the *aparador* was visible to the barangay captain during that time when you first see (sic) the *marijuana* and the *shabu*?
A: The *aparador* was visible to the *barangay* captain, your Honor.

FISCAL LLOBRERA:

Q: Was the *aparador* padlocked or not?
A: The *aparador* was padlocked and it is (sic) on top of it where we found the items, sir.

Q: Right on top of the *aparador*?
A: Yes, sir.

Q: It was not placed in a drawer?
A: No, sir, on top itself of the *aparador*.

Q: And so what did you do with the *shabu* and the *marijuana*?
A: We confiscated the items, sir.

Q: After confiscating it, what did you do with it?
A: We showed the *shabu* and the *marijuana* to the Spouses David, sir.

Q: After showing them to the spouses, what else happened?
A: We brought the evidence to the police station, sir.

Q: How about Raul David, what did you do with him?
A: We also brought him to the police station, sir.

Q: What happened in the police station?
A: We indorsed Raul David and the evidence we confiscated to our investigator, sir.[29]

Therefore, it is apparent from the above disquisition that the integrity and evidentiary value of the items seized were well-preserved. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as it would be utilized in the determination of the guilt or innocence of the accused.[30] Anyway, this Court has consistently ruled that non-compliance with the requirements of Section 21 of R.A. No. 9165 will not necessarily render the items seized or confiscated in a buy-bust operation inadmissible.[31] Strict compliance with

[29] TSN, September 22, 2003, pp. 16-18.

[30] *People v. Rosialda*, G.R. No. 188330, August 25, 2010, 629 SCRA 507, 521.

[31] *People v. Joel Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359, 371-372, citing *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843; *People v. Alberto*, G.R. No. 179717, February

the letter of Section 21 is not required if there is a clear showing that the integrity and the evidentiary value of the seized items have been preserved, *i.e.*, the items being offered in court as exhibits are, without a specter of doubt, the very same ones recovered in the buy-bust operation.[32] Hence, once the possibility of substitution has been negated by evidence of an unbroken and cohesive chain of custody over the contraband, such contraband may be admitted and stand as proof of the *corpus delicti* notwithstanding the fact that it was never made the subject of an inventory or was photographed pursuant to Section 21 (1) of Republic Act No. 9165.[33]

Anent petitioner's contention that having been caught in possession of *shabu* and *marijuana* in one occasion, he should have been charged with, and convicted of, one offense only, this Court finds it meritorious.

Before the enactment of R.A. 9165, the governing law on dangerous drugs was R.A. 6425, which differentiated regulated drugs from prohibited drugs. It laid down different provisions for possession of regulated and prohibited drugs. Under R.A. 9165, the distinction between regulated and prohibited drugs has been removed and both are now classified as dangerous drugs. The eradication of such distinction was the real intention of the legislators. As read from the transcript of stenographic notes of the Twelfth Congress on the deliberation of R.A. 9165, then Senate Bill No. 1858:

> Senator Leviste. And we are in support of the good sponsor's conviction to give teeth to this new law and to go all out against drugs.
>
> Under the old law – R.A. No. 6425 – a classification was provided between a prohibited drug and a regulated drug. I believe in the new proposed measure, there is no distinction between the two

5, 2010, 611 SCRA 706, 718; *People v. Capco*, G.R. No. 183088, September 17, 2009, 600 SCRA 204, 213; *People v. Teodoro*, G.R. No. 185164, June 22, 2009, 590 SCRA 494, 507.

[32] *Id.*

[33] *Id.*

categories. And in lieu of the two categories, the new measure merely provides for an all-embracing category of dangerous drugs.

May we know, Mr. President, the significance of eliminating the two categories in the old law because there might be adverse implications if we do not classify "prohibited" from "regulated" drugs. There are instances, for example, when a cancer patient – I know I am not a doctor but Senator Flavier might be able to enlighten us here – is allowed to use with prescription from a licensed physician regulated drugs. Morphine, for example, for pain killers. How would this declassification affect this case?

Senator Barbers. Well, her point is very valid, Mr. President. The reason as to why under R.A. No. 6425 there was a distinction between "prohibited" and "regulated" drugs is that this is in consonance with the International Treaties on Drugs under the UN Convention of 1961, 1971, and 1988. Now, when we speak of narcotics under this treaty, it would mean "prohibited" drugs. When we speak of psychotropic under the same convention, it would mean "regulated" drugs. In this particular proposal, we did not make any distinction anymore. Why? Because whether these are regulated, whether these are prohibited, these are considered as dangerous drugs unless authorized by law. That a patient, for example, is in need of some drugs, morphine, for example, then that would be another story.[34]

xxx xxx xxx

Senator De Castro. Mr. President, on page 3, line 3, the term used is "dangerous," while under our present law, Republic Act No. 6425, as amended, the term used is "prohibited." May we know from the sponsor the distinction between the words "prohibited" and "dangerous."

Senator Barbers. Yes, Mr. President. Under Republic Act No. 6425, there is a distinction between prohibited drugs and regulated drugs. When we speak of prohibited drugs, it would mean that there is no prescription needed. While in the regulated drugs, a prescription is needed in order to purchase that kind of drug from the drugstore.

Under the present bill, Mr. President, we removed the distinction and we came up with the term "dangerous drugs" instead of classifying these drugs into prohibited and regulated ones. Why? Because there are prohibited drugs that sometimes are also being dispensed

[34] TSN, October 23, 2001, pp. 51-52.

with prescription, like for example, morphine and opium. These could be used as pain relievers. There are also regulated ones which become prohibited drugs when we use a proportion which could not be considered as therapeutic in nature.

Senator De Castro. Therapeutic and that includes *marijuana*, Mr. President?

Senator Barbers. That is correct, Mr. President, although *marijuana* is not dispensed in drugstores. We classify *marijuana* under RA 6425 as a prohibited drug, while under this measure *marijuana* is considered as a dangerous drug.[35]

xxx xxx xxx

Senator Cayetano. Mr. President, I also note that there is no definition of "regulated drug" at least in my cursory examination. Has the good sponsor deleted the provision of the Dangerous Drugs Act of 1972 or Republic Act No. 6425 where there is a definition of "regulated drug?" And if so, I just want to find out why this particular definition of what constitutes a regulated drug is not included in this bill?

Senator Barbers. That is correct, Mr. President. In the present measure, we already deleted prohibited drugs as well as regulated drugs. We came up with one item only from regulated, from prohibited, to dangerous drugs. That would be the classification now. Whether it is regulated or prohibited, it is of no moment to us. What is important is that we define dangerous drugs.

Senator Cayetano. No. The reason I asked that, Mr. President, is, under the present law, "regulated drugs" is defined and the penalties for transgression of the requirements of getting a regulated drug is different from the transgression of committing any act in relation to what constitutes purely dangerous drugs.

So this is the reason I am inquiring because it is important. Regulated drugs *per se* are not dangerous drugs, regulated in the sense that it may be dispensed by a certified physician or members of the medical or dental profession.

The only transgression or penalty that may be included on regulated drug is, for instance, if one imports regulated drugs without the

[35] TSN, January 15, 2002, pp. 80-81.

necessary authority from the present Dangerous Drugs Board, and also the manufacture as well as the sale of the same.

So that is the reason I am inquiring, Mr. President.

Senator Barbers. I have with me here, Mr. President, a definition of a "regulated drug," but this is applicable under Republic Act No. 6425. Under my proposal, we deleted the definition. We concentrated on dangerous drugs.

Senator Cayetano. So am I correct then that the omission is deliberate, but it does not repeal the provision of Republic Act No. 6425 which is known as the "Dangerous Drugs Act of 1972," *vis-a-vis* the regulated drugs? It does not.

Senator Barbers. Mr. President, this proposed measure is practically a repeal of Republic Act No. 6425.[36]

From the above-quoted, it is clear that the deliberate elimination of the classification of dangerous drugs is the main reason that under R.A. 9165, the possession of any kind of dangerous drugs is now penalized under the same section. The deliberations, however, do not address a case wherein an individual is caught in possession of different kinds of dangerous drugs. In the present case, petitioner was charged under two Informations, one for illegal possession of six (6) plastic heat-sealed sachets containing dried *marijuana* leaves weighing more or less 3.865 grams and the other for illegal possession of three (3) plastic heat-sealed sachets containing *shabu* weighing more or less 0.327 gram. Under Section 11 of R.A. 9165, the corresponding penalty for each charge, based on the weight of the dangerous drugs confiscated, is imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of three hundred thousand pesos (₱300,000.00). The trial court imposed a single penalty of imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of three hundred thousand pesos (₱300,000.00), while the CA modified it by imposing the corresponding penalty for each charge.

[36] TSN, January 16, 2002, pp. 21-22.

Absent any clear interpretation as to the application of the penalties in cases such as the present one, this Court shall construe it in favor of the petitioner for the subject provision is penal in nature. It is a well-known rule of legal hermeneutics that penal or criminal laws are strictly construed against the state and liberally in favor of the accused.[37] Thus, an accused may only be convicted of a single offense of possession of dangerous drugs if he or she was caught in possession of different kinds of dangerous drugs in a single occasion. If convicted, the higher penalty shall be imposed, which is still lighter if the accused is convicted of two (2) offenses having two (2) separate penalties. This interpretation is more in keeping with the intention of the legislators as well as more favorable to the accused.

WHEREFORE, the Petition for Review on *Certiorari* dated April 11, 2008 of petitioner Raul David is hereby *DENIED*. Consequently, the Decision dated August 31, 2007 and Resolution dated February 20, 2008 of the Court of Appeals are hereby *AFFIRMED* with the *MODIFICATION* that the penalty of imprisonment for Twelve (12) years & one (1) day, as minimum, to Fourteen (14) years, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00) be imposed.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

[37] *People v. Subido*, G.R. No. L-21734, September 5, 1975, 66 SCRA 545, 551.

FIRST DIVISION

[G.R. No. 197042. October 17, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JULIET OLACO *y* POLER,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; LIABILITY OF THE ACCUSED; CRIMINAL LIABILITY IS TOTALLY EXTINGUISHED UPON THE DEATH OF THE ACCUSED.— Olaco's death on February 17, 2010, during the pendency of her appeal, extinguished not only her criminal liability for qualified theft committed against private complainant Ruben Vinluan, but also her civil liability, particularly the award for actual damages, solely arising from or based on said crime. xxx

2. ID.; ID.; CIVIL LIABILITY IS EXTINGUISHED ONLY WHEN DEATH OCCURS BEFORE FINAL JUDGMENT.— Olaco's appeal was still pending and no final judgment had been rendered against her at the time of her death. Hence, whether or not Olaco was guilty of the crime charged had become irrelevant because even assuming that Olaco did incur criminal liability and civil liability *ex delicto*, these were totally extinguished by her death, following Article 89(1) of the Revised Penal Code and our disquisition in *Bayotas*.

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

LEONARDO-DE CASTRO, *J.*:

Before Us is an appeal filed by Juliet Olaco *y* Poler (Olaco) assailing the Decision[1] dated January 20, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02756, which affirmed with modification the Decision dated March 5, 2007 of the Regional Trial Court (RTC) of Las Piñas City, Branch 198, in Criminal Case No. 04-0746.[2] In the March 5, 2007 Decision, the RTC found Olaco guilty beyond reasonable doubt of the crime of Qualified Theft.

In an Information dated August 24, 2004, Olaco was charged with Qualified Theft, committed as follows:

> That on or about the 21st day of August 2004, in the City of Las Pinas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one *alias* Rena, Victor Catulong, Roland Baroga and *alias* Roger, whose true identities and whereabouts are still unknown and all of them mutually helping and aiding one another, accused OLACO being the housemaid of Ruben Vinluan *y* Torno, and as such enjoying the trust and confidence reposed upon her by her aforementioned employer, with intent to gain and without the knowledge and consent of the owner thereof and with grave abuse of confidence, did then and there willfully, unlawfully and feloniously take, steal, and carry away the following items, to wit:

ITEMS	AMOUNT
Three (3) Men's Necklace	
Two (2) Gold Necklaces	₱120,000.00
One (1) White Gold Necklace	60,000.00
Three (3) Men's Bracelet	
Two (2) Gold Bracelets	50,000.00

[1] *Rollo*, pp. 2-26A; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias, concurring.

[2] CA *rollo*, pp. 31-38.

One (1) Two-tone Bracelet (Gold and White Gold)	45,000.00
Ashworth Bracelet (brown)	10,000.00
US Dollar 1,000 cash, in peso equivalent	55,000.00
One Men's White Gold with 8 diamond (20K)	120,000.00
One (1) set Earring and Pendant Egg shape South Sea Pearl with diamonds	60,000.00
One (1) GUCCI Ladies Watch	250,000.00
One (1) DKNY Ladies Watch	15,000.00
One (1) Cartier Ladies Watch	35,000.00
One (1) set of Necklace & Bracelet 24K Gold	40,000.00
One (1) Solid Gold 24K Necklace	25,000.00
One (1) Pendant with 3 diamonds each .51K	25,000.00
One (1) Gold 18K Chain	10,000.00
One (1) 18K Gold Chain with Pendant Blessed Virgin	18,000.00
One (1) Bracelet 24K twisted design	12,000.00
One (1) 18K Gold Chain 18 inches long With 18K Cross Pendant	20,000.00
One (1) Bundle New Bills ₱20 denominator	2,000.00
One (1) bag of coins ₱1.00	100.00

belonging to Ruben Vinluan *y* Torno to the damage and prejudice of the aforenamed owner thereof in the total amount of ₱972,100.00.[3]

The case was docketed as Criminal Case No. 04-0746 before the RTC.

When arraigned, Olaco pleaded not guilty.

After trial on the merits, the RTC rendered a Decision on March 5, 2007, finding Olaco guilty and sentencing her thus:

WHEREFORE, premises considered, this Court finds the accused JULIET OLACO *y* POLER GUILTY beyond reasonable doubt of the crime of Qualified Theft as defined and penalized under Article 310 of the Revised Penal Code, and hereby sentences said accused to suffer the penalty of *reclusion perpetua*. She is likewise ordered to indemnify the offended party in the sum of Nine Hundred Seventy-two Thousand One Hundred Pesos (Php972,100.00) representing

[3] *Rollo,* pp. 3-4.

the total value of the cash and jewelry taken by the accused without subsidiary imprisonment in case of insolvency, with costs.[4]

On March 26, 2007, Olaco was committed to the Correctional Institution for Women in Mandaluyong City.[5]

Olaco filed an appeal before the Court of Appeals, which was docketed as CA-G.R. CR.-H.C. No. 02756. In a Decision promulgated on January 20, 2011, the appellate court denied Olaco's appeal and affirmed with modification the RTC judgment, to wit:

> WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 05 March 2007 of the Regional Trial Court of Las Pinas City, Branch 198 in Crim. Case No. 04-0746 finding accused-appellant Juliet Olaco *y* Poler guilty beyond reasonable doubt of the crime of Qualified Theft under Article 310 of the Revised Penal Code and sentencing her to suffer the penalty of *reclusion perpetua* is hereby AFFIRMED with MODIFICATION in that accused-appellant is hereby ordered to pay private complainant Ruben Vinluan the reduced amount of Php200,000.00, as actual damages.[6]

However, in a letter[7] dated January 27, 2011, Rachel D. Ruelo, Superintendent IV of the Correctional Institution for Women, informed the Court of Appeals that Olaco had died on February 17, 2010. A photocopy of Olaco's Death Certificate was attached to Ruelo's letter.

On February 2, 2011, Olaco's counsel still filed, on behalf of his deceased client, a Notice of Appeal,[8] which the Court of Appeals gave due course on February 8, 2011. Accordingly, the appellate court directed its Judicial Records Division to elevate to us the original records in CA-G.R. CR.-H.C. No. 02756.[9]

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[4] CA *rollo*, p. 38.

[5] *Rollo*, p. 31.

[6] *Id.* at 24.

[7] CA *rollo*, p. 141.

[8] *Id.* at 138.

[9] *Id.* at 144.

In a Resolution[10] dated July 18, 2011, we required Ruelo to submit a certified true copy of Olaco's death certificate from the local civil registrar within five days from notice.

In compliance with the foregoing Resolution, Ruelo submitted on September 15, 2011 a certified true copy of Olaco's Death Certificate, issued by the Office of the Civil Registrar of Mandaluyong City.

Given Olaco's death, we must now determine the fate of her appeal before us.

Olaco's death on February 17, 2010, during the pendency of her appeal, extinguished not only her criminal liability for qualified theft committed against private complainant Ruben Vinluan, but also her civil liability, particularly the award for actual damages, solely arising from or based on said crime.

According to Article 89(1) of the Revised Penal Code, criminal liability is totally extinguished:

> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

Applying the foregoing provision, we laid down the following guidelines in *People v. Bayotas*:[11]

> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of [the] accused, if the same may also be predicated on a source of obligation other than delict.

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[10] *Rollo*, p. 32.

[11] G.R. No. 102007, September 2, 1994, 236 SCRA 239.

> Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
>
> a) Law
>
> b) Contracts
>
> c) Quasi-contracts
>
> xxx xxx xxx
>
> *e) Quasi-delicts*
>
> 3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.
>
> 4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with [the] provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[12]

Clearly, it is already unnecessary for us to rule on Olaco's appeal. Olaco's appeal was still pending and no final judgment had been rendered against her at the time of her death. Hence, whether or not Olaco was guilty of the crime charged had become irrelevant because even assuming that Olaco did incur criminal liability and civil liability *ex delicto*, these were totally extinguished by her death, following Article 89(1) of the Revised Penal Code and our disquisition in *Bayotas*.

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[12] *Id.* at 255-256.

For the same reasons, the appealed Decision dated January 20, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02756 – finding Olaco guilty of qualified theft, sentencing her to *reclusion perpetua*, and ordering her to pay private complainant Ruben Vinluan actual damages in the amount of ₱200,000.00 – had become ineffectual.

WHEREFORE, in view of the death of accused-appellant Juliet Olaco *y* Poler, the Decision dated January 20, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02756 is *SET ASIDE* and Criminal Case No. 04-0746 before the Regional Trial Court of Las Piñas City is *DISMISSED*. Costs *de oficio*.

SO ORDERED.

Corona, C.J. (Chairperson), Peralta,[*] *Del Castillo,* and *Villarama, Jr., JJ.,* concur.

EN BANC

[G.R. No. 157139. October 18, 2011]

CARLOS COTIANGCO, LICIO SALAS, EDELTHA SALONOY, MA. FILIPINA CALDERON, ROSALINDA ABILAR, MEDARDA LARIBA, TITO GUTIERREZ, BENJAMIN LUCIANO, MYRNA FILAMOR and MONINA NAJARRO, *petitioners, vs.* **THE PROVINCE OF BILIRAN and THE COURT OF APPEALS,** *respondents.*

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[*] Per Special Order No. 1110 (Revised) dated September 30, 2011.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; R.A. 6656; BAD FAITH IN THE REMOVAL OF EMPLOYEES DUE TO REORGANIZATION, NOT ESTABLISHED.— Section 2 of R.A. 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization) cites instances that may be considered as evidence of bad faith in the removal from office of a government officer or employee pursuant to a reorganization[.] x x x [P]etitioners failed to adduce evidence to show bad faith on the part of the Province in effecting the reorganization. *First*, petitioners have failed to show that there was a "significant increase in the number of positions in the new staffing pattern" of Biliran Province as a result of the reorganization. x x x *Second*, petitioners have failed to present evidence that an office performing substantially the same functions as an abolished office was created as a result of the reorganization. x x x *Third*, petitioners have not shown that there was a "reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices." *Fourth*, petitioners have not adduced evidence that they were "replaced by those less qualified in terms of status of appointment, performance and merit." Alternatively, petitioners have not adduced any evidence to show that their qualifications in terms of performance and merit are any better than those possessed by the persons who were eventually appointed to the reorganized positions. Neither have petitioners been able to demonstrate that their removal from office as a result of the reorganization violated the order of separation as found in Section 3 of R.A. 6656, particularly, in the provision that "those … who are least qualified in terms of performance and merit shall be laid [off] first, length of service notwithstanding."

2. ID.; ID.; ID.; ID.; "NEXT IN RANK" RULE DOES NOT APPLY TO POSITIONS CREATED IN THE COURSE OF A VALID REORGANIZATION; EXPLAINED.— Petitioners also erroneously insist on the application of the "next in rank" rule in claiming that they should have been appointed to the available positions after the reorganization. However, the "next in rank rule" specifically applies only to promotions and not

to positions created in the course of a valid reorganization. Apart from the fact that the "next in rank" rule only gives *preference* to the person occupying the position next in rank to a vacancy, it does not by any means give him exclusive right to be appointed to the said vacancy. Indeed, the appointing authority is vested with sufficient discretion to appoint a candidate, as long as the latter possesses the minimum qualifications under the law.

3. ID.; ID.; ID.; ID.; ONLY THOSE EMPLOYEES WHO HAVE FILED THEIR APPLICATIONS MAY BE CONSIDERED FOR POSSIBLE APPOINTMENT.— R.A. 6656 itself, the law that these Implementing Rules seek to implement, provides only that all officers and employees of the agency being reorganized shall be invited to apply for any of the positions in the new staffing pattern, and that the "(s)aid application shall be considered by the (Placement) Committee in the placement and selection of personnel"[.] x x x [T]he law mandates that only those who have filed the requisite applications for the subject position may be considered by the placement committee for possible appointment. The intent of this law is clear enough. After all, it is the submission of the application form that signals an employee's interest in a position. The placement committee cannot spend its limited time and resources in considering the qualifications of all previous employees of the agency being reorganized, even if they have not signified their intention to continue working in the said agency. Otherwise, there is a possibility that it would recommend the appointment of a person to a position in which the latter is not interested. Also, without the filing of the requisite application form, there would hardly be a basis for evaluating the qualifications of the candidates for employment.

APPEARANCES OF COUNSEL

Clemencio C. Sabitsana, Jr. for petitioners.
Provincial Legal Officer (Biliran) for respondents.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 seeking a reversal of the Decision of the Court of Appeals dated 16 July 2002,[1] and its Resolution dated 24 January 2003 which affirmed Resolution No. 000894 dated 30 March 2000 of the Civil Service Commission (CSC). The CSC Resolution held that petitioners' removal from their respective positions in the Biliran Provincial Health Office as a result of the reorganization of the provincial government was lawful.

Petitioners held permanent appointments as public health workers in the Province of Biliran.

On 23 October 1998, the S*angguniang Panlalawigan* (SP) of Biliran passed SP Resolution No. 102, Series of 1998, approving the revised structure and staffing pattern of the provincial government submitted by its then incumbent governor, Danilo Parilla.

Pursuant to said Resolution, Governor Parilla issued Executive Order (EO) No. 98-07, Series of 1998, dated 4 November 1998, declaring all positions in the provincial government of Biliran as abolished except those of the Provincial Treasurer and all elective positions.

EO No. 98-07 was revoked by EO No. 98-08, Series of 1998, which in turn declared "all positions under the new staffing pattern vacant" and directed "all permanent employees to submit their application within fifteen (15) days from the date of posting of the approved new staffing pattern on November 4, 1998."

Petitioners filed a suit for Prohibition[2] to question the validity of EO No. 98-08, Series of 1998.

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[1] The Decision of the Court of Appeals, Seventh Division was penned by Associate Justice Conchita Carpio Morales (now a retired member of this Court) and concurred in by Associate Justices Martin S. Villarama, Jr. and Mariano C. del Castillo (now members of this Court); *rollo*, pp. 31-38.

[2] The case was entitled *Dr. Carlos Cotiangco, et al. v. Gov. Danilo Parilla, et al*., docketed as Civil Case No. B-1050, and raffled to the Regional Trial Court, Branch 16 of Naval, Biliran.

Meanwhile, pursuant to said EO, a Personnel Placement Committee (Committee) was created to screen and evaluate all applicants for the vacant positions.

Petitioners failed/refused to apply for any position under the new staffing pattern, claiming that to do so would be inconsistent with their pending suit for prohibition. At any rate, petitioners argue that under Rule VI, Section 9 of Civil Service Commission (CSC) Resolution No. 91-1631,[3] as well as Sections 5 and 6 of the Rules on Government Reorganization, there should be a screening of the qualifications of all existing employees, and not merely of those who filed their respective applications under the new staffing pattern.

As a result of the reorganization, the following positions in the Biliran Provincial Health Service occupied by petitioners were excluded or abolished:

[3] SECTION 9. To ensure objectivity in promotion, a Selection/Promotion Board shall be established in every department or agency which shall be responsible for the adoption of a formal screening procedure and formulation of criteria for the evaluation of candidates for promotion.

Reasonable and valid standards and methods of evaluating the competence and qualifications of all employees competing for a particular position shall be established and applied fairly and consistently. The criteria established for evaluation of qualification of candidates for promotion must suit the job requirements of the position.

The Selection/Promotion Board shall then evaluate the qualifications of an employee being considered for promotion in accordance with the department or agency Merit Promotion Plan.

The Selection/Promotion Board shall likewise determine *en banc* the list of employees recommended for promotion from which the appointing authority may choose the employee to be promoted. In preparing the list, the Board shall see to it that the qualifications of employees recommended for promotion are comparatively at par and that they are the best qualified from among the candidates.

As soon as the promotional appointment is issued, a notice announcing the promotion shall be posted by the head of the Personnel Division/department/office on the bulletin board of the department, agency or regional offices concerned.

Selection, promotion board shall maintain records of deliberations which shall be available for inspection by the Commission or its duly authorized representatives.

Dr. Carlos C. Cotiangco --------	Provincial Health Officer I
Licio J. Salas ----------	Administrative Officer II
Edeltha O. Salonoy ----------	Senior Bookkeeper I
Ma. Filipina V. Calderon -------	Cashier II
Rosalinda A. Abilar ----------	Pharmacist III
Medarda S. Lariba ----------	Cook I
Tito G. Gutierrez ----------	Driver II
Benjamin J. Luciano ----------	Cook I
Myrna A. Filamor ----------	Nurse II
Monina Najarro ----------	Medical Technologist

On 13 January 1999, petitioners received their notices of termination/non-reappointment dated 12 January 1999, which stated that their service was "only up to February 11, 1999."

Petitioners appealed to the governor, but he denied their appeal.

Petitioners thereafter filed an appeal to the CSC, which likewise dismissed it in CSC Resolution No. 000894 dated 30 March 2000.[4] The CSC held that petitioners failed to show that the reorganization was tainted with bad faith. They failed to establish that they were replaced by less qualified employees "in terms of status of appointment, performance and merit." The Commission noted that the reorganization resulted in a significant decrease in the number of positions in the staffing pattern of the Biliran Provincial Hospital.[5] The CSC further held that the reorganization did not violate the Magna Carta of Public Health Workers (Republic Act No. 7305), because the governor implemented a procedure for the reorganization, as follows:

1. Information dissemination regarding the reorganization to be effected;

2. The Committee was established to screen and evaluate the qualifications of existing employees;

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[4] *Rollo*, pp. 63-70.

[5] *Id.* at 71.

3. Publication and dissemination of the new staffing pattern;
4. Invitation of employees to apply for the new positions; and
5. Notices to appellants that they were not reappointed in the revised organization structure and staffing pattern.

Moreover, it was pointed out that petitioners' positions were duplications of other positions. Finally, the CSC ruled that petitioners could no longer be appointed to other positions as the records show that these do not include their former positions, which had in fact remained unfilled after the reorganization.

Petitioners moved for reconsideration of the CSC Resolution. This motion was denied for lack of merit by the CSC in its Resolution No. 010530[6] dated 4 September 2000.

Petitioners elevated the case to the Court of Appeals (CA), citing similar cases (CSC Resolution Nos. 002617, 002624, and 002629 dated 6 March 2001)[7] wherein the CSC found that the Province of Biliran failed to comply with the required procedure with respect to the other employees who were also not reappointed. Petitioners claimed that in these companion cases, employees of the province were reinstated on the ground that the reorganization had been implemented in violation of Republic Act No. (R.A.) 6656 and its Implementing Rules, as it was not shown that the subject employees' qualifications were assessed or evaluated by the committee.

In its Decision dated 16 July 2002, the CA affirmed the CSC resolution with modification, in that the Province of Biliran was directed to take up petitioner Salvador Rosel's possible reappointment as Sanitation Inspector I of the Municipality of Caibiran. The CA held that what petitioners referred to as companion cases "involve circumstances different from the case at bench where petitioners had not presented any concrete evidence to prove their claim."[8]

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[6] *Id.* at 81-84.

[7] *Id.*

[8] *Rollo,* pp. 6-7.

Petitioners moved for reconsideration of the said Decision but the CA denied their motion. Hence, petitioners filed the present Rule 45 petition, basically posing the following issue for resolution:

1. Whether or not the reorganization was done in bad faith
2. Whether or not petitioners were denied due process when they were not screened and evaluated for possible appointment to new positions

We rule to deny the petition.

1. Petitioners failed to show that the reorganization was done in bad faith. They have not adduced sufficient evidence to establish the existence of bad faith.

Section 8 of the Magna Carta of Public Health Workers (R.A. 7305) provides that "(i)n case of regular employment of public health workers, their services shall not be terminated except for cause provided by law and after due process."

Nevertheless, a government officer or employee's removal from office as a result of a *bona fide* reorganization is a valid cause for that employee's removal.[9]

Hence, the pertinent issue would be whether the reorganization herein was undertaken in bad faith.

Petitioners claim that the provincial government's reorganization implemented by Governor Parilla was not caused by a desire to streamline the local bureaucracy to save on resources. They allege that despite the availability of a sufficient number of vehicles for official use, the provincial government bought five motor vehicles, which were used by provincial officials belonging to the same political party as that of Governor Parilla. Allegedly, there were also excessive numbers of casuals hired and positions/items abolished, only to create new ones with

[9] R.A. No. 6656, Section 2.

substantially the same functions. Petitioners were all appointees of former Governor Wayne Jaro, who is the political enemy of Governor Parilla.

On the other hand, the provincial government argued, and the CSC found, that the Biliran Province had a total of 162 personnel in 1990. However, this number swelled to 381 personnel in 1998. Reorganization was therefore called for to lessen the budget allocation for personnel services; and to increase that for development projects, the purchase of medicines and supplies, and the maintenance of infrastructure.

It is a basic principle that good faith is presumed and that the party who alleges bad faith has the burden of proving the allegation. Petitioners therefore had the burden of proving bad faith on the part of the province when it undertook the reorganization. Section 2 of R.A. 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization) cites instances that may be considered as evidence of bad faith in the removal from office of a government officer or employee pursuant to a reorganization, to wit:

SECTION 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 exists 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 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 other 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 function as the original offices;

(e) Where the removal violates the order of separation provided in Section 3 hereof. (Underscoring supplied.)

Measured against the foregoing guidelines, petitioners failed to adduce evidence to show bad faith on the part of the Province in effecting the reorganization.

First, petitioners have failed to show that there was a "significant increase in the number of positions in the new staffing pattern" of Biliran Province as a result of the reorganization. On the contrary, it is undisputed that from a high of 120 positions in 1998, the number of those at the Biliran Provincial Health Office was reduced to only 98 after the reorganization.[10] Even assuming the truth of petitioners' claim that the CSC and the CA committed a misapprehension of facts in equating the number of personnel in the Biliran Provincial Hospital with the number of personnel in the entire Provincial Health Office, this conclusion cannot be altered in the absence of glaring error in such apprehension.

Second, petitioners have failed to present evidence that an office performing substantially the same functions as an abolished office was created as a result of the reorganization. We note that there were four new positions created within the Provincial Health Office (one Medical Technologist II for the Health Services Group; and one Storekeeper each for Caibiran Community Hospital, Culaba Community Hospital and Maripipi Community Hospital). None of these positions may be considered as having been created to perform substantially the same functions as any of the abolished offices. None of the petitioners held the position of Storekeeper; and, although petitioner Najarro held the position of Medical Technologist II, he was then assigned to the Maripipi Community Hospital, and not to the Health (Field) Services Group.

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[10] Biliran Provincial Health Office Personnel Schedule; *rollo*, pp. 55-62.

Third, petitioners have not shown that there was a "reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices."

Fourth, petitioners have not adduced evidence that they were "replaced by those less qualified in terms of status of appointment, performance and merit." Alternatively, petitioners have not adduced any evidence to show that their qualifications in terms of performance and merit are any better than those possessed by the persons who were eventually appointed to the reorganized positions.

Neither have petitioners been able to demonstrate that their removal from office as a result of the reorganization violated the order of separation as found in Section 3 of R.A. 6656, particularly, in the provision that "those … who are least qualified in terms of performance and merit shall be laid [off] first, length of service notwithstanding."

Petitioners also erroneously insist on the application of the "next in rank" rule in claiming that they should have been appointed to the available positions after the reorganization. However, the "next in rank rule" specifically applies only to promotions and not to positions created in the course of a valid reorganization.[11] Apart from the fact that the "next in rank" rule only gives *preference* to the person occupying the position next in rank to a vacancy, it does not by any means give him exclusive right to be appointed to the said vacancy. Indeed, the appointing authority is vested with sufficient discretion to appoint a candidate, as long as the latter possesses the minimum qualifications under the law.[12]

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[11] *Panis v. Civil Service Commission*, G.R. No. 102948, 2 February 1994, 229 SCRA 589.

[12] *Central Bank of the Philippines v. Civil Service Commission*, G.R. Nos. 80455-56, 10 April 1989, 171 SCRA 744.

2. Petitioners were not deprived of due process when they were not screened and evaluated for possible appointment to new positions, as they had not filed their applications notwithstanding the invitation for them to do so.

Petitioners allege that they were deprived of their employment without due process of law, because respondent province did not show proof that its Personnel Placement Committee had screened and evaluated them for possible appointment to new positions.

On the other hand, respondent province argues that petitioners were not considered for the new positions, because they had not filed their applications notwithstanding the invitation for them to do so.

In response, petitioners argue that under the Implementing Rules of R.A. 6656, "qualifications of existing employees," and not merely those who filed their respective applications under the new staffing pattern, should be screened and evaluated, as follows:

SECTION 5. **Who** will be Evaluated. - **All officers and employees**, including those who have pending administrative charges, or any derogatory records/reports, shall be evaluated on the basis of standards for retention/termination as provided for herein. (Underscoring and emphasis supplied.)

Moreover, Section 9 of the same Implementing Rules provides that the Placement Committee shall evaluate the qualifications and competence of both "the applicants and other employees in the agency," to wit:

SECTION 9. Selection and Placement of Personnel. —

(1) Within five (5) days from receipt by the agency concerned of its approved staffing pattern, or the Organizational Staffing and Classification Action Summary (OSCAS), the head of office shall

cause copies thereof to be posted in the bulletin boards and other conspicuous places in its central and regional/field offices.

(2) Officers and employees shall be invited to apply for any of the authorized position. Said Application shall be considered by the Placement Committee in the placement and selection of personnel.

(3) The Committee shall evaluate/assess the qualifications and competence of the applicants **and other employee in the agency** based on the criteria and preference provided for in these Rules.

(4) The Committee shall prepare the Personnel Placement List and submit the same to the appointing authority for his approval.

(5) Within thirty (30) days from submission of the Personnel Placement List by the Placement Committee, the appointing authority shall approve, modify or revise the Personnel Placement List which shall then constitute the New Plantilla of Personnel. (Underscoring and emphasis supplied.)

Petitioners' reliance upon the words used in the above portions of the Implementing Rules is misplaced.

R.A. 6656 itself, the law that these Implementing Rules seek to implement, provides only that all officers and employees of the agency being reorganized shall be invited to apply for any of the positions in the new staffing pattern, and that the "(s)aid application shall be considered by the (Placement) Committee in the placement and selection of personnel," as shown by the following provision:

SECTION 6. In order that the best qualified and most deserving persons shall be appointed in any reorganization, there shall be created a Placement Committee in each department or agency to assist the appointing authority in the judicious selection and placement of personnel. The Committee shall consist of two (2) members appointed by the head of the department or agency, a representative of the appointing authority, and two (2) members duly elected by the employees holding positions in the first and second levels of the career service: Provided, That if there is a registered employee association with a majority of the employees as members, that employee association shall also have a representative in the Committee: Provided, further That immediately upon approval of the staffing pattern of the department or agency concerned, such

staffing pattern shall be made known to all officers and employees of the agency who shall be invited to apply for any of the positions authorized therein. Said application shall be considered by the Committee in the placement and selection of personnel. (Underscoring supplied.)

Clearly, the law mandates that only those who have filed the requisite applications for the subject position may be considered by the placement committee for possible appointment. The intent of this law is clear enough. After all, it is the submission of the application form that signals an employee's interest in a position. The placement committee cannot spend its limited time and resources in considering the qualifications of all previous employees of the agency being reorganized, even if they have not signified their intention to continue working in the said agency. Otherwise, there is a possibility that it would recommend the appointment of a person to a position in which the latter is not interested. Also, without the filing of the requisite application form, there would hardly be a basis for evaluating the qualifications of the candidates for employment.

WHEREFORE, premises considered, the petition is denied for lack of merit. The 16 July 2002 Decision and the 24 January 2003 Resolution of the Court of Appeals are hereby *AFFIRMED*.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Del Castillo and *Villarama, Jr., JJ.,* no part.

EN BANC

[G.R. No. 181881. October 18, 2011]

BRICCIO "Ricky" A. POLLO, *petitioner, vs.* **CHAIRPERSON KARINA CONSTANTINO-DAVID, DIRECTOR IV RACQUEL DE GUZMAN BUENSALIDA, DIRECTOR IV LYDIA A. CASTILLO, DIRECTOR III ENGELBERT ANTHONY D. UNITE and THE CIVIL SERVICE COMMISSION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; SEARCHES AND SEIZURES OF THE OFFICE AND COMPUTER FILES OF A GOVERNMENT EMPLOYEE BY THE PUBLIC EMPLOYER; CASES OF O'CONNOR **AND** SIMONS **IN UNITED STATES' JURISDICTION DISCUSSED FOR PURPOSES OF RESOLVING THE ISSUES IN THE CASE AT BAR.—** The constitutional guarantee is not a prohibition of all searches and seizures but only of "unreasonable" searches and seizures. But to fully understand this concept and application for the purpose of resolving the issue at hand, it is essential that we examine the doctrine in the light of pronouncements in another jurisdiction. xxx In *O'Connor* the Court recognized that "special needs" authorize warrantless searches involving public employees for work-related reasons. The Court thus laid down a balancing test under which government interests are weighed against the employee's reasonable expectation of privacy. This reasonableness test implicates neither probable cause nor the warrant requirement, which are related to law enforcement. *O'Connor* was applied in subsequent cases raising issues on employees' privacy rights in the workplace. One of these cases involved a government employer's search of an office computer, *United States v. Mark L. Simons* where the defendant Simons, an employee of a division of the Central Intelligence Agency (CIA), was convicted of receiving and possessing materials containing child pornography. xxx The US Supreme Court ruled that the searches of Simons' computer and office did not violate his Fourth Amendment rights and the first search

warrant was valid. It held that the search remains valid under the *O'Connor* exception to the warrant requirement because evidence of the crime was discovered in the course of an otherwise proper administrative inspection. Simons' violation of the agency's Internet policy happened also to be a violation of criminal law; this does not mean that said employer lost the capacity and interests of an employer. The warrantless entry into Simons' office was reasonable under the Fourth Amendment standard announced in *O'Connor* because at the inception of the search, the employer had "reasonable grounds for suspecting" that the hard drive would yield evidence of misconduct, as the employer was already aware that Simons had misused his Internet access to download over a thousand pornographic images. The retrieval of the hard drive was reasonably related to the objective of the search, and the search was not excessively intrusive. Thus, while Simons had a reasonable expectation of privacy in his office, he did not have such legitimate expectation of privacy with regard to the files in his computer.

2. ID.; ID.; ID.; ID.; PRINCIPLES IN O' CONNOR AND SIMONS, APPLIED; EMPLOYEE'S FAILURE TO PROVE THAT HE HAD REASONABLE EXPECTATION OF PRIVACY EITHER IN HIS OFFICE OR GOVERNMENT-ISSUED COMPUTER WHICH CONTAINED HIS PERSONAL FILES.— Applying the analysis and principles announced in *O'Connor* and *Simons t*o the case at bar, we now address the following questions: (1) Did petitioner have a reasonable expectation of privacy in his office and computer files? x x x In this inquiry, the relevant surrounding circumstances to consider include "(1) the employee's relationship to the item seized; (2) whether the item was in the immediate control of the employee when it was seized; and (3) whether the employee took actions to maintain his privacy in the item." These factors are relevant to both the subjective and objective prongs of the reasonableness inquiry, and we consider the two questions together. Thus, where the employee used a password on his computer, did not share his office with co-workers and kept the same locked, he had a legitimate expectation of privacy and any search of that space and items located therein must comply with the Fourth Amendment. We answer the first in the negative. Petitioner failed to prove that he had an actual

(subjective) expectation of privacy either in his office or government-issued computer which contained his personal files. Petitioner did not allege that he had a separate enclosed office which he did not share with anyone, or that his office was always locked and not open to other employees or visitors. Neither did he allege that he used passwords or adopted any means to prevent other employees from accessing his computer files. On the contrary, he submits that being in the public assistance office of the CSC-ROIV, he normally would have visitors in his office like friends, associates and even unknown people, whom he even allowed to use his computer which to him seemed a trivial request. He described his office as "full of people, his friends, unknown people" and that in the past 22 years he had been discharging his functions at the PALD, he is "personally assisting incoming clients, receiving documents, drafting cases on appeals, in charge of accomplishment report, *Mamamayan Muna* Program, Public Sector Unionism, Correction of name, accreditation of service, and hardly had anytime for himself alone, that in fact he stays in the office as a paying customer." Under this scenario, it can hardly be deduced that petitioner had such expectation of privacy that society would recognize as reasonable.

3. ID.; ID.; ID.; ID.; REASONABLENESS OF THE SEARCH CONDUCTED BY PUBLIC EMPLOYER ON THE EMPLOYEE'S COMPUTER FILES, UPHELD.— The search of petitioner's computer files was conducted in connection with investigation of work-related misconduct prompted by an anonymous letter-complaint addressed to Chairperson David regarding anomalies in the CSC-ROIV where the head of the *Mamamayan Muna Hindi Mamaya Na* division is supposedly "lawyering" for individuals with pending cases in the CSC. x x x A search by a government employer of an employee's office is justified at inception when there are reasonable grounds for suspecting that it will turn up evidence that the employee is guilty of work-related misconduct. Thus, in the 2004 case decided by the US Court of Appeals Eighth Circuit, it was held that where a government agency's computer use policy prohibited electronic messages with pornographic content and in addition expressly provided that employees *do not have any personal privacy rights regarding their use of the agency information systems and technology*, the government employee

had no legitimate expectation of privacy as to the use and contents of his office computer, and therefore evidence found during warrantless search of the computer was admissible in prosecution for child pornography. In that case, the defendant employee's computer hard drive was first remotely examined by a computer information technician after his supervisor received complaints that he was inaccessible and had copied and distributed non-work-related e-mail messages throughout the office. When the supervisor confirmed that defendant had used his computer to access the prohibited websites, in contravention of the express policy of the agency, his computer tower and floppy disks were taken and examined. A formal administrative investigation ensued and later search warrants were secured by the police department. The initial remote search of the hard drive of petitioner's computer, as well as the subsequent warrantless searches was held as valid under the *O'Connor* ruling that a public employer can investigate work-related misconduct so long as any search is justified at inception and is reasonably related in scope to the circumstances that justified it in the first place. Under the facts obtaining, the search conducted on petitioner's computer was justified at its inception and scope.

4. ID.; ID.; ID.; ID.; CONSTITUTIONAL RIGHT TO PRIVACY MAY NOT BE INVOKED WHERE THE SEARCH OF COMPUTER FILES IS JUSTIFIED.— Petitioner's claim of violation of his constitutional right to privacy must necessarily fail. His other argument invoking the privacy of communication and correspondence under Section 3(1), Article III of the 1987 Constitution is also untenable considering the recognition accorded to certain legitimate intrusions into the privacy of employees in the government workplace under the aforecited authorities. We likewise find no merit in his contention that *O'Connor* and *Simons* are not relevant because the present case does not involve a criminal offense like child pornography. As already mentioned, the search of petitioner's computer was justified there being reasonable ground for suspecting that the files stored therein would yield incriminating evidence relevant to the investigation being conducted by CSC as government employer of such misconduct subject of the anonymous complaint. This situation clearly falls under the exception to the warrantless requirement in administrative searches defined

in *O'Connor*. x x x [T]he computer from which the personal files of herein petitioner were retrieved is a government-issued computer, hence government property the use of which the CSC has absolute right to regulate and monitor. Such relationship of the petitioner with the item seized (office computer) and other relevant factors and circumstances under American Fourth Amendment jurisprudence, notably the existence of CSC MO 10, S. 2007 on Computer Use Policy, failed to establish that petitioner had a reasonable expectation of privacy in the office computer assigned to him.

5. ID.; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION (CSC); FACTUAL FINDINGS THEREOF SHOULD BE UPHELD IF SUPPORTED BY SUBSTANTIAL EVIDENCE.— Well-settled is the rule that the findings of fact of quasi-judicial agencies, like the CSC, are accorded not only respect but even finality if such findings are supported by substantial evidence. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. The CSC based its findings on evidence consisting of a substantial number of drafts of legal pleadings and documents stored in his office computer, as well as the sworn affidavits and testimonies of the witnesses it presented during the formal investigation. According to the CSC, these documents were confirmed to be similar or exactly the same content-wise with those on the case records of some cases pending either with CSCRO No. IV, CSC-NCR or the Commission Proper. There were also substantially similar copies of those pleadings filed with the CA and duly furnished the Commission. Further, the CSC found the explanation given by petitioner, to the effect that those files retrieved from his computer hard drive actually belonged to his lawyer friends Estrellado and Solosa whom he allowed the use of his computer for drafting their pleadings in the cases they handle, as implausible and doubtful under the circumstances. We hold that the CSC's factual finding regarding the authorship of the subject pleadings and misuse of the office computer is well-supported by the evidence on record[.]

6. ID.; ID.; ID.; THE CSC MAY INITIATE AN INVESTIGATION AND RESOLVE AN ADMINISTRATIVE CASE ON THE BASIS OF AN ANONYMOUS COMPLAINT.— The

administrative complaint is deemed to have been initiated by the CSC itself when Chairperson David, after a spot inspection and search of the files stored in the hard drive of computers in the two divisions adverted to in the anonymous letter — as part of the disciplining authority's own fact-finding investigation and information-gathering — found a *prima facie* case against the petitioner who was then directed to file his comment. As this Court held in *Civil Service Commission v. Court of Appeals*— Under Sections 46 and 48 (1), Chapter 6, Subtitle A, Book V of E.O. No. 292 and Section 8, Rule II of Uniform Rules on Administrative Cases in the Civil Service, **a complaint may be initiated against a civil service officer or employee by the appropriate disciplining authority, even without being subscribed and sworn to.**

7. ID.; ID.; ID.; MEMORANDUM ORDER ISSUED BY THE CSC CHAIR WHICH IS MERELY INTERNAL IN NATURE NEED NOT BE PUBLISHED PRIOR TO ITS EFFECTIVITY.— As to petitioner's challenge on the validity of CSC OM 10, S. 2002 (CUP), the same deserves scant consideration. The alleged infirmity due to the said memorandum order having been issued solely by the CSC Chair and not the Commission as a collegial body, upon which the dissent of Commissioner Buenaflor is partly anchored, was already explained by Chairperson David in her Reply to the Addendum to Commissioner Buenaflor's previous memo expressing his dissent to the actions and disposition of the Commission in this case. According to Chairperson David, said memorandum order was in fact exhaustively discussed, provision by provision in the January 23, 2002 Commission Meeting, attended by her and former Commissioners Erestain, Jr. and Valmores. Hence, the Commission *En Banc* at the time saw no need to issue a Resolution for the purpose and further because the CUP being for internal use of the Commission, the practice had been to issue a memorandum order. Moreover, being an administrative rule that is merely internal in nature, or which regulates only the personnel of the CSC and not the public, the CUP need not be published prior to its effectivity.

CARPIO, J., separate concurring opinion**:**

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; CONSTITUTIONAL GUARANTEES OF PRIVACY

AND REASONABLE SEARCH ARE UNAVAILING AGAINST AUDIT INSPECTIONS OR INTERNAL INVESTIGATIONS INVOLVING GOVERNMENT-OWNED PROPERTY.— The CSC's computer use regulation, which opens to access for internal scrutiny anything CSC employees "create, store, send, or receive in the computer system," has a statutory basis under the Government Auditing Code of the Philippines. Section 4(2) of the Code mandates that "**[g]overnment** x x x property **shall be** x x x used solely for public purposes." In short, any **private use** of a government property, like a government-owned computer, is prohibited by law. Consequently, a government employee cannot expect any privacy when he uses a government-owned computer because he knows he cannot use the computer for any private purpose. The CSC regulation declaring a no-privacy expectation on the use of government-owned computers logically follows from the statutory rule that government-owned property shall be used "solely" for a public purpose. Moreover, the statutory rule and the CSC regulation are consistent with the constitutional treatment of a public office as a public trust. The statutory rule and the CSC regulation also implement the State policies, as expressly provided in the Constitution, of ensuring full disclosure of all government transactions involving public interest, maintaining honesty and integrity in the public service, and preventing graft and corruption. Thus, in this jurisdiction, the constitutional guarantees of privacy and reasonable search are unavailing against audit inspections or internal investigations for misconduct, as here, of electronic data stored in **government-owned property** such as computing, telecommunication, and other devices issued to civil servants. These constitutional guarantees apply only to searches of devices **privately owned** by government employees.

2. ID.; ID.; ID.; THE CSC REGULATION DENYING CSC EMPLOYEES PRIVACY EXPECTATION IN THEIR COMPUTER FILES AND EXCLUDES FROM ITS AMBIT THE THREE CSC COMMISSIONERS IS CONSTITUTIONALLY INFIRMED.— The CSC office regulation denying CSC employees privacy expectation in "anything they create, store, send, or receive in the computer system," although valid as to petitioner Briccio Pollo, is constitutionally infirm insofar as the regulation excludes from its ambit the three CSC commissioners solely by reason of

their *rank*, and not by reason of the confidential nature of the electronic data they generate. x x x By providing that "*[u]sers* **except the Members of the Commission** shall *not* have an expectation of privacy in anything they create, store, send, or receive in the [government-owned] computer system," the CSC regulation creates a new, constitutionally suspect category of confidential information based, not on the sensitivity of content, but on the salary grade of its author. Thus, a glaring exemption from the CSC's own transparency regulation is "anything x x x create[d], store[d], sen[t], or receive[d]" in the commission's computer system *by the three CSC members*. As the new category is content-neutral and draws its confidentiality solely from the rank held by the government official creating, storing, sending and receiving the data, the exemption stands on its head the traditional grounding of confidentiality – the sensitivity of *content*. The constitutional infirmity of the exemption is worsened by the arbitrariness of its rank-based classification. The three CSC commissioners, unlike the rest of the lower ranked CSC employees, are excluded from the operation of the CSC's data transparency regulation solely because they are the CSC's highest ranking officers. This classification fails even the most lenient equal protection analysis. It bears no reasonable connection with the CSC regulation's avowed purposes of "[1] [p]rotec[ing] confidential, proprietary information of the CSC from theft or unauthorized disclosure to third parties; [2] [o]ptimiz[ing] the use of the CSC's [c]omputer [r]esources as what they are officially intended for; and [3] [r]educ[ing] and possibly eliminate[ing] potential legal liability to employees and third parties." The assumption upon, which the classification rests – that the CSC commissioners, unlike the rest of the CSC's thousands of employees, are incapable of violating these objectives — is plainly unfounded.

BERSAMIN, J., concurring and dissenting opinion**:**

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO PRIVACY; HISTORY AND EVOLUTION OF THE RIGHT TO PRIVACY AS A CONSTITUTIONALLY-PROTECTED RIGHT, DISCUSSED.— Article III, Section 3 of the 1987 Constitution embodies the protection of the privacy of communication and correspondence[.] xxx Yet, the guarantee in favor of the privacy of communication and correspondence

is not absolute, for it expressly allows intrusion either upon lawful order of a court or when public safety and order so demands (even without a court order). In its 1965 ruling in *Griswold v. Connecticut,* the US Supreme Court declared that the right to privacy was a fundamental personal right; and that the enumeration in the Constitution of certain rights should not be construed as a denial or disparagement of others that have been *retained* by the people, considering that the "specific guarantees in the Bill of Rights had penumbras, formed by emanations from those guarantees that helped give them life and substance." Accordingly, an individual's right to privacy of communication and correspondence cannot, as a general rule, be denied without violating the basic principles of liberty and justice. The constitutional right to privacy in its Philippine context was first recognized in the 1968 ruling of *Morfe v. Mutuc,* where the Court xxx emphasized the significance of privacy by declaring that "[t]he right to be let alone is indeed the beginning of all freedom." The description hewed very closely to that earlier made by Justice Brandeis in *Olmstead v. United States* that the right to be let alone was "the most comprehensive of rights and the right most valued by civilized men." It is elementary that before this constitutional right may be invoked a reasonable or objective expectation of privacy should exist, a concept that was introduced in the concurring opinion of Justice Harlan in the 1967 case *Katz v. United States,* no doubt inspired by the oral argument of Judge Harvey Schneider, then co-counsel for petitioner Charles Katz. Since the idea was never discussed in the briefs, Judge Schneider boldly articulated during his oral argument that "expectations of privacy should be based on an objective standard, one that could be formulated using the reasonable man standard from tort law." Realizing the significance of this new standard in its Fourth Amendment jurisprudence, Justice Harlan, in his own way, characterized the reasonable expectation of privacy test as "the rule that has emerged from prior decisions." Justice Harlan expanded the test into its subjective and objective component, however, by stressing that the protection of the Fourth Amendment has a two-fold requirement: "first, that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable'." Although the majority opinion in *Katz v. United States* made no reference to this

reasonable expectation of privacy test, it instituted the doctrine that "the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." In the 1968 case *Mancusi v. DeForte*, the US Supreme Court started to apply the reasonable expectation of privacy test pioneered by *Katz v. United States* and declared that the "capacity to claim the protection of the Amendment depends not upon a property right in the invaded place, but upon whether the area was one in which there was a reasonable expectation of freedom from governmental intrusion."

2. ID.; ID.; ID.; REASONS WHY PUBLIC EMPLOYEES HAVE A DECREASED EXPECTATION OF PRIVACY IN THE WORKPLACE.— [T]here are specific reasons why employees in general have a *decreased* expectation of privacy with respect to work-email accounts, including the following: *(a)* Employers have legitimate interests in monitoring the workplace; *(b)* Employers own the facilities; *(c)* Monitoring computer or internet use is a lesser evil compared to other liabilities, such as having copyright infringing material enter the company computers, or having employees send proprietary material to outside parties; (*d*)An employer also has an interest in detecting legally incriminating material that may later be subject to electronic discovery; (*e*) An employer simply needs to monitor the use of computer resources, from viruses to clogging due to large image or pornography files. In view of these reasons, the fact that employees may be given individual accounts and password protection is not deemed to create any expectation of privacy. Similarly, monitoring an employee's computer usage may also be impelled by the following legitimate reasons: *(a)* To maintain the company's professional reputation and image; *(b)* To maintain employee productivity; *(c)* To prevent and discourage sexual or other illegal workplace harassment; *(d)* To prevent "cyberstalking" by employees; *(e)* To prevent possible defamation liability; *(f)* To prevent employee disclosure of trade secrets and other confidential information; and *(g)*To avoid copyright and other intellectual property infringement from employees illegally downloading software, *etc*.

3. ID.; ID.; ID.; ID.; A PUBLIC EMPLOYEE IS ENTITLED TO A REASONABLE EXPECTATION OF PRIVACY IN RESPECT TO COMMUNICATIONS CREATED, STORED, SENT, OR RECEIVED THROUGH THE OFFICE COMPUTER AFTER OFFICE HOURS.— In view of the petitioner's expectation of privacy, albeit diminished, I differ from the Majority's holding that he should be barred from claiming any violation of his right to privacy and right against unreasonable searches and seizures with respect to *all* the files, official or private, stored in his computer. Although I concede that respondent David had legal authority and good reasons to issue her order to back up the petitioner's files as an exercise of her power of supervision, I am not in full accord with the Majority's holding for the confiscation of *all* the files stored in the computer. The need to control or prevent activities constitutionally subject to the State's regulation may not be filled by means that unnecessarily and broadly sweep and thereby invade the area of protected freedoms. I hold, instead, that the petitioner is entitled to a reasonable expectation of privacy in respect of the communications created, stored, sent, or received *after office hours* through the office computer, as to which he must be protected. For that reason, respondent David's order to back up files should only cover the files corresponding to communications created, stored, sent, or received *during office hours*. There will be no difficulty in identifying and segregating the files created, stored, sent, or received *during* and *after* office hours with the constant advancement and improvement of technology and the presumed expertise of the Commission's information systems analysts.

4. ID.; ID.; ID.; ID.; ADOPTION OF THE BALANCING OF INTEREST TEST **IS APPROPRIATE IN THE FACE OF THE CONFLICT BETWEEN THE PUBLIC EMPLOYER'S LEGITIMATE CONCERN AS AN ARM OF THE GOVERNMENT AND INDIVIDUAL INTEREST OF ITS EMPLOYEE WHO ASSERTS HIS RIGHT TO PRIVACY; CASE AT BAR.—** In upholding the validity of OM No. 10, I also suppose that it is not the intention of the Majority to render the Bill of Rights inferior to an administrative rule. Rather, adoption of the *balancing of interests test*, a concept analogous to the form of scrutiny employed by courts of the United States, has turned out to be applicable especially in

the face of the conflict between the individual interest of the petitioner (who asserts his right to privacy) and the Commission's legitimate concern as an arm of the Government tasked to perform official functions. x x x Much like any other government office, the Commission was established primarily for the purpose of advancing and accomplishing the functions that were the object of its creation. It is imperative, therefore, that its resources be maximized to achieve utmost efficiency in order to ensure the delivery of quality output and services to the public. This commitment to efficiency existed not solely in the interest of good government but also in the interest of letting government agencies control their own information-processing systems. With the State and the people being the Commission's ultimate beneficiaries, it is incumbent upon the Commission to maintain integrity both in fact and in appearance at all times. OM No. 10 was issued to serve as a necessary instrument to safeguard the efficiency and integrity of the Commission, a matter that was of a compelling State interest, and consequently to lay a sound basis for the limited encroachment in the petitioner's right to privacy.

5. ID.; ID.; ID.; ID.; THE MAJORITY RULING ON THE DECREASED EXPECTATION OF PRIVACY IN GOVERNMENT WORKPLACES SHOULD BE MADE PRO HAC VICE **IN VIEW OF THE POSSIBILITY OF ABUSE AND SITUATIONS NOT PRESENTLY ENVISIONED.—** In this era when technological advancement and the emergence of sophisticated methodologies in terms of the science of communication are already inexorable and commonplace, I cannot help but recognize the potential impact of the Majority's ruling on future policies to govern situations in the public and private workplaces. I apprehend that the ruling about the decreased expectation of privacy in the workplace may generate an unwanted implication for employers in general to henceforth consider themselves authorized, without risking a collision with the Constitutionally-protected right to privacy, to probe and pry into communications made during work hours by their employees through the use of their computers and other digital instruments of communication. Thus, the employers may possibly begin to monitor their employees' phone calls, to screen incoming and out-going e-mails, to capture queries made through any of the Internet's efficient search

engines (like Google), or to censor visited websites (like Yahoo!, Facebook or Twitter) in the avowed interest of ensuring productivity and supervising use of business resources. That will be unfortunate. The apprehension may ripen into a real concern about the possibility of abuse on the part of the employers. I propose, therefore, that the ruling herein be made *pro hac vice*, for there may be situations not presently envisioned that may be held, wrongly or rightly, as covered by the ruling, like when the instrument of communication used is property *not owned* by the employer although used during work hours.

APPEARANCES OF COUNSEL

Ponciano R. Solosa for petitioner.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., J.:

This case involves a search of office computer assigned to a government employee who was charged administratively and eventually dismissed from the service. The employee's personal files stored in the computer were used by the government employer as evidence of misconduct.

Before us is a petition for review on *certiorari* under Rule 45 which seeks to reverse and set aside the Decision[1] dated October 11, 2007 and Resolution[2] dated February 29, 2008 of the Court of Appeals (CA). The CA dismissed the petition for *certiorari* (CA-G.R. SP No. 98224) filed by petitioner Briccio "Ricky" A. Pollo to nullify the proceedings conducted by the Civil Service Commission (CSC) which found him guilty of dishonesty, grave misconduct, conduct prejudicial to the best interest of the service, and violation of Republic Act (R.A.) No. 6713 and penalized him with dismissal.

[1] *Rollo*, pp. 63-83. Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a Member of this Court) and Arcangelita M. Romilla-Lontok concurring.

[2] *Id.* at 85.

The factual antecedents:

Petitioner is a former Supervising Personnel Specialist of the CSC Regional Office No. IV and also the Officer-in-Charge of the Public Assistance and Liaison Division (PALD) under the "*Mamamayan Muna Hindi Mamaya Na*" program of the CSC.

On January 3, 2007 at around 2:30 p.m., an unsigned letter-complaint addressed to respondent CSC Chairperson Karina Constantino-David which was marked "Confidential" and sent through a courier service (LBC) from a certain "Alan San Pascual" of Bagong Silang, Caloocan City, was received by the Integrated Records Management Office (IRMO) at the CSC Central Office. Following office practice in which documents marked "Confidential" are left unopened and instead sent to the addressee, the aforesaid letter was given directly to Chairperson David.

The letter-complaint reads:

The Chairwoman
Civil Service Commission
Batasan Hills, Quezon City

Dear Madam Chairwoman,

Belated Merry Christmas and Advance Happy New Year!

As a concerned citizen of my beloved country, I would like to ask from you personally if it is just alright for an employee of your agency to be a lawyer of an accused gov't employee having a pending case in the csc. I honestly think this is a violation of law and unfair to others and your office.

I have known that a person have been lawyered by one of your attorny in the region 4 office. He is the chief of the Mamamayan muna hindi mamaya na division. He have been helping many who have pending cases in the Csc. The justice in our govt system will not be served if this will continue. Please investigate this anomaly because our perception of your clean and good office is being tainted.

Concerned Govt employee[3]

[3] *Id.* at 306.

Chairperson David immediately formed a team of four personnel with background in information technology (IT), and issued a memo directing them to conduct an investigation and specifically "to back up all the files in the computers found in the Mamamayan Muna (PALD) and Legal divisions."[4] After some briefing, the team proceeded at once to the CSC-ROIV office at Panay Avenue, Quezon City. Upon their arrival thereat around 5:30 p.m., the team informed the officials of the CSC-ROIV, respondents Director IV Lydia Castillo (Director Castillo) and Director III Engelbert Unite (Director Unite) of Chairperson David's directive.

The backing-up of *all* files in the hard disk of computers at the PALD and Legal Services Division (LSD) was witnessed by several employees, together with Directors Castillo and Unite who closely monitored said activity. At around 6:00 p.m., Director Unite sent text messages to petitioner and the head of LSD, who were both out of the office at the time, informing them of the ongoing copying of computer files in their divisions upon orders of the CSC Chair. The text messages received by petitioner read:

"Gud p.m. This is Atty. Unite FYI: Co people are going over the PCs of PALD and LSD per instruction of the Chairman. If you can make it here now it would be better."

"All PCs Of PALD and LSD are being backed up per memo of the chair."

"CO IT people arrived just now for this purpose. We were not also informed about this.

"We can't do anything about … it … it's a directive from chair."

"Memo of the chair was referring to an anonymous complaint"; "ill send a copy of the memo via mms"[5]

Petitioner replied also thru text message that he was leaving the matter to Director Unite and that he will just get a lawyer. Another text message received by petitioner from PALD staff also reported the presence of the team from CSC main office:

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[4] *Id.* at 305.

[5] CA *rollo*, p. 56.

"*Sir may mga taga C.O. daw sa kuarto natin.*"[6] At around 10:00 p.m. of the same day, the investigating team finished their task. The next day, all the computers in the PALD were sealed and secured for the purpose of preserving all the files stored therein. Several diskettes containing the back-up files sourced from the hard disk of PALD and LSD computers were turned over to Chairperson David. The contents of the diskettes were examined by the CSC's Office for Legal Affairs (OLA). It was found that most of the files in the 17 diskettes containing files copied from the computer assigned to and being used by the petitioner, numbering about 40 to 42 documents, were draft pleadings or letters[7] in connection with administrative cases in the CSC and other tribunals. On the basis of this finding, Chairperson David issued the Show-Cause Order[8] dated January 11, 2007, requiring the petitioner, who had gone on extended leave, to submit his explanation or counter-affidavit within five days from notice.

Evaluating the subject documents obtained from petitioner's personal files, Chairperson David made the following observations:

> Most of the foregoing files are drafts of legal pleadings or documents that are related to or connected with administrative cases that may broadly be lumped as pending either in the CSCRO No. IV, the CSC-NCR, the CSC-Central Office or other tribunals. It is also of note that most of these draft pleadings are for and on behalves of parties, who are facing charges as respondents in administrative cases. This gives rise to the inference that the one who prepared them was knowingly, deliberately and willfully aiding and advancing interests adverse and inimical to the interest of the CSC as the central personnel agency of the government tasked to discipline misfeasance and malfeasance in the government service. The number of pleadings so prepared further demonstrates that such person is not merely engaged in an isolated practice but pursues it with seeming regularity. It would also be the height of naivete or credulity, and certainly

[6] *Id.*

[7] *Id.* at 21-24.

[8] *Id.* at 20-25.

against common human experience, to believe that the person concerned had engaged in this customary practice without any consideration, and in fact, one of the retrieved files (item 13 above) appears to insinuate the collection of fees. That these draft pleadings were obtained from the computer assigned to Pollo invariably raises the presumption that he was the one responsible or had a hand in their drafting or preparation since the computer of origin was within his direct control and disposition.[9]

Petitioner filed his Comment, denying that he is the person referred to in the anonymous letter-complaint which had no attachments to it, because he is not a lawyer and neither is he "lawyering" for people with cases in the CSC. He accused CSC officials of conducting a "fishing expedition" when they unlawfully copied and printed personal files in his computer, and subsequently asking him to submit his comment which violated his right against self-incrimination. He asserted that he had protested the unlawful taking of his computer done while he was on leave, citing the letter dated January 8, 2007 in which he informed Director Castillo that the files in his computer were his personal files and those of his sister, relatives, friends and some associates and that he is not authorizing their sealing, copying, duplicating and printing as these would violate his constitutional right to privacy and protection against self-incrimination and warrantless search and seizure. He pointed out that though government property, the temporary use and ownership of the computer issued under a Memorandum of Receipt (MR) is ceded to the employee who may exercise all attributes of ownership, including its use for personal purposes. As to the anonymous letter, petitioner argued that it is not actionable as it failed to comply with the requirements of a formal complaint under the Uniform Rules on Administrative Cases in the Civil Service (URACC). In view of the illegal search, the files/documents copied from his computer without his consent is thus inadmissible as evidence, being "fruits of a poisonous tree."[10]

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[9] *Id.* at 25.

[10] *Id.* at 55-62.

On February 26, 2007, the CSC issued Resolution No. 070382[11] finding *prima facie* case against the petitioner and charging him with Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Violation of R.A. No. 6713 (*Code of Conduct and Ethical Standards for Public Officials and Employees*). Petitioner was directed to submit his answer under oath within five days from notice and indicate whether he elects a formal investigation. Since the charges fall under Section 19 of the URACC, petitioner was likewise placed under 90 days preventive suspension effective immediately upon receipt of the resolution. Petitioner received a copy of Resolution No. 070382 on March 1, 2007.

Petitioner filed an Omnibus Motion (For Reconsideration, to Dismiss and/or to Defer) assailing the formal charge as without basis having proceeded from an illegal search which is beyond the authority of the CSC Chairman, such power pertaining solely to the court. Petitioner reiterated that he never aided any people with pending cases at the CSC and alleged that those files found in his computer were prepared not by him but by certain persons whom he permitted, at one time or another, to make use of his computer out of close association or friendship. Attached to the motion were the affidavit of Atty. Ponciano R. Solosa who entrusted his own files to be kept at petitioner's CPU and Atty. Eric N. Estrellado, the latter being Atty. Solosa's client who attested that petitioner had nothing to do with the pleadings or bill for legal fees because in truth he owed legal fees to Atty. Solosa and not to petitioner. Petitioner contended that the case should be deferred in view of the prejudicial question raised in the criminal complaint he filed before the Ombudsman against Director Buensalida, whom petitioner believes had instigated this administrative case. He also prayed for the lifting of the preventive suspension imposed on him. In its Resolution

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[11] *Id.* at 26-33. Chairperson Karina Constantino-David and Commissioner Mary Ann Z. Fernandez-Mendoza concurred in ruling that a *prima facie* case existed against petitioner while Commissioner Cesar D. Buenaflor dissented [see Memorandum (OCOM-C Memo No. 14, s. 2007, CA *rollo*, pp. 431-434).

No. 070519[12] dated March 19, 2007, the CSC denied the omnibus motion. The CSC resolved to treat the said motion as petitioner's answer.

On March 14, 2007, petitioner filed an Urgent Petition[13] under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 98224, assailing both the January 11, 2007 Show-Cause Order and Resolution No. 070382 dated February 26, 2007 as having been issued with grave abuse of discretion amounting to excess or total absence of jurisdiction. Prior to this, however, petitioner lodged an administrative/criminal complaint against respondents Directors Racquel D.G. Buensalida (Chief of Staff, Office of the CSC Chairman) and Lydia A. Castillo (CSC-RO IV) before the Office of the Ombudsman, and a separate complaint for disbarment against Director Buensalida.[14]

On April 17, 2007, petitioner received a notice of hearing from the CSC setting the formal investigation of the case on April 30, 2007. On April 25, 2007, he filed in the CA an Urgent Motion for the issuance of TRO and preliminary injunction.[15] Since he failed to attend the pre-hearing conference scheduled on April 30, 2007, the CSC reset the same to May 17, 2007 with warning that the failure of petitioner and/or his counsel to appear in the said pre-hearing conference shall entitle the prosecution to proceed with the formal investigation *ex-parte*.[16] Petitioner moved to defer or to reset the pre-hearing conference, claiming that the investigation proceedings should be held in abeyance pending the resolution of his petition by the CA. The CSC denied his request and again scheduled the pre-hearing conference on May 18, 2007 with similar warning on the

[12] CSC records, pp. 71-l to 71-n. Chairperson Karina Constantino-David and Commissioner Mary Ann Z. Fernandez-Mendoza concurred in the denial of the omnibus motion while Commissioner Cesar D. Buenaflor reiterated his dissent.

[13] CA *rollo*, pp. 2-19.

[14] *Id.* at 288-294, 321-325.

[15] *Id.* at 336-340.

[16] *Id.* at 373.

consequences of petitioner and/or his counsel's non-appearance.[17] This prompted petitioner to file another motion in the CA, to cite the respondents, including the hearing officer, in indirect contempt.[18]

On June 12, 2007, the CSC issued Resolution No. 071134[19] denying petitioner's motion to set aside the denial of his motion to defer the proceedings and to inhibit the designated hearing officer, Atty. Bernard G. Jimenez. The hearing officer was directed to proceed with the investigation proper with dispatch.

In view of the absence of petitioner and his counsel, and upon the motion of the prosecution, petitioner was deemed to have waived his right to the formal investigation which then proceeded *ex parte*.

On July 24, 2007, the CSC issued Resolution No. 071420,[20] the dispositive part of which reads:

> WHEREFORE, foregoing premises considered, the Commission hereby finds Briccio A. Pollo, *a.k.a*. Ricky A. Pollo GUILTY of Dishonesty, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Violation of Republic Act 6713. He is meted the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties, namely, disqualification to hold public office, forfeiture of retirement benefits, cancellation of civil service eligibilities and bar from taking future civil service examinations.[21]

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[17] *Id.* at 376-378.

[18] *Id.* at 388-392.

[19] *Id.* at 457-463.Chairperson Karina Constantino-David and Commissioner Mary Ann Z. Fernandez-Mendoza concurred in denying the motion while Commissioner Cesar D. Buenaflor dissented stating that based on his dissenting position, any subsequent proceedings in this case is of no moment since the initiatory proceedings was in violation of a person's fundamental rights enshrined in the Bill of Rights of the Constitution. (*Id.* at 465.)

[20] *Id.* at 586-618. Chairperson Karina Constantino-David and Commissioner Mary Ann Z. Fernandez-Mendoza concurred in ruling that petitioner is guilty as charged while Commissioner Cesar D. Buenaflor maintained his dissent.

[21] *Id.* at 618.

On the paramount issue of the legality of the search conducted on petitioner's computer, the CSC noted the dearth of jurisprudence relevant to the factual milieu of this case where the government as employer invades the private files of an employee stored in the computer assigned to him for his official use, in the course of initial investigation of possible misconduct committed by said employee and without the latter's consent or participation. The CSC thus turned to relevant rulings of the United States Supreme Court, and cited the leading case of *O'Connor v. Ortega*[22] as authority for the view that government agencies, in their capacity as employers, rather than law enforcers, could validly conduct search and seizure in the governmental workplace without meeting the "probable cause" or warrant requirement for search and seizure. Another ruling cited by the CSC is the more recent case of *United States v. Mark L. Simons*[23] which declared that the federal agency's computer use policy foreclosed any inference of reasonable expectation of privacy on the part of its employees. Though the Court therein recognized that such policy did not, at the same time, erode the respondent's legitimate expectation of privacy in the office in which the computer was installed, still, the warrantless search of the employee's office was upheld as valid because a government employer is entitled to conduct a warrantless search pursuant to an investigation of work-related misconduct provided the search is reasonable in its inception and scope.

With the foregoing American jurisprudence as benchmark, the CSC held that petitioner has no reasonable expectation of privacy with regard to the computer he was using in the regional office in view of the CSC computer use policy which unequivocally declared that a CSC employee cannot assert any privacy right to a computer assigned to him. Even assuming that there was no such administrative policy, the CSC was of the view that the search of petitioner's computer successfully passed the test of reasonableness for warrantless searches in the workplace as enunciated in the aforecited authorities. The

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[22] 480 U.S. 709 (1987).

[23] 206 F.3d 392 (4th Cir. 2000).

CSC stressed that it pursued the search in its capacity as government employer and that it was undertaken in connection with an investigation involving work-related misconduct, which exempts it from the warrant requirement under the Constitution. With the matter of admissibility of the evidence having been resolved, the CSC then ruled that the totality of evidence adequately supports the charges of grave misconduct, dishonesty, conduct prejudicial to the best interest of the service and violation of R.A. No. 6713 against the petitioner. These grave infractions justified petitioner's dismissal from the service with all its accessory penalties.

In his Memorandum[24] filed in the CA, petitioner moved to incorporate the above resolution dismissing him from the service in his main petition, in lieu of the filing of an appeal via a Rule 43 petition. In a subsequent motion, he likewise prayed for the inclusion of Resolution No. 071800[25] which denied his motion for reconsideration.

By Decision dated October 11, 2007, the CA dismissed the petition for *certiorari* after finding no grave abuse of discretion committed by respondents CSC officials. The CA held that: (1) petitioner was not charged on the basis of the anonymous letter but from the initiative of the CSC after a fact-finding investigation was conducted and the results thereof yielded a *prima facie* case against him; (2) it could not be said that in ordering the back-up of files in petitioner's computer and later confiscating the same, Chairperson David had encroached on the authority of a judge in view of the CSC computer policy declaring the computers as government property and that employee-users thereof have no reasonable expectation of privacy in anything they create, store, send, or receive on the computer system; and (3) there is nothing contemptuous in CSC's act of proceeding with the formal investigation as there was no restraining order or injunction issued by the CA.

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[24] *Id.* at 560-585.

[25] *Id*. at 707-719. Chairperson Karina Constantino-David and Commissioner Mary Ann Z. Fernandez-Mendoza concurred in the denial of the motion for reconsideration while Commissioner Cesar D. Buenaflor reiterated his dissent under his "Addendum to the Dissenting Position Under OCOM-C Memo No. 14, S. 2007". (*Id.* at 720.)

His motion for reconsideration having been denied by the CA, petitioner brought this appeal arguing that—

I

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED AND COMMITTED SERIOUS IRREGULARITY AND BLATANT ERRORS IN LAW AMOUNTING TO GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT ANONYMOUS COMPLAINT IS ACTIONABLE UNDER E.O. 292 WHEN IN TRUTH AND IN FACT THE CONTRARY IS EXPLICITLY PROVIDED UNDER 2nd PARAGRAPH OF SECTION 8 OF CSC RESOLUTION NO. 99-1936, WHICH IS AN [AMENDMENT] TO THE ORIGINAL RULES PER CSC RESOLUTION NO. 94-0521;

II

THE HONORABLE COURT GRIEVOUSLY ERRED AND COMMITTED PALPABLE ERRORS IN LAW AMOUNTING TO GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT PETITIONER CANNOT INVOKE HIS RIGHT TO PRIVACY, TO UNREASONABLE SEARCH AND SEIZURE, AGAINST SELF-INCRIMINATION, BY VIRTUE OF OFFICE MEMORANDUM NO. 10 S. 2002, A MERE INTERNAL MEMORANDUM SIGNED SOLELY AND EXCLUSIVELY BY RESPONDENT DAVID AND NOT BY THE COLLEGIAL COMMISSION CONSIDERING THAT POLICY MATTERS INVOLVING SUB[S]TANTIAL RIGHTS CANNOT BE COVERED BY AN OFFICE MEMORANDUM WHICH IS LIMITED TO PROCEDURAL AND ROUTINARY INSTRUCTION;

III

THE HONORABLE COURT GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT MEMO SEARCH DATED JANUARY 3, 2007 AND THE TAKING OF DOCUMENTS IN THE EVENING THEREOF FROM 7:00 TO 10:00 P.M. IS NOT GRAVE ABUSE OF DISCRETION LIMITING THE DEFINITION [OF] GRAVE ABUSE OF DISCRETION TO ONE INVOLVING AND TAINTED WITH PERSONAL HOSTILITY. IT LIKEWISE ERRED IN HOLDING THAT DATA STORED IN THE GOVERNMENT COMPUTERS ARE GOVERNMENT PROPERTIES INCLUDING THE PERSONAL FILES WHEN THE CONTRARY IS PROVIDED UNDER SECTION 14 OF OM. 10 s. 2002. AND GRIEVOUSLY ERRED STILL WHEN IT RULED THAT RESPONDENT DAVID BY VIRTUE OF O.M. 10 DID NOT

ENCROACH ON THE DUTIES AND FUNCTIONS OF A JUDGE PURSUANT TO ARTICLE III, SECTION 2 OF THE 1987 PHILIPPINE CONSTITUTION;

IV

THE HONORABLE COURT ERRED WHEN IT FAILED TO CONSIDER ALL OTHER NEW ARGUMENTS, ADDITIONAL EVIDENCE HEREUNTO SUBMITTED AS WELL AS ITS FAILURE TO EVALUATE AND TAKE ACTION ON THE 2 MOTIONS TO ADMIT AND INCORPORATE CSC RESOLUTION NOS. 07-1420 DATED JULY 24, 2007 AND CSC RESOLUTION 07-1800 DATED SEPTEMBER 10, 2007. IT DID NOT RULE LIKEWISE ON THE FOUR URGENT MOTION TO RESOLVE ANCILLARY PRAYER FOR TRO.[26]

Squarely raised by the petitioner is the legality of the search conducted on his office computer and the copying of his personal files without his knowledge and consent, alleged as a transgression on his constitutional right to privacy.

The right to privacy has been accorded recognition in this jurisdiction as a facet of the right protected by the guarantee against unreasonable search and seizure under Section 2, Article III of the 1987 Constitution,[27] which provides:

> Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The constitutional guarantee is not a prohibition of all searches and seizures but only of "unreasonable" searches and seizures.[28]

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[26] *Rollo,* p. 19.

[27] *Social Justice Society (SJS) v. Dangerous Drugs Board*, G.R. Nos. 157870, 158633 and 161658, November 3, 2008, 570 SCRA 410, 427, citing *Ople v. Torres,* G.R. No. 127685, July 23, 1998, 293 SCRA 141, 169.

[28] Joaquin Bernas, S.J., *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, 2003 ed., p. 162.

But to fully understand this concept and application for the purpose of resolving the issue at hand, it is essential that we examine the doctrine in the light of pronouncements in another jurisdiction. As the Court declared in *People v. Marti*:[29]

> Our present constitutional provision on the guarantee against unreasonable search and seizure had its origin in the 1935 Charter which, worded as follows:
>
> > "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon *probable* cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." (Sec. 1[3], Article III)
>
> was in turn derived almost verbatim from the Fourth Amendment to the United States Constitution. As such, the Court may turn to the pronouncements of the United States Federal Supreme Court and State Appellate Courts which are considered doctrinal in this jurisdiction.[30]

In the 1967 case of *Katz v. United States*,[31] the US Supreme Court held that the act of FBI agents in electronically recording a conversation made by petitioner in an enclosed public telephone booth violated his right to privacy and constituted a "search and seizure." Because the petitioner had a reasonable expectation of privacy in using the enclosed booth to make a personal telephone call, the protection of the Fourth Amendment extends to such area. In the concurring opinion of Mr. Justice Harlan, it was further noted that the existence of privacy right under prior decisions involved a two-fold requirement: first, that a person has exhibited an actual (subjective) expectation of privacy; and second, that the expectation be one that society is prepared to recognize as reasonable (objective).[32]

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[29] G.R. No. 81561, January 18, 1991, 193 SCRA 57.

[30] *Id.* at 63.

[31] 389 U.S. 437 (1967).

[32] *Id.*

In *Mancusi v. DeForte*[33] which addressed the reasonable expectations of *private* employees in the workplace, the US Supreme Court held that a union employee had Fourth Amendment rights with regard to an office at union headquarters that he shared with other union officials, even as the latter or their guests could enter the office. The Court thus "recognized that employees may have a reasonable expectation of privacy against intrusions by police."

That the Fourth Amendment equally applies to a government workplace was addressed in the 1987 case of *O'Connor v. Ortega*[34] where a physician, Dr. Magno Ortega, who was employed by a state hospital, claimed a violation of his Fourth Amendment rights when hospital officials investigating charges of mismanagement of the psychiatric residency program, sexual harassment of female hospital employees and other irregularities involving his private patients under the state medical aid program, searched his office and seized personal items from his desk and filing cabinets. In that case, the Court categorically declared that "[i]ndividuals do not lose Fourth Amendment rights merely because they work for the government instead of a private employer."[35] A plurality of four Justices concurred that the correct analysis has two steps: first, because "some government offices may be so open to fellow employees or the public that no expectation of privacy is reasonable", a court must consider "[t]he operational realities of the workplace" in order to determine whether an employee's Fourth Amendment rights are implicated; and next, where an employee has a legitimate privacy expectation, an employer's intrusion on that expectation "for noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances."[36]

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[33] 392 U.S. 364, 88 S.Ct. 2120, 20 L.Ed2d 1154 (1968).

[34] *Supra* note 22.

[35] *Id.* at 717.

[36] *City of Ontario, Cal. v. Quon,* 130 S.Ct. 2619, U.S. 2010, June 17, 2010.

On the matter of government employees' reasonable expectations of privacy in their workplace, *O'Connor* teaches:

> x x x Public employees' expectations of privacy in their offices, desks, and file cabinets, like similar expectations of employees in the private sector, may be reduced by virtue of actual office practices and procedures, or by legitimate regulation. x x x The employee's expectation of privacy must be assessed in the context of the employment relation. An office is seldom a private enclave free from entry by supervisors, other employees, and business and personal invitees. Instead, in many cases offices are continually entered by fellow employees and other visitors during the workday for conferences, consultations, and other work-related visits. Simply put, it is the nature of government offices that others – such as fellow employees, supervisors, consensual visitors, and the general public – may have frequent access to an individual's office. We agree with JUSTICE SCALIA that "[c]onstitutional protection against unreasonable searches by the government does not disappear merely because the government has the right to make reasonable intrusions in its capacity as employer," x x x but **some government offices may be so open to fellow employees or the public that no expectation of privacy is reasonable**. x x x **Given the great variety of work environments in the public sector, the question of whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis.**[37] (Citations omitted; emphasis supplied.)

On the basis of the established rule in previous cases, the US Supreme Court declared that Dr. Ortega's Fourth Amendment rights are implicated only if the conduct of the hospital officials infringed "an expectation of privacy that society is prepared to consider as reasonable." Given the undisputed evidence that respondent Dr. Ortega did not share his desk or file cabinets with any other employees, kept personal correspondence and other private items in his own office while those work-related files (on physicians in residency training) were stored outside his office, and there being no evidence that the hospital had established any reasonable regulation or policy discouraging employees from storing personal papers and effects in their desks

[37] *Supra* note 22 at 717-718.

or file cabinets (although the absence of such a policy does not create any expectation of privacy where it would not otherwise exist), the Court concluded that Dr. Ortega has a reasonable expectation of privacy at least in his desk and file cabinets.[38]

Proceeding to the next inquiry as to whether the search conducted by hospital officials was reasonable, the *O'Connor* plurality decision discussed the following principles:

> Having determined that Dr. Ortega had a reasonable expectation of privacy in his office, the Court of Appeals simply concluded without discussion that the "search…was not a reasonable search under the fourth amendment." xxx "[t]o hold that the Fourth Amendment applies to searches conducted by [public employers] is only to begin the inquiry into the standards governing such searches…[W]hat is reasonable depends on the context within which a search takes place. xxx Thus, we must determine the appropriate standard of reasonableness applicable to the search. A determination of the standard of reasonableness applicable to a particular class of searches requires "balanc[ing] the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." xxx **In the case of searches conducted by a public employer, we must balance the invasion of the employees' legitimate expectations of privacy against the government's need for supervision, control, and the efficient operation of the workplace.**
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> In our view, requiring an employer to obtain a warrant whenever the employer wished to enter an employee's office, desk, or file cabinets for a work-related purpose would seriously disrupt the routine conduct of business and would be unduly burdensome. Imposing unwieldy warrant procedures in such cases upon supervisors, who would otherwise have no reason to be familiar with such procedures, is simply unreasonable. In contrast to other circumstances in which we have required warrants, supervisors in offices such as at the Hospital are hardly in the business of investigating the violation of criminal laws. Rather, work-related searches are merely incident to the primary business of the agency. Under these circumstances, the imposition of a warrant requirement would conflict with the

[38] *Id.* at 718-719.

"common-sense realization that government offices could not function if every employment decision became a constitutional matter." xxx

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The governmental interest justifying work-related intrusions by public employers is the efficient and proper operation of the workplace. Government agencies provide myriad services to the public, and the work of these agencies would suffer if employers were required to have probable cause before they entered an employee's desk for the purpose of finding a file or piece of office correspondence. Indeed, it is difficult to give the concept of probable cause, rooted as it is in the criminal investigatory context, much meaning when the purpose of a search is to retrieve a file for work-related reasons. Similarly, the concept of probable cause has little meaning for a routine inventory conducted by public employers for the purpose of securing state property. x x x To ensure the efficient and proper operation of the agency, therefore, public employers must be given wide latitude to enter employee offices for work-related, noninvestigatory reasons.

We come to a similar conclusion for searches conducted pursuant to an investigation of work-related employee misconduct. Even when employers conduct an investigation, they have an interest substantially different from "the normal need for law enforcement." x x x Public employers have an interest in ensuring that their agencies operate in an effective and efficient manner, and the work of these agencies inevitably suffers from the inefficiency, incompetence, mismanagement, or other work-related misfeasance of its employees. Indeed, in many cases, public employees are entrusted with tremendous responsibility, and the consequences of their misconduct or incompetence to both the agency and the public interest can be severe. In contrast to law enforcement officials, therefore, public employers are not enforcers of the criminal law; instead, public employers have a direct and overriding interest in ensuring that the work of the agency is conducted in a proper and efficient manner. In our view, therefore, **a probable cause requirement for searches of the type at issue here would impose intolerable burdens on public employers. The delay in correcting the employee misconduct caused by the need for probable cause rather than reasonable suspicion will be translated into tangible and often irreparable damage to the agency's work, and ultimately to the public interest**. x x x

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In sum, we conclude **that the "special needs, beyond the normal need for law enforcement make the…probable-cause requirement impracticable," x x x for legitimate, work-related noninvestigatory intrusions as well as investigations of work-related misconduct**. A standard of reasonableness will neither unduly burden the efforts of government employers to ensure the efficient and proper operation of the workplace, nor authorize arbitrary intrusions upon the privacy of public employees. We hold, therefore, that **public employer intrusions on the constitutionally protected privacy interests of government employees for noninvestigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances**. Under this reasonableness standard, **both the inception and the scope of the intrusion must be reasonable:**

> "Determining the reasonableness of any search involves a twofold inquiry: first, one must consider 'whether the…action was justified at its inception,' x x x ; second, one must determine whether the search as actually conducted 'was reasonably related in scope to the circumstances which justified the interference in the first place,'" x x x

Ordinarily, **a search of an employee's office by a supervisor will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a noninvestigatory work-related purpose** such as to retrieve a needed file. x x x **The search will be permissible in its scope when "the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of … the nature of the [misconduct**]." x x x[39] (Citations omitted; emphasis supplied.)

Since the District Court granted summary judgment without a hearing on the factual dispute as to the character of the search and neither was there any finding made as to the scope of the search that was undertaken, the case was remanded to said court for the determination of the justification for the search and seizure, and evaluation of the reasonableness of both the inception of the search and its scope.

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[39] *Id.* at 719, 722-725.

In *O'Connor* the Court recognized that "special needs" authorize warrantless searches involving public employees for work-related reasons. The Court thus laid down a balancing test under which government interests are weighed against the employee's reasonable expectation of privacy. This reasonableness test implicates neither probable cause nor the warrant requirement, which are related to law enforcement.[40]

O'Connor was applied in subsequent cases raising issues on employees' privacy rights in the workplace. One of these cases involved a government employer's search of an office computer, *United States v. Mark L. Simons*[41] where the defendant Simons, an employee of a division of the Central Intelligence Agency (CIA), was convicted of receiving and possessing materials containing child pornography. Simons was provided with an office which he did not share with anyone, and a computer with Internet access. The agency had instituted a policy on computer use stating that employees were to use the Internet for official government business only and that accessing unlawful material was specifically prohibited. The policy also stated that users shall understand that the agency will periodically audit, inspect, and/or monitor the user's Internet access as deemed appropriate. CIA agents instructed its contractor for the management of the agency's computer network, upon initial discovery of prohibited internet activity originating from Simons' computer, to conduct a remote monitoring and examination of Simons' computer. After confirming that Simons had indeed downloaded pictures that were pornographic in nature, all the files on the hard drive of Simon's computer were copied from a remote work station. Days later, the contractor's representative finally entered Simon's office, removed the original hard drive on Simon's computer, replaced it with a copy, and gave the original to the agency security officer. Thereafter, the agency secured warrants and searched Simons' office in the evening when Simons was not around. The search team *copied* the contents of Simons' computer; computer diskettes found in Simons' desk drawer; computer

[40] *Francis v. Giacomelli,* 588 F.3d 186, C.A. (Md), December 2, 2009.

[41] *Supra* note 23.

files stored on the zip drive or on zip drive diskettes; videotapes; and various documents, including personal correspondence. At his trial, Simons moved to suppress these evidence, arguing that the searches of his office and computer violated his Fourth Amendment rights. After a hearing, the district court denied the motion and Simons was found guilty as charged.

Simons appealed his convictions. The US Supreme Court ruled that the searches of Simons' computer and office did not violate his Fourth Amendment rights and the first search warrant was valid. It held that the search remains valid under the *O'Connor* exception to the warrant requirement because evidence of the crime was discovered in the course of an otherwise proper administrative inspection. Simons' violation of the agency's Internet policy happened also to be a violation of criminal law; this does not mean that said employer lost the capacity and interests of an employer. The warrantless entry into Simons' office was reasonable under the Fourth Amendment standard announced in *O'Connor* because at the inception of the search, the employer had "reasonable grounds for suspecting" that the hard drive would yield evidence of misconduct, as the employer was already aware that Simons had misused his Internet access to download over a thousand pornographic images. The retrieval of the hard drive was reasonably related to the objective of the search, and the search was not excessively intrusive. Thus, while Simons had a reasonable expectation of privacy in his office, he did not have such legitimate expectation of privacy with regard to the files in his computer.

x x x To establish a violation of his rights under the Fourth Amendment, Simons must first prove that he had a legitimate expectation of privacy in the place searched or the item seized. x x x And, in order to prove a legitimate expectation of privacy, Simons must show that his subjective expectation of privacy is one that society is prepared to accept as objectively reasonable. x x x

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x x x We conclude that the remote searches of Simons' computer did not violate his Fourth Amendment rights because, in light of

the Internet policy, Simons lacked a legitimate expectation of privacy in the files downloaded from the Internet. Additionally, we conclude that Simons' Fourth Amendment rights were not violated by FBIS' retrieval of Simons' hard drive from his office.

Simons did not have a legitimate expectation of privacy with regard to the record or fruits of his Internet use in light of the FBIS Internet policy. The policy clearly stated that FBIS would "audit, inspect, and/or monitor" employees' use of the Internet, including all file transfers, all websites visited, and all e-mail messages, "as deemed appropriate." x x x This policy placed employees on notice that they could not reasonably expect that their Internet activity would be private. Therefore, regardless of whether Simons subjectively believed that the files he transferred from the Internet were private, such a belief was not objectively reasonable after FBIS notified him that it would be overseeing his Internet use. x x x Accordingly, FBIS' actions in remotely searching and seizing the computer files Simons downloaded from the Internet did not violate the Fourth Amendment.

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The burden is on Simons to prove that he had a legitimate expectation of privacy in his office. x x x Here, Simons has shown that he had an office that he did not share. As noted above, the operational realities of Simons' workplace may have diminished his legitimate privacy expectations. However, there is no evidence in the record of any workplace practices, procedures, or regulations that had such an effect. We therefore conclude that, on this record, **Simons possessed a legitimate expectation of privacy in his office.**

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In the final analysis, this case involves an employee's supervisor entering the employee's government office and retrieving a piece of government equipment in which the employee had absolutely no expectation of privacy – equipment that the employer knew contained evidence of crimes committed by the employee in the employee's office. This situation may be contrasted with one in which the criminal acts of a government employee were unrelated to his employment. Here, there was a conjunction of the conduct that violated the employer's policy and the conduct that violated the criminal law.

We consider that FBIS' intrusion into Simons' office to retrieve the hard drive is one in which a reasonable employer might engage. x x x[42] (Citations omitted; emphasis supplied.)

This Court, in *Social Justice Society (SJS) v. Dangerous Drugs Board*[43] which involved the constitutionality of a provision in R.A. No. 9165 requiring mandatory drug testing of candidates for public office, students of secondary and tertiary schools, officers and employees of public and private offices, and persons charged before the prosecutor's office with certain offenses, have also recognized the fact that there may be such legitimate intrusion of privacy in the workplace.

The first factor to consider in the matter of reasonableness is the nature of the privacy interest upon which the drug testing, which effects a search within the meaning of Sec. 2, Art. III of the Constitution, intrudes. In this case, the office or workplace serves as the backdrop for the analysis of the privacy expectation of the employees and the reasonableness of drug testing requirement. **The employees' privacy interest in an office is to a large extent circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace**. Their privacy expectation in a regulated office environment is, in fine, reduced; and a degree of impingement upon such privacy has been upheld. (Emphasis supplied.)

Applying the analysis and principles announced in *O'Connor* and *Simons* to the case at bar, we now address the following questions: (1) Did petitioner have a reasonable expectation of privacy in his office and computer files?; and (2) Was the search authorized by the CSC Chair, the copying of the contents of the hard drive on petitioner's computer reasonable in its inception and scope?

In this inquiry, the relevant surrounding circumstances to consider include "(1) the employee's relationship to the item

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[42] *Id.*

[43] *Supra* note 27 at 432-433.

seized; (2) whether the item was in the immediate control of the employee when it was seized; and (3) whether the employee took actions to maintain his privacy in the item." These factors are relevant to both the subjective and objective prongs of the reasonableness inquiry, and we consider the two questions together.[44] Thus, where the employee used a password on his computer, did not share his office with co-workers and kept the same locked, he had a legitimate expectation of privacy and any search of that space and items located therein must comply with the Fourth Amendment.[45]

We answer the first in the negative. Petitioner failed to prove that he had an actual (subjective) expectation of privacy either in his office or government-issued computer which contained his personal files. Petitioner did not allege that he had a separate enclosed office which he did not share with anyone, or that his office was always locked and not open to other employees or visitors. Neither did he allege that he used passwords or adopted any means to prevent other employees from accessing his computer files. On the contrary, he submits that being in the public assistance office of the CSC-ROIV, he normally would have visitors in his office like friends, associates and even unknown people, whom he even allowed to use his computer which to him seemed a trivial request. He described his office as "full of people, his friends, unknown people" and that in the past 22 years he had been discharging his functions at the PALD, he is "personally assisting incoming clients, receiving documents, drafting cases on appeals, in charge of accomplishment report, *Mamamayan Muna* Program, Public Sector Unionism, Correction of name, accreditation of service, and hardly had anytime for himself alone, that in fact he stays in the office as a paying customer."[46] Under this scenario, it can hardly be deduced that petitioner had such expectation of privacy that society would recognize as reasonable.

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[44] *U.S. v. Barrows,* 481 F.3d 1246, C.A.10 (Okla.), April 3, 2007, citing *United States v. Anderson,* 154 F.3d 1225, 1229 (10th Cir. 1998).

[45] *U.S. v. Ziegler,* 474 F.3d 1184 C.A.9 (Mont.), January 30, 2007.

[46] CA *rollo,* pp. 42, 61.

Moreover, even assuming *arguendo*, in the absence of allegation or proof of the aforementioned factual circumstances, that petitioner had at least a subjective expectation of privacy in his computer as he claims, such is negated by the presence of policy regulating the use of office computers, as in *Simons.*

Office Memorandum No. 10, S. 2002 "*Computer Use Policy (CUP)*" explicitly provides:

POLICY

1. The *Computer Resources* are the property of the Civil Service Commission and may be used only for legitimate business purposes.

2. *Users* shall be permitted access to *Computer Resources* to assist them in the performance of their respective jobs.

3. Use of the *Computer Resources* is a privilege that may be revoked at any given time.

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No Expectation of Privacy

4. *No expectation of privacy. Users* except the Members of the Commission shall not have an expectation of privacy in anything they create, store, send, or receive on the computer system.

   The Head of the Office for Recruitment, Examination and Placement shall select and assign *Users* to handle the confidential examination data and processes.

5. *Waiver of privacy rights. Users* expressly waive any right to privacy in anything they create, store, send, or receive on the computer through the Internet or any other computer network. *Users* understand that the **CSC may use human or automated means to monitor the use of its** Computer Resources.

6. *Non-exclusivity of Computer Resources.* A computer resource is not a personal property or for the exclusive use of a *User* to whom a memorandum of receipt (MR) has been issued. It can be shared or operated by other users. However, he is accountable therefor and must insure its care and maintenance.

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Passwords

12. *Responsibility for passwords.* *Users* shall be responsible for safeguarding their passwords for access to the computer system. Individual passwords shall not be printed, stored online, or given to others. *Users* shall be responsible for all transactions made using their passwords. *No User may access the computer system with another User's password or account.*

13. *Passwords do not imply privacy.* Use of passwords to gain access to the computer system or to encode particular files or messages does not imply that *Users* have an expectation of privacy in the material they create or receive on the computer system. The Civil Service Commission has global passwords that permit access to all materials stored on its networked computer system regardless of whether those materials have been encoded with a particular *User's* password. Only members of the Commission shall authorize the application of the said global passwords.

xxx xxx xxx[47] (Emphasis supplied.)

The CSC in this case had implemented a policy that put its employees on notice that they have no expectation of privacy in **anything** they create, store, send or receive on the office computers, and that the CSC may monitor the use of the computer resources using both automated or human means. This implies that on-the-spot inspections may be done to ensure that the computer resources were used only for such legitimate business purposes.

One of the factors stated in *O'Connor* which are relevant in determining whether an employee's expectation of privacy in the workplace is reasonable is the existence of a workplace privacy policy.[48] In one case, the US Court of Appeals Eighth Circuit held that a state university employee has not shown that he had

[47] *Id.* at 440-443.

[48] *Biby v. Board of Regents, of the University of Nebraska at Lincoln,* 419 F.3d 845 C.A.8 (Neb), August 22, 2005.

a reasonable expectation of privacy in his computer files where the university's computer policy, the computer user is informed not to expect privacy if the university has a legitimate reason to conduct a search. The user is specifically told that computer files, including e-mail, can be searched when the university is responding to a discovery request in the course of litigation. Petitioner employee thus cannot claim a violation of Fourth Amendment rights when university officials conducted a warrantless search of his computer for work-related materials.[49]

As to the second point of inquiry on the reasonableness of the search conducted on petitioner's computer, we answer in the affirmative.

The search of petitioner's computer files was conducted in connection with investigation of work-related misconduct prompted by an anonymous letter-complaint addressed to Chairperson David regarding anomalies in the CSC-ROIV where the head of the *Mamamayan Muna Hindi Mamaya Na* division is supposedly "lawyering" for individuals with pending cases in the CSC. Chairperson David stated in her sworn affidavit:

> 8. That prior to this, as early as 2006, the undersigned has received several text messages from unknown sources adverting to certain anomalies in Civil Service Commission Regional Office IV (CSCRO IV) such as, staff working in another government agency, "selling" cases and aiding parties with pending cases, all done during office hours and involved the use of government properties;
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> 9. That said text messages were not investigated for lack of any verifiable leads and details sufficient to warrant an investigation;
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> 10. That the anonymous letter provided the lead and details as it pinpointed the persons and divisions involved in the alleged irregularities happening in CSCRO IV;
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> 11. That in view of the seriousness of the allegations of irregularities happening in CSCRO IV and its effect on the

[49] *Id.*

> integrity of the Commission, I decided to form a team of Central Office staff to back up the files in the computers of the Public Assistance and Liaison Division (PALD) and Legal Division;
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> xxx xxx xxx[50]

A search by a government employer of an employee's office is justified at inception when there are reasonable grounds for suspecting that it will turn up evidence that the employee is guilty of work-related misconduct.[51] Thus, in the 2004 case decided by the US Court of Appeals Eighth Circuit, it was held that where a government agency's computer use policy prohibited electronic messages with pornographic content and in addition expressly provided that employees *do not have any personal privacy rights regarding their use of the agency information systems and technology*, the government employee had no legitimate expectation of privacy as to the use and contents of his office computer, and therefore evidence found during warrantless search of the computer was admissible in prosecution for child pornography. In that case, the defendant employee's computer hard drive was first remotely examined by a computer information technician after his supervisor received complaints that he was inaccessible and had copied and distributed non-work-related e-mail messages throughout the office. When the supervisor confirmed that defendant had used his computer to access the prohibited websites, in contravention of the express policy of the agency, his computer tower and floppy disks were taken and examined. A formal administrative investigation ensued and later search warrants were secured by the police department. The initial remote search of the hard drive of petitioner's computer, as well as the subsequent warrantless searches was held as valid under the *O'Connor* ruling that a public employer can investigate work-related misconduct so long as any search is justified at inception and is reasonably related in scope to the circumstances that justified it in the first place.[52]

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[50] CA *rollo*, p. 639.

[51] *U.S. v. Thorn*, 375 F.3d 679, C.A.8 (Mo.), July 13, 2004.

[52] *Id.*

Under the facts obtaining, the search conducted on petitioner's computer was justified at its inception and scope. We quote with approval the CSC's discussion on the reasonableness of its actions, consistent as it were with the guidelines established by *O'Connor*:

> Even conceding for a moment that there is no such administrative policy, there is no doubt in the mind of the Commission that the search of Pollo's computer has successfully passed the test of reasonableness for warrantless searches in the workplace as enunciated in the above-discussed American authorities. It bears emphasis **that the Commission pursued the search in its capacity as a government employer and that it was undertaken in connection with an investigation involving a work-related misconduct**, one of the circumstances exempted from the warrant requirement. At the inception of the search, a complaint was received recounting that a certain division chief in the CSCRO No. IV was "lawyering" for parties having pending cases with the said regional office or in the Commission. **The nature of the imputation was serious, as it was grievously disturbing.** If, indeed, a CSC employee was found to be furtively engaged in the practice of "lawyering" for parties with pending cases before the Commission would be a highly repugnant scenario, then such a case would have shattering repercussions. It would undeniably cast clouds of doubt upon the institutional integrity of the Commission as a quasi-judicial agency, and in the process, render it less effective in fulfilling its mandate as an impartial and objective dispenser of administrative justice. It is settled that a court or an administrative tribunal must not only be actually impartial but must be seen to be so, otherwise the general public would not have any trust and confidence in it.
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> **Considering the damaging nature of the accusation, the Commission had to act fast**, if only to arrest or limit any possible adverse consequence or fall-out. Thus, on the same date that the complaint was received, a search was forthwith conducted involving the computer resources in the concerned regional office. **That it was the computers that were subjected to the search was justified since these furnished the easiest means for an employee to encode and store documents. Indeed, the computers would be a likely starting point in ferreting out incriminating evidence. Concomitantly, the ephemeral nature of computer files, that is, they could easily be destroyed at a click of a button, necessitated**

drastic and immediate action. Pointedly, to impose the need to comply with the probable cause requirement would invariably defeat the purpose of the work-related (sic) investigation.

Worthy to mention, too, is the fact that the Commission effected the warrantless search in an open and transparent manner. Officials and some employees of the regional office, who happened to be in the vicinity, were on hand to observe the process until its completion. In addition, the respondent himself was duly notified, through text messaging, of the search and the concomitant retrieval of files from his computer.

All in all, the Commission is convinced that the warrantless search done on computer assigned to Pollo was not, in any way, vitiated with unconstitutionality. It was a reasonable exercise of the managerial prerogative of the Commission as an employer aimed at ensuring its operational effectiveness and efficiency by going after the work-related misfeasance of its employees. Consequently, the evidence derived from the questioned search are deemed admissible.[53]

Petitioner's claim of violation of his constitutional right to privacy must necessarily fail. His other argument invoking the privacy of communication and correspondence under Section 3(1), Article III of the 1987 Constitution is also untenable considering the recognition accorded to certain legitimate intrusions into the privacy of employees in the government workplace under the aforecited authorities. We likewise find no merit in his contention that *O'Connor* and *Simons* are not relevant because the present case does not involve a criminal offense like child pornography. As already mentioned, the search of petitioner's computer was justified there being reasonable ground for suspecting that the files stored therein would yield incriminating evidence relevant to the investigation being conducted by CSC as government employer of such misconduct subject of the anonymous complaint. This situation clearly falls under the exception to the warrantless requirement in administrative searches defined in *O'Connor*.

The Court is not unaware of our decision in *Anonymous Letter-Complaint against Atty. Miguel Morales, Clerk of Court,*

[53] CA *rollo*, pp. 611-612.

Metropolitan Trial Court of Manila[54] involving a branch clerk (Atty. Morales) who was investigated on the basis of an anonymous letter alleging that he was consuming his working hours filing and attending to personal cases, using office supplies, equipment and utilities. The OCA conducted a spot investigation aided by NBI agents. The team was able to access Atty. Morales' personal computer and print two documents stored in its hard drive, which turned out to be two pleadings, one filed in the CA and another in the RTC of Manila, both in the name of another lawyer. Atty. Morales' computer was seized and taken in custody of the OCA but was later ordered released on his motion, but with order to the MISO to first retrieve the files stored therein. The OCA disagreed with the report of the Investigating Judge that there was no evidence to support the charge against Atty. Morales as no one from the OCC personnel who were interviewed would give a categorical and positive statement affirming the charges against Atty. Morales, along with other court personnel also charged in the same case. The OCA recommended that Atty. Morales should be found guilty of gross misconduct. The Court *En Banc* held that while Atty. Morales may have fallen short of the exacting standards required of every court employee, the Court cannot use the evidence obtained from his *personal* computer against him for it violated his constitutional right against unreasonable searches and seizures. The Court found no evidence to support the claim of OCA that they were able to obtain the subject pleadings with the consent of Atty. Morales, as in fact the latter immediately filed an administrative case against the persons who conducted the spot investigation, questioning the validity of the investigation and specifically invoking his constitutional right against unreasonable search and seizure. And as there is no other evidence, apart from the pleadings, retrieved from the unduly confiscated personal computer of Atty. Morales, to hold him administratively liable, the Court had no choice but to dismiss the charges against him for insufficiency of evidence.

The above case is to be distinguished from the case at bar because, unlike the former which involved a *personal* computer

[54] A.M. Nos. P-08-2519 and P-08-2520, November 19, 2008, 571 SCRA 361.

of a court employee, the computer from which the personal files of herein petitioner were retrieved is a government-issued computer, hence government property the use of which the CSC has absolute right to regulate and monitor. Such relationship of the petitioner with the item seized (office computer) and other relevant factors and circumstances under American Fourth Amendment jurisprudence, notably the existence of CSC MO 10, S. 2007 on Computer Use Policy, failed to establish that petitioner had a reasonable expectation of privacy in the office computer assigned to him.

Having determined that the personal files copied from the office computer of petitioner are admissible in the administrative case against him, we now proceed to the issue of whether the CSC was correct in finding the petitioner guilty of the charges and dismissing him from the service.

Well-settled is the rule that the findings of fact of quasi-judicial agencies, like the CSC, are accorded not only respect but even finality if such findings are supported by substantial evidence. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[55]

The CSC based its findings on evidence consisting of a substantial number of drafts of legal pleadings and documents stored in his office computer, as well as the sworn affidavits and testimonies of the witnesses it presented during the formal investigation. According to the CSC, these documents were confirmed to be similar or exactly the same content-wise with those on the case records of some cases pending either with CSCRO No. IV, CSC-NCR or the Commission Proper. There were also substantially similar copies of those pleadings filed with the CA and duly furnished the Commission. Further, the

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[55] *Vertudes v. Buenaflor,* G.R. No. 153166, December 16, 2005, 478 SCRA 210, 230, citing *Rosario v. Victory Ricemill,* G.R. No. 147572, February 19, 2003, 397 SCRA 760, 766 and *Bagong Bayan Corp., Realty Investors and Developers v. NLRC,* G.R. No. 61272, September 29, 1989, 178 SCRA 107.

CSC found the explanation given by petitioner, to the effect that those files retrieved from his computer hard drive actually belonged to his lawyer friends Estrellado and Solosa whom he allowed the use of his computer for drafting their pleadings in the cases they handle, as implausible and doubtful under the circumstances. We hold that the CSC's factual finding regarding the authorship of the subject pleadings and misuse of the office computer is well-supported by the evidence on record, thus:

> It is also striking to note that some of these documents were in the nature of pleadings responding to the orders, decisions or resolutions of these offices or directly in opposition to them such as a petition for *certiorari* or a motion for reconsideration of CSC Resolution. This indicates that the author thereof knowingly and willingly participated in the promotion or advancement of the interests of parties contrary or antagonistic to the Commission. Worse, the appearance in one of the retrieved documents the phrase, *"Eric N. Estr[e]llado, Epal kulang ang bayad mo,"* lends plausibility to an inference that the preparation or drafting of the legal pleadings was pursued with less than a laudable motivation. Whoever was responsible for these documents was simply doing the same for the money – a "*legal mercenary*" selling or purveying his expertise to the highest bidder, so to speak.
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> Inevitably, **the fact that these documents were retrieved from the computer of Pollo raises the presumption that he was the author thereof. This is because he had a control of the said computer**. More significantly, one of the witnesses, Margarita Reyes, categorically testified seeing a written copy of one of the pleadings found in the case records lying on the table of the respondent. This was the Petition for Review in the case of Estrellado addressed to the Court of Appeals. The said circumstances indubitably demonstrate that Pollo was secretly undermining the interest of the Commission, his very own employer.
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> To deflect any culpability, Pollo would, however, want the Commission to believe that the documents were the personal files of some of his friends, including one Attorney Ponciano Solosa, who incidentally served as his counsel of record during the formal investigation of this case. In fact, Atty. Solosa himself executed a sworn affidavit to this effect. Unfortunately, this contention of the respondent was directly rebutted by the prosecution witness, Reyes,

who testified that during her entire stay in the PALD, she never saw Atty. Solosa using the computer assigned to the respondent. Reyes more particularly stated that she worked in close proximity with Pollo and would have known if Atty. Solosa, whom she personally knows, was using the computer in question. Further, Atty. Solosa himself was never presented during the formal investigation to confirm his sworn statement such that the same constitutes self-serving evidence unworthy of weight and credence. The same is true with the other supporting affidavits, which Pollo submitted.

At any rate, even admitting for a moment the said contention of the respondent, it evinces the fact that he was unlawfully authorizing private persons to use the computer assigned to him for official purpose, not only once but several times gauging by the number of pleadings, for ends not in conformity with the interests of the Commission. He was, in effect, acting as a principal by indispensable cooperation…Or at the very least, he should be responsible for serious misconduct for repeatedly allowing CSC resources, that is, the computer and the electricity, to be utilized for purposes other than what they were officially intended.

Further, the Commission cannot lend credence to the posturing of the appellant that the line appearing in one of the documents, "*Eric N. Estrellado, Epal kulang ang bayad mo*," was a private joke between the person alluded to therein, Eric N. Estrellado, and his counsel, Atty. Solosa, and not indicative of anything more sinister. The same is too preposterous to be believed. Why would such a statement appear in a legal pleading stored in the computer assigned to the respondent, unless he had something to do with it?[56]

Petitioner assails the CA in not ruling that the CSC should not have entertained an anonymous complaint since Section 8 of CSC Resolution No. 99-1936 (URACC) requires a verified complaint:

Rule II – Disciplinary Cases

SEC. 8. *Complaint.* - A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, **in cases initiated by the proper disciplining authority**, the complaint need not be under oath.

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[56] CA *rollo,* pp. 616-617.

No anonymous complaint shall be entertained unless **there is obvious truth or merit to the allegation therein** or supported by documentary or direct evidence, in which case the person complained of may be required to comment.

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We need not belabor this point raised by petitioner. The administrative complaint is deemed to have been initiated by the CSC itself when Chairperson David, after a spot inspection and search of the files stored in the hard drive of computers in the two divisions adverted to in the anonymous letter — as part of the disciplining authority's own fact-finding investigation and information-gathering — found a *prima facie* case against the petitioner who was then directed to file his comment. As this Court held in *Civil Service Commission v. Court of Appeals*[57]—

Under Sections 46 and 48 (1), Chapter 6, Subtitle A, Book V of E.O. No. 292 and Section 8, Rule II of Uniform Rules on Administrative Cases in the Civil Service, **a complaint may be initiated against a civil service officer or employee by the appropriate disciplining authority, even without being subscribed and sworn to.** Considering that the CSC, as the disciplining authority for Dumlao, filed the complaint, jurisdiction over Dumlao was validly acquired. (Emphasis supplied.)

As to petitioner's challenge on the validity of CSC OM 10, S. 2002 (CUP), the same deserves scant consideration. The alleged infirmity due to the said memorandum order having been issued solely by the CSC Chair and not the Commission as a collegial body, upon which the dissent of Commissioner Buenaflor is partly anchored, was already explained by Chairperson David in her Reply to the Addendum to Commissioner Buenaflor's previous memo expressing his dissent to the actions and disposition of the Commission in this case. According to Chairperson David, said memorandum order was in fact exhaustively discussed, provision by provision in the January 23, 2002 Commission Meeting, attended by her and former Commissioners Erestain, Jr. and Valmores. Hence, the Commission *En Banc* at the time saw no need to issue a Resolution for the

[57] G.R. No. 147009, March 11, 2004, 425 SCRA 394, 401.

purpose and further because the CUP being for internal use of the Commission, the practice had been to issue a memorandum order.[58] Moreover, being an administrative rule that is merely internal in nature, or which regulates only the personnel of the CSC and not the public, the CUP need not be published prior to its effectivity.[59]

In fine, no error or grave abuse of discretion was committed by the CA in affirming the CSC's ruling that petitioner is guilty of grave misconduct, dishonesty, conduct prejudicial to the best interest of the service, and violation of R.A. No. 6713. The gravity of these offenses justified the imposition on petitioner of the ultimate penalty of dismissal with all its accessory penalties, pursuant to existing rules and regulations.

WHEREFORE, the petition for review on *certiorari* is *DENIED*. The Decision dated October 11, 2007 and Resolution dated February 29, 2008 of the Court of Appeals in CA-G.R. SP No. 98224 are *AFFIRMED*.

With costs against the petitioner.

SO ORDERED.

Corona, C.J., Brion, Peralta, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.*, concur.

Carpio, J., see separate concurring opinion.

Sereno, J., concurs but share *J.* Carpio's concerns.

Velasco, Jr., Leonardo-de Castro, and *Abad, JJ.*, join the concurring and dissenting opinion of Justice Bersamin.

Bersamin, J., please see concurring and dissenting opinion.

Del Castillo, J., no part.

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[58] *Rollo*, p. 299.

[59] See *Tañada vs. Hon. Tavera*, 230 Phil. 528, 535 (1986)

SEPARATE CONCURRING OPINION

CARPIO, J.:

I concur with the Court's denial of the petition. However, I file this separate opinion to (1) assert a statutory basis for the disposition of the case, and (2) articulate the exception to the Civil Service Commission (CSC) office regulation denying expectation of privacy in the use of government computers.

First. The CSC's computer use regulation, which opens to access for internal scrutiny anything CSC employees "create, store, send, or receive in the computer system," has a statutory basis under the Government Auditing Code of the Philippines. Section 4(2) of the Code mandates that "**[g]overnment** x x x property **shall be** x x x used solely for public purposes."[1] In short, any **private use** of a government property, like a government-owned computer, is prohibited by law. Consequently, a government employee cannot expect any privacy when he uses a government-owned computer because he knows he cannot use the computer for any private purpose. The CSC regulation declaring a no-privacy expectation on the use of government-owned computers logically follows from the statutory rule that government-owned property shall be used "solely" for a public purpose.

Moreover, the statutory rule and the CSC regulation are consistent with the constitutional treatment of a public office as a public trust.[2] The statutory rule and the CSC regulation also implement the State policies, as expressly provided in the Constitution, of ensuring full disclosure of all government transactions involving public interest,[3] maintaining honesty and

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[1] Presidential Decree No. 1445. Section 4(2) provides in full: "Government funds or property shall be spent or used solely for public purposes."

[2] Section 1, Article XI of the Constitution provides: "Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives."

[3] Section 28, Article II of the Constitution provides: "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest."

integrity in the public service, and preventing graft and corruption.[4]

Thus, in this jurisdiction, the constitutional guarantees of privacy and reasonable search are unavailing against audit inspections or internal investigations for misconduct, as here, of electronic data stored in **government-owned property** such as computing, telecommunication, and other devices issued to civil servants. These constitutional guarantees apply only to searches of devices **privately owned** by government employees.

Second. The CSC office regulation denying CSC employees privacy expectation in "anything they create, store, send, or receive in the computer system,"[5] although valid as to petitioner Briccio Pollo, is constitutionally infirm insofar as the regulation excludes from its ambit the three CSC commissioners solely by reason of their *rank*, and not by reason of the confidential nature of the electronic data they generate.

Office regulations mandating no-privacy expectation such as the CSC regulation in question cannot justify access to sensitive government information traditionally recognized as **confidential**. Thus, insulated from the reach of such regulations are Presidential conversations, correspondences, or discussions during closed-door Cabinet meetings, internal deliberations of the Supreme Court and other collegiate courts, draft decisions of judges and justices, executive sessions of either house of Congress, military and diplomatic secrets, national security matters, documents relating to pre-prosecution investigations by law enforcement

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[4] Section 27, Article II of the Constitution provides: "The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."

[5] The rule under CSC Memorandum No. 10, series of 2002, provides:

No expectation of privacy. Users except the Members of the Commission shall not have expectation of privacy in anything they create, store, send or receive in the computer system.

The Head of the Office for Recruitment, Examination and Placement shall select and assign Users to handle the confidential examination of data and processes.

agencies and similar confidential matters.[6] The privilege of confidentiality covering these classes of information, barring free access to them, is grounded on the nature of the constitutional function of the public officials involved, coupled with considerations of efficiency, safety and comity interests since disclosure of confidential information jeopardizes decision-making, endangers lives and undermines diplomatic dealings, as the case may be.

The CSC, as the government's "central personnel agency,"[7] exercises quasi-judicial functions in "[r]ender[ing] opinion and rulings on all personnel and other Civil Service matters."[8] The CSC's internal deliberations on administrative cases are comparable to the internal deliberations of collegial courts. Such internal deliberations enjoy confidentiality and cannot be accessed on the ground that an audio of the deliberations is stored in a government-owned device. Likewise, draft decisions of CSC commissioners that are stored in government-issued computers are confidential information.

By providing that "*[u]sers* **except the Members of the Commission** shall *not* have an expectation of privacy in anything they create, store, send, or receive in the [government-owned] computer system," the CSC regulation creates a new, constitutionally suspect category of confidential information based, not on the sensitivity of content, but on the salary grade of its author. Thus, a glaring exemption from the CSC's own transparency regulation is "anything x x x create[d], store[d], sen[t], or receive[d]" in the commission's computer system *by the three CSC members*. As the new category is content-neutral and draws its confidentiality solely from the rank held by the government official creating, storing, sending and receiving the data, the exemption stands on its head the traditional grounding of confidentiality – the sensitivity of *content*.

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[6] Under *Chavez v. Public Estates Authority* (G.R. No. 133250, 9 July 2002, 384 SCRA 152, 188), these are also beyond the reach of the constitutional right to information.

[7] Constitution, Article IX(B), Section 3.

[8] Executive Order No. 292, Book V, Title I, Chapter 3, Section 12(5).

The constitutional infirmity of the exemption is worsened by the arbitrariness of its rank-based classification. The three CSC commissioners, unlike the rest of the lower ranked CSC employees, are excluded from the operation of the CSC's data transparency regulation solely because they are the CSC's highest ranking officers.[9] This classification fails even the most lenient equal protection analysis. It bears no reasonable connection with the CSC regulation's avowed purposes of "[1] [p]rotect[ing] confidential, proprietary information of the CSC from theft or unauthorized disclosure to third parties; [2] [o]ptimiz[ing] the use of the CSC's [c]omputer [r]esources as what they are officially

CONCURRING AND DISSENTING OPINION

BERSAMIN, J.:

I render this concurring and dissenting opinion only to express my thoughts on the constitutional right to privacy of communication and correspondence *vis-à-vis* an office memorandum that apparently removed an employee's expectation of privacy in the workplace.

I

Indispensable to the position I take herein is an appreciation of the development and different attributes of the right to privacy that has come to be generally regarded today as among the valuable rights of the individual that must be given Constitutional protection.

The 1890 publication in the *Harvard Law Review* of *The Right to Privacy*,[1] an article of 28 pages co-written by former law classmates Samuel Warren and Louis Brandeis, is often cited to have given birth to the recognition of the constitutional right to privacy. The article was spawned by the emerging growth

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[9] Aside from its three commissioners, the CSC has two assistant commissioners and twelve divisions in its central office, including an office for legal affairs. The CSC also maintains 16 regional offices.

[1] 4 *Harvard Law Review* 193.

of media and technology, with the co-authors particularly being concerned by the production in 1884 by the Eastman Kodak Company of a "snap camera" that enabled people to take candid pictures. Prior to 1884, cameras had been expensive and heavy; they had to be set up and people would have to pose to have their pictures taken. The snap camera expectedly ignited the enthusiasm for amateur photography in thousands of people who had previously not been able to afford a camera. This technological development moved Warren and Brandeis to search for a legal right to protect individual privacy.[2] One of the significant assertions they made in their article was the declaration that "the common law secures to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others,"[3] said right being merely part of an individual's *right to be let alone*.[4]

While some quarters do not easily concede that Warren and Brandeis "invented" the right to privacy, mainly because a robust body of confidentiality law protecting private information from disclosure existed throughout Anglo-American common law by 1890, critics have acknowledged that *The Right to Privacy* charted a new path for American privacy law.[5]

In 1928, Brandeis, already a Supreme Court Justice, incorporated the *right to be let alone* in his dissent in *Olmstead v. United States*,[6] *viz*:

"The protection guaranteed by the Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. **They recognized the significance of man's spiritual nature, of his feelings, and of**

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[2] Richards, Neil M. and Daniel J. Solove, *Privacy's Other Path: Recovering the Law of Confidentiality*, The Georgetown Law Journal, Vol. 96 (2007), pp. 128-129.

[3] *Supra*, note 1, p. 198.

[4] *Id.*, p. 195; Warren and Brandeis adopted the "*right to be let alone*" language from Judge Thomas M. Cooley's 1888 treatise *The Law of Torts* 29 (2d ed. 1888).

[5] Richards and Solove, *op. cit.*, p. 125.

[6] 277 U.S. 438 (1928).

his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone the most comprehensive of rights, and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use, as evidence in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the Fifth." [emphasis supplied]

In 1960, torts scholar William Prosser published in the *California Law Review*[7] his article *Privacy* based on his thorough review of the various decisions of the United States courts and of the privacy laws. He observed then that the "law of privacy comprises four distinct kinds of invasion of four different interests of the plaintiff, which are tied together by the common name, but otherwise have almost nothing in common except that each represents an interference with the right of the plaintiff, in the phrase coined by Judge Cooley, 'to be let alone.'"[8] He identified the four torts as: (*a*) the intrusion upon the plaintiff's seclusion or solitude, or into his private affairs; (*b*) the public disclosure of embarrassing private facts about the plaintiff; (*c*) the publicity that places the plaintiff in a false light in the public eye; and (*d*) the appropriation, for the defendant's advantage, of the plaintiff's name or likeness.[9]

With regard to the first tort of intrusion upon seclusion or solitude, or into private affairs, Prosser posited that there was a remedy when a person "intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns" in a manner that was "highly offensive to a reasonable person."[10] The second and third torts established

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[7] 48 *California Law Review*, No. 3 (August 1960), p. 383.

[8] *Id.*, p. 389.

[9] *Id.*; see also Richards and Solove, *op. cit.*, pp. 148-149.

[10] *Restatement of Torts* 2d §652B (1977) (Prosser was also a reporter of the Second Restatement of Torts).

liability when the publicized matter was highly offensive to a reasonable person and was not a legitimate concern of the public – if it involved disclosure of embarrassing private facts – or placed another before the public in a false light.[11] Lastly, the tort of appropriation afforded a relief when a person adopted "to his own use or benefit the name or likeness of another."[12]

In the 1977 landmark ruling of *Whalen v. Roe*,[13] the US Supreme Court expanded the right to privacy by categorizing privacy claims into two, namely: *informational privacy*, to refer to the interest in avoiding disclosure of personal matters; and *decisional privacy*, to refer to the interest in independence in making certain kinds of important decisions.

All US Circuit Courts recognizing *informational privacy* have held that this right is not absolute and, therefore, they have balanced individuals' informational privacy interests against the State's interest in acquiring or disclosing the information.[14] The majority of the US Circuit Courts have adopted some form of scrutiny that has required the Government to show a "substantial" interest for invading individuals' right to confidentiality in their personal information, and then to balance the State's substantial interest in the disclosure as against the individual's interest in confidentiality.[15] This balancing test was developed in *United States v. Westinghouse*[16] by using the following factors, to wit: (*a*) the type of record requested; (*b*) the information it did or might contain; (*c*) the potential for harm in any subsequent nonconsensual disclosure; (*d*) the injury from disclosure to the relationship in which the record was generated; (*e*) the adequacy of safeguards to prevent unauthorized disclosure; (*f*) the degree of need for access; and (*g*) the presence

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[11] *Id.,* §652D-§652E (1977).

[12] *Id.,* §652C (1977).

[13] 429 U.S. 589 (1977).

[14] Gilbert, Helen L., *Minors' Constitutional Right to Informational Privacy*, The University of Chicago Law Journal (2007), pp. 1385-1386.

[15] *Id.*, p. 1386.

[16] 638 F2d 570 (3d Cir 1980).

of an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access.[17]

Decisional privacy, on the other hand, evolved from decisions touching on matters concerning speech, religion, personal relations, education and sexual preferences. As early as 1923, the US Supreme Court recognized decisional privacy in its majority opinion in *Meyer v. Nebraska*.[18] The petitioner therein was tried and convicted by a district court, and his conviction was affirmed by the Supreme Court of the Nebraska, for teaching the subject of reading in the German language to a ten-year old boy who had not attained and successfully passed eighth grade.[19] In reversing the judgment, Justice McReynolds of the US Supreme Court pronounced that the liberty guaranteed by the Fourteenth Amendment "denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized

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[17] *Id.,* p. 578.

[18] 262 U.S. 390 (1923).

[19] The criminal information was based upon "An act relating to the teaching of foreign languages in the State of Nebraska," approved April 9, 1919, pertinent portions of which provide:

Section 1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

Sec. 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

Sec. 3. Any person who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction, shall be subject to a fine of not less than twenty-five dollars ($25), nor more than one hundred dollars ($100) or be confined in the county jail for any period not exceeding thirty days for each offense.

Sec. 4. Whereas, an emergency exists, this act shall be in force from and after its passage and approval.

at common law as essential to the orderly pursuit of happiness by free men." Justice McReynolds elaborated thusly:

"Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, essential, indeed, to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff in error taught this language in school as part of his occupation. His right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment."

In *Griswold v. Connecticut,*[20] the US Supreme Court resolved another decisional privacy claim by striking down a statute that prohibited the use of contraceptives by married couples. Justice Douglas, delivering the opinion, declared:

"By *Pierce v. Society of Sisters, supra,* the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By *Meyer v. Nebraska, supra,* the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read (*Martin v. Struthers,* 319 U.S. 141, 143) and freedom of inquiry, freedom of thought, and freedom to teach (*see Wiemann v. Updegraff,* 344 U.S. 183, 195) — indeed, the freedom of the entire university community. (*Sweezy v. New Hampshire,* 354 U.S. 234, 249-250, 261-263; *Barenblatt v. United States,* 360 U.S. 109, 112; *Baggett v. Bullitt,* 377 U.S. 360, 369). Without those peripheral rights, the specific rights would be less secure. And so we reaffirm the principle of the *Pierce* and the *Meyer* cases.

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"The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive

[20] 381 U.S. 479 (1965).

impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. (NAACP v. Alabama, 377 U.S. 288, 307). Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship."

One of the most controversial decisional privacy claims was dealt with in *Roe v. Wade*,[21] by which the US Supreme Court justified abortion in the United States on the premise that:

"This right of privacy xxx is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

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"Although the results are divided, most of these courts have agreed that the right of privacy, however based, is broad enough to cover the abortion decision; that the right, nonetheless, is not absolute and is subject to some limitations; and that at some point the state interests as to protection of health, medical standards, and prenatal life, become dominant."

In the Philippines, we have upheld decisional privacy claims. For instance, in the 2003 case of *Estrada v. Escritor*,[22] although

[21] 410 U.S. 113 (1973)

[22] A.M. No, P-02-1651, August 4, 2003, 408 SCRA 1.

the majority opinion dealt extensively with the claim of religious freedom, a right explicitly provided by the Constitution, Justice Bellosillo's separate opinion was informative with regard to the privacy aspect of the issue involved and, hence, stated:

"More than religious freedom, I look with partiality to the rights of due process and privacy. Law in general reflects a particular morality or ideology, and so I would rather not foist upon the populace such criteria as "compelling state interest," but more, the reasonably foreseeable specific connection between an employee's potentially embarrassing conduct and the efficiency of the service. This is a fairly objective standard than the compelling interest standard involved in religious freedom.

"Verily, if we are to remand the instant case to the Office of the Court Administrator, we must also configure the rights of due process and privacy into the equation. By doing so, we can make a difference not only for those who object out of religious scruples but also for those who choose to live a meaningful life even if it means sometimes breaking "oppressive" and "antiquated" application of laws but are otherwise efficient and effective workers. As is often said, when we have learned to reverence each individual's liberty as we do our tangible wealth, we then shall have our renaissance."

Relevantly, Article III, Section 3 of the 1987 Constitution embodies the protection of the privacy of communication and correspondence, to wit:

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

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Yet, the guarantee in favor of the privacy of communication and correspondence is not absolute, for it expressly allows intrusion either upon lawful order of a court or when public safety and order so demands (even without a court order).[23]

[23] Bernas, Joaquin G., *The 1987 Constitution of the Philippines,* 1986 Ed., p. 191.

In its 1965 ruling in *Griswold v. Connecticut,*[24] the US Supreme Court declared that the right to privacy was a fundamental personal right; and that the enumeration in the Constitution of certain rights should not be construed as a denial or disparagement of others that have been *retained* by the people,[25] considering that the "specific guarantees in the Bill of Rights had penumbras, formed by emanations from those guarantees that helped give them life and substance." Accordingly, an individual's right to privacy of communication and correspondence cannot, as a general rule, be denied without violating the basic principles of liberty and justice.

The constitutional right to privacy in its Philippine context was first recognized in the 1968 ruling of *Morfe v. Mutuc*,[26] where the Court affirmed that:

"The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: "The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government, safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."

Morfe v. Mutuc emphasized the significance of privacy by declaring that "[t]he right to be let alone is indeed the beginning

[24] 410 U.S. 113 (1973).

[25] Ninth Amendment of the United States Constitution.

[26] G.R. No. L-20387, 22 SCRA 424, January 31, 1968.

of all freedom."[27] The description hewed very closely to that earlier made by Justice Brandeis in *Olmstead v. United States* that the right to be let alone was "the most comprehensive of rights and the right most valued by civilized men."[28]

It is elementary that before this constitutional right may be invoked a reasonable or objective expectation of privacy should exist, a concept that was introduced in the concurring opinion of Justice Harlan in the 1967 case *Katz v. United States*,[29] no doubt inspired by the oral argument[30] of Judge Harvey Schneider,

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[27] *Id.*, citing *Public Utilities Commission v. Pollak*, 343 U. S. 451, 467 (1952).

[28] 277 U.S. 438 (1928).

[29] 389 U.S, 347, 350-351 (1967).

[30] The transcript of Judge Schneider's oral argument in part provides:

> Mr. Schneider: x x x We think and respectfully submit to the Court that whether or not, a telephone booth or any area is constitutionally protected, is the wrong initial inquiry.
>
> We do not believe that the question should be determined as to whether or not, let's say you have an invasion of a constitutionally protected area, that shouldn't be the initial inquiry, but rather that probably should be the conclusion that is reached after the application of a test such as that we propose are similar test.
>
> Now, we have proposed in our brief and there's nothing magical or ingenious about our test.
>
> It's an objective test which stresses the rule of reason, we think.
>
> The test really asks or opposes the question, "Would a reasonable person objectively looking at the communication setting, the situation and location of a communicator and communicatee — would he reasonably believe that that communication was intended to be confidential?"
>
> We think that in applying this test there are several criteria that can be used.
>
> Justice William J. Brennan: So that parabolic mic on the two people conversing in the field a mile away might —
>
> Mr. Schneider: Absolutely.
>
> xxx xxx xxx
>
> We think that if a confidential communication was intended and all the other aspects of confidentiality are present, then it makes no difference whether you're in an open field or in the privacy of your own home.

then co-counsel for petitioner Charles Katz. Since the idea was never discussed in the briefs, Judge Schneider boldly articulated

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We would submit to the Court that there are factors present which would tend to give the Courts, the trial courts, and ultimately this Court, some guidelines as to whether or not objectively speaking, the communication was intended to be private.

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Mr. Schneider: x x x

I believe the following factors at least should be included in an analysis of this problem.

One, what is the physical location?

In other words, where did the conversation take place?

Was it in a situation where numerous persons were present or whether just a few people present?

I think that bears on the issue.

I think the tone of voice bears on the issue.

I think that you can have a communication for example in your house which almost everyone would see all things being equal would be confidential.

However, if you use a loud enough voice, I think you destroy your own confidentiality.

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Mr. Schneider: x x x

We feel that the Fourth Amendment and at the Court's decisions recently for a long time, I believe, have indicated that the right to privacy is what's protected by the Fourth Amendment.

We feel that the right to privacy follows the individual.

And that whether or not, he's in a space when closed by four walls, and a ceiling, and a roof, or an auto-mobile, or any other physical location, is not determined of the issue of whether or not the communication can ultimately be declared confidential.

x x x

Justice John M. Harlan: Could you state this Court tested this as you propose?

Mr. Schneider: Yes, we propose a test using in a way it's not too dissimilar from a tort, that tort reasonable man test.

We're suggesting that what should be used is the communication setting should be observed and those items that should be considered are the tone of voice, the actual physical location where the conversation took place, the activities on the part of the officer.

during his oral argument that "expectations of privacy should be based on an objective standard, one that could be formulated using the reasonable man standard from tort law."[31] Realizing the significance of this new standard in its Fourth Amendment jurisprudence, Justice Harlan, in his own way, characterized the reasonable expectation of privacy test as "the rule that has emerged from prior decisions."[32]

Justice Harlan expanded the test into its subjective and objective component, however, by stressing that the protection of the Fourth Amendment has a two-fold requirement: "first, that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable'."[33] Although the majority opinion in *Katz v. United* States made no reference to this reasonable expectation of privacy test, it instituted the doctrine that "the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."[34]

When all those things are considered, we would ask that the test be applied as to whether or not a third person objectively looking at the entire scene could reasonably interpret and could reasonably say that the communicator intended his communication to be confidential. x x x (emphasis supplied.)

[31] Winn, Peter, *Katz and the Origins of the "Reasonable Expectation of Privacy" Test*, 2008.

[32] *Id.*; see the concurring opinion of Justice Harlan in *Katz v. United States*, 389 U.S, 347, 350-351 (1967).

[33] Concurring opinion of Justice Harlan in *Katz v. United States, supra.*

[34] *Katz v. United States, supra*; writing for the majority, Justice Stewart made the following pronouncement:

xxx. In the first place, the correct solution of Fourth Amendment problems is not necessarily promoted by incantation of the phrase "constitutionally protected area." Secondly, the Fourth Amendment cannot be translated into a general constitutional "right to privacy." That Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all.

In the 1968 case *Mancusi v. DeForte*,[35] the US Supreme Court started to apply the reasonable expectation of privacy test pioneered by *Katz v. United States* and declared that the "capacity to claim the protection of the Amendment depends not upon a property right in the invaded place, but upon whether the area was one in which there was a reasonable expectation of freedom from governmental intrusion."[36]

II

Bearing in mind the history and evolution of the right to privacy as a Constitutionally-protected right, I now dwell on whether the petitioner, a public employee, enjoyed an objective or reasonable expectation of privacy in his workplace, *i.e*. within the premises of respondent Civil Service Commission, his employer.

At the outset, I state that the right to privacy involved herein is the petitioner's right to informational privacy in his workplace, specifically his right to work freely without surveillance or intrusion.[37]

I find relevant the doctrine laid down in *O'Connor v. Ortega*,[38] where the US Supreme Court held that a person was deemed to have a lower expectation of privacy in his workplace. The decrease in expectation of privacy was not similar to a non-existent expectation, however, for the US Supreme Court clarified:

Other provisions of the Constitution protect personal privacy from other forms of governmental invasion. But the protection of a person's *general* right to privacy — his right to be let alone by other people — is, like the protection of his property and of his very life, left largely to the law of the individual States.

[35] 392 U.S. 364 (1968).

[36] Justice Harlan delivered the opinion of the Court.

[37] In *Whalen v. Roe*, *supra*, note 13, p. 599, the Court advanced the principle that the right to information privacy has two aspects: (1) the right of an individual not to have private information about himself disclosed; and (2) the right of an individual to live freely without surveillance and intrusion.

[38] 480 U.S. 709, 715-17 (1987).

"Given the societal expectations of privacy in one's place of work expressed in both *Oliver* and *Mancusi*, **we reject the contention made by the Solicitor General and petitioners that public employees can never have a reasonable expectation of privacy in their place of work. Individuals do not lose Fourth Amendment rights merely because they work for the government, instead of a private employer. The operational realities of the workplace, however, may make some employees' expectations of privacy unreasonable when an intrusion is by a supervisor, rather than a law enforcement official. Public employees' expectations of privacy in their offices, desks, and file cabinets, like similar expectations of employees in the private sector, may be reduced by virtue of actual office practices and procedures, or by legitimate regulation**. xxx An office is seldom a private enclave free from entry by supervisors, other employees, and business and personal invitees. Instead, in many cases offices are continually entered by fellow employees and other visitors during the workday for conferences, consultations, and other work-related visits. **Simply put, it is the nature of government offices that others – such as fellow employees, supervisors, consensual visitors, and the general public – may have frequent access to an individual's office.** We agree with JUSTICE SCALIA that

> '[c]onstitutional protection against *unreasonable* searches by the government does not disappear merely because the government has the right to make reasonable intrusions in its capacity as employer,'

but some government offices may be so open to fellow employees or the public that no expectation of privacy is reasonable.

xxx xxx xxx

"Balanced against the substantial government interests in the efficient and proper operation of the workplace are the privacy interests of government employees in their place of work, which, while not insubstantial, are far less than those found at home or in some other contexts. As with the building inspections in *Camara*, the employer intrusions at issue here "involve a relatively limited invasion" of employee privacy. **Government offices are provided to employees for the sole purpose of facilitating the work of an agency. The employee may avoid exposing personal belongings at work by simply leaving them at home**. [emphasis supplied]

For sure, there are specific reasons why employees in general have a *decreased* expectation of privacy with respect to work-email accounts,[39] including the following:

(a) Employers have legitimate interests in monitoring the workplace;[40]

(b) Employers own the facilities;

(c) Monitoring computer or internet use is a lesser evil compared to other liabilities, such as having copyright infringing material enter the company computers, or having employees send proprietary material to outside parties;

(*d*) An employer also has an interest in detecting legally incriminating material that may later be subject to electronic discovery;

(*e*) An employer simply needs to monitor the use of computer resources, from viruses to clogging due to large image or pornography files.[41]

In view of these reasons, the fact that employees may be given individual accounts and password protection is not deemed to create any expectation of privacy.[42]

Similarly, monitoring an employee's computer usage may also be impelled by the following legitimate reasons:

(a) To maintain the company's professional reputation and image;

(b) To maintain employee productivity;

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[39] Tan, Oscar Franklin B., *Articulating the Complete Philippine Right to Privacy in Constitutional and Civil Law: A Tribute to Chief Justice Fernando and Justice Carpio*, Philippine Law Journal, Vol. 82, No. 4 (2008), pp. 228-229.

[40] *Id.*, citing Michael Rustad and Thomas Koenig, *Cybertorts and Legal Lag: An Empirical Analysis*, 13 S. Cal. Interdisc. L.J. 77, 95 (2003).

[41] *Id.*, citing Matthew Finkin, *Information Technology and Worker's Privacy: The United States Law*, 23 COMP. LAB. L. & POL'Y J. 471, 474 (2002).

[42] *Supra* Note 6, p. 228.

(c) To prevent and discourage sexual or other illegal workplace harassment;

(d) To prevent "cyberstalking" by employees;

(e) To prevent possible defamation liability;

(f) To prevent employee disclosure of trade secrets and other confidential information; and

(*g*) To avoid copyright and other intellectual property infringement from employees illegally downloading software, *etc*.[43]

Even without Office Memorandum (OM) No. 10, Series of 2002 being issued by respondent Karina Constantino-David as Chairman of the Civil Service Commission, the employees of the Commission, including the petitioner, have a *reduced* expectation of privacy in the workplace. The objective of the issuance of OM No. 10 has been only to formally inform and make aware the employees of the Commission about the limitations on their privacy while they are in the workplace and to advise them that the Commission has legitimate reasons to monitor communications made by them, electronically or not. The objectives of OM No. 10 are, needless to state, clear in this regard.[44]

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[43] Ciocchetti, Corey A., *Monitoring Employee Email: Efficient Workplaces vs. Employee Privacy*, <http://www.law.duke.edu/journals/dltr/articles/2001dltr0026.html#8.> Last visited on June 14, 2011; citing Terrence Lewis, *Pittsburgh Business Times*, *Monitoring Employee E-Mail: Avoid stalking and Illegal Internet Conduct*) <http://www.pittsburgh.bcentral.com/pittsburgh/stories/2000/05/22/focus6.html>.

[44] *Rollo*, p. 98.

O.M. No. 10 provides:

OBJECTIVES

Specifically, the guidelines aim to:

- Protect confidential, proprietary information of the CSC from theft or unauthorized disclosure to third parties;
- Optimize the use of the CSC's *Computer Resources* as what they are officially intended for; and
- Reduce, and possibly eliminate potential legal liability to employees and third parties.

III

Unlike the Majority, I find that the petitioner did not absolutely waive his right to privacy.[45] OM No. 10 contains the following exception, to wit:

> *Waste of Computer Resources.* x x x
>
> xxx xxx xxx
>
> **However, Users are given privileged access to the Internet for knowledge search, information exchange and others. They shall be allowed to use the computer resources for personal purpose after office hours provided that no unlawful materials mentioned in item number 7 and 8 are involved, and no other facilities such as air conditioning unit, video/audio system etc., shall be used except sufficient lights.** [emphasis supplied]

Thereby, OM No. 10 has actually given the petitioner *privileged access* to the Internet for knowledge search, information exchange, and others; and has explicitly allowed him to use the computer resources for personal purposes *after* office hours. Implicit in such privileged access and permitted personal use was, therefore, that he still had a reasonable expectation of privacy *vis-à-vis* whatever communications he created, stored, sent, or received *after* office hours through using the Commission's computer resources, such that he could rightfully invoke the Constitutional protection to the privacy of his communication and correspondence.

In view of the petitioner's expectation of privacy, albeit diminished, I differ from the Majority's holding that he should be barred from claiming any violation of his right to privacy and right against unreasonable searches and seizures with respect to *all* the files, official or private, stored in his computer. Although

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[45] *Id.*, p. 99; O.M. No. 10 states:

> *Waiver of privacy rights. Users* expressly waive any right to privacy in anything they create, store, send, or receive on the computer through the Internet or any other computer network. *Users* understand that the CSC may use human or automated means to monitor the use of its *Computer Resources.*

I concede that respondent David had legal authority and good reasons to issue her order to back up the petitioner's files as an exercise of her power of supervision, I am not in full accord with the Majority's holding for the confiscation of *all* the files stored in the computer. The need to control or prevent activities constitutionally subject to the State's regulation may not be filled by means that unnecessarily and broadly sweep and thereby invade the area of protected freedoms.[46]

I hold, instead, that the petitioner is entitled to a reasonable expectation of privacy in respect of the communications created, stored, sent, or received *after office hours* through the office computer, as to which he must be protected. For that reason, respondent David's order to back up files should only cover the files corresponding to communications created, stored, sent, or received *during office hours.* There will be no difficulty in identifying and segregating the files created, stored, sent, or received *during* and *after* office hours with the constant advancement and improvement of technology and the presumed expertise of the Commission's information systems analysts.

Nonetheless, my concurrence with the Majority remains as regards the petitioner's administrative liability and the seizure of the remainder of the files. I am reiterating, for emphasis, that the diminution of his expectation of privacy in the workplace derived from the nature and purpose of a government office, actual office practice and procedures observed therein, and legitimate regulation.[47] Thus, I vote to uphold the legality of OM No. 10. I hasten to add, to be very clear, that the validity of the seizure of the files should be limited to the need for determining whether or not the petitioner unjustly utilized official resources of the Commission for personal purposes, and should not extend to the reading of the files' contents, which would be violative of his right to privacy.

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[46] *Griswold v. Connecticut, supra,* note 20, citing *NAACP v. Alabama,* 377 U.S. 288 (1964).

[47] *O'Connor v. Ortega,* 25 480 U.S. 709, 715-17 (1987).

I adhere to the principle that every man is believed to be free. Freedom gears a man to move about unhampered and to speak out from conviction. That is why the right to privacy has earned its worthy place in the Bill of Rights. However, although the right to privacy is referred to as a right to be enjoyed *by the people*, the State cannot just sit back and stand aside when, in the exercise of his right to privacy, the individual perilously tilts the scales to the detriment of the national interest.

In upholding the validity of OM No. 10, I also suppose that it is not the intention of the Majority to render the Bill of Rights inferior to an administrative rule. Rather, adoption of the *balancing of interests test*, a concept analogous to the form of scrutiny employed by courts of the United States, has turned out to be applicable especially in the face of the conflict between the individual interest of the petitioner (who asserts his right to privacy) and the Commission's legitimate concern as an arm of the Government tasked to perform official functions. The *balancing of interest test* has been explained by Professor Kauper,[48] *viz*:

"The theory of balance of interests represents a wholly pragmatic approach to the problem of First Amendment freedom, indeed, to the whole problem of constitutional interpretation. **It rests on the theory that is the Court's function in the case before it when it finds public interests served by legislation on the one hand and First Amendment freedoms affected by it on the other, to balance the one against the other and to arrive at a judgment where the greater weight shall be placed. If on balance it appears that the public interest served by restrictive legislation is of such a character that it outweighs the abridgment of freedom, then the Court will find the legislation valid. In short, the balance-of-interests theory rests on the basis that constitutional freedoms are not absolute, not even those stated in the First Amendment, and that they may be abridged to some extent to serve appropriate and important interest**." (emphasis supplied.)

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[48] Cited in *Gonzales v. COMELEC*, G.R. No. L-27833, April 18, 1969, 27 SCRA 835, 899.

The Court has applied the *balancing of interest test* in *Alejano v. Cabuay*,[49] where it ruled that the substantial government interest in security and discipline *outweighed* a detainee's right to privacy of communication. The Court has elucidated:

"In *Hudson v. Palmer*, the U.S. Supreme Court ruled that an inmate has no reasonable expectation of privacy inside his cell. The U.S. Supreme Court explained that prisoners necessarily lose many protections of the Constitution, thus:

> 'However, while persons imprisoned for crime enjoy many protections of the Constitution, it is also clear that imprisonment carries with it the circumscription or loss of many significant rights. These constraints on inmates, and in some cases the complete withdrawal of certain rights, are "justified by the considerations underlying our penal system." The curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of "institutional needs and objectives" of prison facilities, chief among which is internal security. Of course, these restrictions or retractions also serve, incidentally, as reminders that, under our system of justice, deterrence and retribution are factors in addition to correction.'

"The later case of *State v. Dunn*, citing *Hudson v. Palmer*, abandoned *Palmigiano v. Travisono* and made no distinction as to the detainees' limited right to privacy. *State v. Dunn* noted the considerable jurisprudence in the United States holding that **inmate mail may be censored for the furtherance of a substantial government interest such as security or discipline.** State v. Dunn **declared that if complete censorship is permissible, then the lesser act of opening the mail and reading it is also permissible.** We quote *State v. Dunn*:

> **'[A] right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure institutional security and internal order. We are satisfied that society would insist that the prisoner's expectation of privacy always yield to what must be considered a paramount interest in institutional security.**

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[49] G.R. No. 160792, August 25, 2005, 468 SCRA 188, 211-214.

> We believe that it is accepted by our society that "[l]oss of freedom of choice and privacy are inherent incidents of confinement."'
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> xxx xxx xxx
>
> "Thus, we do not agree with the Court of Appeals that the opening and reading of the detainees' letters in the present case violated the detainees' right to privacy of communication. The letters were not in a sealed envelope. **The inspection of the folded letters is a valid measure as it serves the same purpose as the opening of sealed letters for the inspection of contraband**.
>
> xxx xxx xxx

"In assessing the regulations imposed in detention and prison facilities that are alleged to infringe on the constitutional rights of the detainees and convicted prisoners, U.S. courts "balance the guarantees of the Constitution with the legitimate concerns of prison administrators." The deferential review of such regulations stems from the principle that:

> [s]ubjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration." [emphasis supplied]

Much like any other government office, the Commission was established primarily for the purpose of advancing and accomplishing the functions that were the object of its creation.[50]

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[50] The Civil Service Commission was conferred the status of a department by Republic Act No. 2260 as amended and elevated to a constitutional body by the 1973 Constitution. It was reorganized under PD No. 181 dated September 24, 1972, and again reorganized under Executive Order no. 181 dated November 21, 1986. With the new Administrative Code of 1987 (EO 292), the Commission is constitutionally mandated to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the Civil Service. Also, as the central human resource institution and as adviser to the President on personnel management of the Philippine Government, the Civil Service Commission exists to be the forerunner in (1) upholding merit, justice and fairness; (2) building competence, expertise and character;

It is imperative, therefore, that its resources be maximized to achieve utmost efficiency in order to ensure the delivery of quality output and services to the public. This commitment to efficiency existed not solely in the interest of good government but also in the interest of letting government agencies control their own information-processing systems.[51] With the State and the people being the Commission's ultimate beneficiaries, it is incumbent upon the Commission to maintain integrity both in fact and in appearance at all times. OM No. 10 was issued to serve as a necessary instrument to safeguard the efficiency and integrity of the Commission, a matter that was of a compelling State interest, and consequently to lay a sound basis for the limited encroachment in the petitioner's right to privacy. But, nonetheless, Justice Goldberg's concurring opinion in *Griswold v. Connecticut*[52] might be instructive:

"In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling (*Bates v. Little Rock*, 361 U.S. 516, 524). The law must be shown 'necessary, and not merely rationally related, to the accomplishment of a permissible state policy.'" (*McLaughlin v. Florida*, 379 U.S. 184, 186)

Even assuming that the anonymous tip about the petitioner's misuse of the computer proved to be false, *i.e.*, the petitioner did not really engage in lawyering for or assisting parties with interests adverse to that of the Commission, his permitting former

(3) ensuring delivery of quality public services and products; (4) institutionalizing workplace harmony and wellness; and (5) fostering partnership and collaboration. www.csc.gov.ph/mandate and mission. Last visited on July 13, 2011.

[51] Regan, Priscilla M., *Legislating Privacy (Technology, Social Values, and Public Policy)*, The University of North Carolina Press, 1995, p. 186.

[52] 381 U.S. 479 (1965).

colleagues and close friends not officially connected with the Commission to use and store files in his computer,[53] which he admitted, still seriously breached, or, at least, threatened to breach the integrity and efficiency of the Commission as a government office. Compounding his breach was that he was well informed of the limited computer use and privacy policies in OM No. 10, in effect since 2002, prior to the seizure of his files in January of 2007. The Court should not disregard or ignore the breach he was guilty of, for doing so could amount to abetting his misconduct to the detriment of the public who always deserved quality service from the Commission.

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[53] *Rollo,* p. 96-97; Paragraphs 4 and 5 of the Affidavit executed by Ponciano R. Solosa narrated the following:

4. That I have also requested Ricky who is like a son to me having known him since he was eighteen (18) years old, to keep my personal files for safekeeping in his computer which I understand was issued thru Memorandum Receipt and therefore for his personal use;

5. That this affidavit is issued to attest to the fact that Mr. Pollo has nothing to do with my files which I have entrusted to him for safekeeping including my personal pleadings with the LTO and PUP, of which I have been the counsel on record and caused the preparation and signed thereof accordingly.

Also, paragraph 5 of the Affidavit executed by Eric N. Estrellado mentioned the following:

8. That I deny what was indicated in CSC Resolution No. 07-0382 under item 13 and 14 that Ricky Pollo is earning out of practicing or aiding people undersigned included, the truth of the matter the statement made *"Epal, kulang ang bayad mo."*, was a private joke between me and my counsel and friend Atty. Solosa. That item 14 was my billing statement with the law firm of solosa [sic] and de Guzman. Ricky has nothing to do with it. These private files but was intruded and confiscated for unknown reasons by people who are not privy to our private affairs with my counsel. That these are in the CPU of Ricky, as he would request as in fact Atty. Solosa himself requested Ricky to keep files thereof thru flash drive or disk drive;

IV

As early as in *Olmstead v. United States*,[54] Justice Brandeis anticipated the impact of technological changes to the right to privacy and significantly observed that-

> "xxx time works changes, brings into existence new conditions and purposes." Subtler and more far-reaching means of invading privacy have become available to the Government. Discovery and invention have made it possible for the government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet. Moreover, "in the application of a Constitution, our contemplation cannot be only of what has been but of what may be." The progress of science in furnishing the Government with means of espionage is not likely to stop with wiretapping. Ways may someday be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home. Advances in the psychic and related sciences may bring means of exploring unexpressed beliefs, thoughts and emotions. xxx"

In this era when technological advancement and the emergence of sophisticated methodologies in terms of the science of communication are already inexorable and commonplace, I cannot help but recognize the potential impact of the Majority's ruling on future policies to govern situations in the public and private workplaces. I apprehend that the ruling about the decreased expectation of privacy in the workplace may generate an unwanted implication for employers in general to henceforth consider themselves authorized, without risking a collision with the Constitutionally-protected right to privacy, to probe and pry into communications made during work hours by their employees through the use of their computers and other digital instruments of communication. Thus, the employers may possibly begin to monitor their employees' phone calls, to screen incoming and out-going e-mails, to capture queries made through any of the Internet's efficient search engines (like Google), or to censor

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[54] Dissenting Opinion of Justice Brandeis, *Olmstead v. United States, supra* Note 6.

visited websites (like Yahoo!, Facebook or Twitter) in the avowed interest of ensuring productivity and supervising use of business resources. That will be unfortunate.

The apprehension may ripen into a real concern about the possibility of abuse on the part of the employers. I propose, therefore, that the ruling herein be made *pro hac vice*, for there may be situations not presently envisioned that may be held, wrongly or rightly, as covered by the ruling, like when the instrument of communication used is property *not owned* by the employer although used during work hours.

As a final note, let me express the sentiment that an employee, regardless of his position and of the sector he works for, is not a slave of trade expected to devote his full time and attention to the job. Although the interests of capital or public service do merit protection, a recognition of the limitations of man as a being needful of some extent of rest, and of some degree of personal space even during work hours, is most essential in order to fully maximize the potential by which his services was obtained in the first place. The job should not own him the whole time he is in the workplace. Even while he remains in the workplace, he must be allowed to preserve his own identity, to maintain an inner self, to safeguard his beliefs, and to keep certain thoughts, judgments and desires hidden. Otherwise put, he does not surrender his entire expectation of privacy totally upon entering the gates of the workplace. Unreasonable intrusion into his right to be let alone should still be zealously guarded against, albeit he may have waived at some point a greater part of that expectation. At any rate, whenever the interest of the employer and the employee should clash, the assistance of the courts may be sought to define the limits of intrusion or to balance interests.

ACCORDINGLY, I vote to deny the petition, subject to the qualification that the petitioner's right to privacy should be respected as to the files created, stored, sent or received *after office hours*; and to the further qualification that the decision be held to apply *pro hac vice*.

intended for; and [3] [r]educ[ing] and possibly eliminat[ing] potential legal liability to employees and third parties."[10] The assumption upon which the classification rests – that the CSC commissioners, unlike the rest of the CSC's thousands of employees, are incapable of violating these objectives – is plainly unfounded.

The only way by which the CSC commissioners, or for that matter, any of its employees, can constitutionally take themselves out of the ambit of the CSC's no-privacy regulation is if they (1) invoke the doctrine of confidentiality of information, and (2) prove that the information sought to be exempted indeed falls under any of the classes of confidential information adverted to above (or those comparable to them). Sensitivity of content, not rank, justifies enjoyment of this very narrow constitutional privilege.

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

EN BANC

[G.R. No. 194076. October 18, 2011]

ALFAIS T. MUNDER, *petitioner, vs.* **COMMISSION ON ELECTIONS and ATTY. TAGO R. SARIP,** *respondents.*

[G.R. No. 194160. October 18, 2011]

ATTY. TAGO R. SARIP, *petitioner, vs.* **ALFAIS T. MUNDER, OLOMODIN M. MACABALANG, JAMAL M. MANUA AND COMMISSION ON ELECTIONS,** *respondents.*

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[10] CSC Memorandum No. 10, series of 2002, enumerates these as its objectives.

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; ELECTION CODE (B.P. 881) *VIS-A-VIS* COMELEC RESOLUTION NO. 8696; A PETITION FOR DISQUALIFICATION AND A PETITION TO DENY DUE COURSE TO OR TO CANCEL A CERTIFICATE OF CANDIDACY ARE TWO DISTINCT REMEDIES ANCHORED ON DIFFERENT GROUNDS AND HAVE DIFFERENT PRESCRIPTIVE PERIODS; CASE AT BAR.— We agree with Munder as to the nature of the petition filed by Sarip. The main ground of the said petition is that Munder committed dishonesty in declaring that he was a registered voter of Barangay Rogero, Bubong, Lanao del Sur, when in fact he was not. This ground is appropriate for a Petition to Deny Due Course or to Cancel Certificate of Candidacy. *Amora v. Comelec* is applicable to the present controversy. x x x One of the issues clarified in the said case was the distinction between a Petition for Disqualification and a Petition to Deny Due Course or to Cancel Certificate of Candidacy. The Court, in effect, held that the Comelec should have dismissed the petition outright, since it was premised on a wrong ground. A Petition for Disqualification has specific grounds different from those of a Petition to Deny Due Course to or to Cancel Certificate of Candidacy. The latter is anchored on the false representation by a candidate as to material information in the CoC. For a petition for disqualification, the law expressly enumerates the grounds in Section 68 of Batas Pambansa Blg. 881 as amended, and which was replicated in Section 4(b) of Comelec Resolution No. 8696. The grounds stated by respondent in his Petition for Disqualification – that Munder was not qualified to run for not being a registered voter therein – was not included in the enumeration of the grounds for disqualification. The grounds in Section 68 may be categorized into two. First, those comprising "prohibited" acts of candidates; and second, the fact of their permanent residency in another country when that fact affects the residency requirement of a candidate according to the law. x x x It is thus clear that the ground invoked by Sarip in his Petition for Disqualification against Munder — the latter's alleged status as unregistered voter in the municipality — was inappropriate for the said petition. The said ground should have been raised in a petition to cancel Munder's CoC. Since the two remedies

vary in nature, they also vary in their prescriptive period. A petition to cancel a CoC gives a registered candidate the chance to question the qualification of a rival candidate for a shorter period: within 5 days from the last day of their filing of CoCs, but not later than 25 days from the filing of the CoC sought to be cancelled. A petition for disqualification may be filed any day after the last day of the filing of CoC but not later than the date of the proclamation.

2. **ID.; ID.; ID.; ID.; FAILURE OF THE COMELEC *EN BANC* TO RESOLVE WHETHER THE PETITION IS ONE FOR DISQUALIFICATION OR FOR THE CANCELLATION OF THE COC CONSTITUTES GRAVE ABUSE OF DISCRETION.—** It was therefore grave abuse of discretion on the part of the Comelec *En Banc* to gloss over the issue of whether the petition was one for disqualification or for the cancellation of CoC. The nature of the petition will determine whether the action has prescribed, and whether the Commission can take cognizance of the petition. In directly tackling the factual issues without determining whether it can properly take cognizance of the petition, the Comelec *En Banc* committed grave abuse of discretion.

3. **ID.; ID.; ID.; ID.; ID.; VOTER'S CERTIFICATION IS INSUFFICIENT EVIDENCE TO IMPEACH THE FACT THAT A CANDIDATE WAS A REGISTERED VOTER OF A CERTAIN PLACE.—** Assuming *arguendo* that the Comelec *En Banc* could answer the factual issue of Munder's non-registration as a voter in Bubong by considering it as a ground for the disqualification of his candidacy, we find that the Comelec committed grave abuse of discretion in concluding that Munder the voter was not Munder the mayoralty candidate. We observe that the Comelec *En Banc* relied on the Voter's Certification indicating one Alfaiz Tocalo Munder registering for the first time in 2003, with 7 May 1984 as birth date, and stating therein that he was 18 years old at the time of the registration. We find this evidence insufficient to impeach the fact that he was a registered voter of Bubong, Lanao del Sur. In the first place, the registration was in 2003, while the election was in 2010. The said evidence would not negate the fact that in 2010, he had already attained eligibility to run for mayor. In such a small municipality like Bubong, the likelihood of not being able to know whether one has a namesake, especially when

> one is running for a public office, is very slim. Sarip should have proved that another Alfais Tocalo Munder is in existence, and that the latter is the registered voter and not herein petitioner. In such a case, Sarip's remedy is not a Petition for Disqualification, but a Petition to Deny Due Course or/to Cancel Certificate of Candidacy which must comply with the prescriptive period. Otherwise, his remedy, after Munder has been proclaimed is to file a *quo warranto* action with the Regional Trial Court to prove that Munder lacks the eligibility required by law. It may be true that in 2003, Munder, who was still a minor, registered himself as a voter and misrepresented that he was already of legal age. Even if it was deliberate, we cannot review his past political acts in this petition. Neither can the Comelec review those acts in an inappropriate remedy. In so doing, it committed grave abuse of discretion, and the act resulting therefrom must be nullified.

APPEARANCES OF COUNSEL

Romulo B. Macalintal and *Edgardo Carlo L. Vistan* for Alfais T. Munder.

Navarro Jumamil Arcilla Escolin & Martinez Law Offices for Atty. Tago R. Sarip.

Daud R. Calala for Olomodin M. Macabalang.

The Solicitor General for public respondent.

D E C I S I O N

SERENO, *J.*:

Jurisprudence has clearly established the doctrine that a petition for disqualification and a petition to deny due course to or to cancel a certificate of candidacy, are two distinct remedies to prevent a candidate from entering an electoral race. Both remedies prescribe distinct periods to file the corresponding petition, on which the jurisdiction of the Commission on Elections (Comelec) over the case is dependent. The present case, assailing a resolution of the Comelec *En Banc*, is not an exception. It must follow the rule set by law and jurisprudential doctrine.

The consolidated cases before us stem from a controversy resolved by the Comelec *En Banc* in SPA No. 10-086(DC) in its Resolution* promulgated on 04 October 2010.[1] The Comelec *En Banc* reversed the earlier Resolution[2] of the Comelec Second Division and disqualified petitioner Alfais T. Munder (Munder) from holding office as Mayor of Bubong, Lanao del Sur.

The Antecedents

In the last national election, which included the election of local elective officials, petitioner Munder ran as mayor of Bubong, Lanao del Sur, and filed his certificate of candidacy (CoC) on 26 November 2009. The last day for filing the certificate of candidacy was on 30 November 2009.[3] Under Sec. 4(A)(1) of Comelec Resolution 8696, a petition to deny due course or to cancel a certificate of candidacy must be filed within five days from the last day of the filing of the certificate of candidacy but not later than twenty-five days from the filing thereof.[4] Respondent Atty. Tago Sarip ("Sarip") likewise filed a certificate of candidacy and vied for the same position in the same municipality.

On 13 April 2010, Sarip filed a Petition for Disqualification[5] with the Comelec on the ground that Munder was not a registered voter of Bubong, Lanao del Sur, and that the latter's application for candidacy was not accomplished in full.

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* Penned by Commissioner Rene V. Sarmiento; with the concurrence of Chairman Jose A. R. Melo, Commissioners Lucenito N. Tagle, Armando C. Velasco, Gregorio Y. Larrazabal; and the dissent of Nicodemo T. Ferrer, Elias R. Yusoph.

[1] *Rollo* (G.R. No. 194076) pp 48-54; *Rollo* (G.R. No. 194160) pp 32-38.

[2] Rendered *per curiam* by the Second Division composed of Presiding Commissioner Nicodemo T. Ferrer, and Commissioners Lucenito N. Tagle (on leave) and Elias R. Yusoph.

[3] Comelec Resolution No. 8678, Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections, promulgated on 06 October 2009.

[4] See also Section 78, Omnibus Election Code.

[5] *Rollo* (G.R. No. 194076), pp 57-65; *Rollo* (G.R. No. 194169), pp 57-65.

Sarip corroborated his allegation that Munder was not a registered voter by presenting a Certification from Amerah M. Hadji Sarip - Election Officer of Bubong, Lanao del Sur – that, in the election list, there was no "Alfais T. Munder" born on 7 May 1987.[6] He also presented a copy of a Voter Certification of one "Munder, Alfais Tocalo", residing at Rogero, Bubong, Lanao del Sur, whose date of birth was "05/07/1984", and who was registered as a voter on "7/26/2003". The said person was 18 years old at that time.[7] On the other hand, petitioner Munder's CoC for Mayor contained the name of a candidate as "Munder, Alfais Tocalo", 22 years old, with residence at Barangay Montia-an, Bubong, Lanao del Sur, and whose date of birth was "05-07-1987".[8]

Capitalizing on the seeming inconsistencies, Sarip argued that the candidate Munder was different from the registered voter Munder, since they had different birth years. Consequently, according to Sarip, Munder did not possess the qualification to run as elective official and should be disqualified. Sarip also maintained that Munder had committed dishonesty and falsity in stating that the latter was a registered voter of Bubong, Lanao del Sur. Sarip filed his Petition for Disqualification pursuant to Resolution No. 8696, Section 4 (B) 1 and argued that he had timely filed the petition. Munder, on the other hand, countered that he was a registered voter of Precinct No. 0033, Barangay Rogero, Municipality of Bubong, Lanao del Sur.[9]

In the 10 May 2010 elections, Munder won overwhelmingly. Garnering 4,793 votes, he had more than twice the number obtained by Sarip, who came in second with 2,356 votes. The Municipal Board of Canvassers of Bubong, Lanao del Sur, thus proclaimed Munder as mayor on 15 May 2010. He filed his answer on 22 May 2010.

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[6] *Id.* at 69; 53.

[7] *Id.* at 70; 54.

[8] *Id.* at 207; 52.

[9] *Rollo* (G.R. No. 194076), pp 75-77.

In his Answer with Affirmative Defenses,[10] Munder denied committing any misrepresentation in his CoC. He also argued that false representations, dishonesty and mockery of justice were not grounds for disqualification of a candidate under Comelec Resolution No. 8696. In effect, he argued that Sarip had availed himself of the wrong remedy and that the latter's petition should be treated as a Petition to Deny Due Course to or to Cancel Certificate of Candidacy. At the time Sarip filed his petition, the said period had already lapsed. Munder thus prayed for the dismissal of the former's petition against him.

On 29 June 2010, the Comelec Second Division sustained Munder's arguments and dismissed Sarip's Petition. It agreed with Munder that the grounds invoked by Sarip were not proper for a petition for disqualification, and that the latter's petition was actually seeking the purging of Munder's CoC. It partly held:

> ...[I]t appears that the nucleus of petitioner's cause of action to sustain his petition are the misrepresentations (respondent not being a registered voter of Municipality of Bubong, Lanao del Sur and the respondent was still a minor when he registered as a voter of the said municipality) allegedly perpetrated by the respondent, and the failure of the respondent to accomplish the formalities of his COC (the respondent's failure to indicate his precinct and to affix his thumbprint therein). We view all these disputations raised by the petitioner inappropriate for the petition for disqualification. These are not grounds for the petition for disqualification contemplated by the rules. In quintessence (sic) of the action taken **the petitioner is actually seeking the denial or cancellation of the respondent's COC** invoking false material representation of the respondent's qualification(s). However, the filing of a petition under this remedy has a prescriptive period which must be strictly followed. Under the rules, a verified petition to deny due course or to cancel certificate of candidacy may be filed by any person within five (5) days from the last day for the filing of certificate of candidacy but not later than twenty-five (25) days from the filing of certificate of candidacy under Section 78 of the Omnibus Election Code. **Pursuant to the above rule, the petitioner has twenty-five (25) days after the**

[10] *Id.* at 75-82.

filing the assailed COC or until December 21, 2009 to file the petition. Since the instant petition was filed only on March 13, 2010 or one hundred-seven (107) days beyond the reglementary period to file a petition to deny due course or to cancel the respondent's COC, the petitioner miserably failed to file his petition within the prescribed period. A petition to deny due course or to cancel a certificate of candidacy filed beyond the required period is filed out of time and may be not entertained. An attempt to circumvent the rules on prescription of period to file a petition to deny due course or to cancel COC in disguise of a petition for qualification will not be countenanced in this jurisdiction.

Anent the contention of the petitioner the *vis-a-vis* failure of the respondent to comply with the formalities of the COC, the law governing the contents of the COC is Section 74 of the Omnibus Election Code. The alleged defect on the COC of the respondent, which is, failure to indicate therein his precinct and his failure to affix his thumbprint are not among those mandatory requirements enumerated under the aforementioned law. Hence, those assailed flaw in the formalities of the respondent's COC does not warrant the invalidation of the same. At most, it can only be considered as a minor inadvertence on the part of the respondent which does not necessarily nullify his COC. It has been held that when the law does not provide otherwise, a departure from the requirements of law which has been due to honest mistake or misinterpretation of the law on the part of him who is obligated to observe it and such departure has not been used as a means for fraudulent practices, will he held directory and such departure will be considered a harmless irregularity."[11] (Emphases supplied)

The outcome was, however, different when the Comelec *En Banc*, upon Sarip's Motion for Reconsideration,[12] reversed the ruling of the Second Division and disqualified Munder in its 4 October 2010 Resolution. The Comelec ruled directly on the substantive merit of the case, and not on the propriety of the remedy taken by Sarip. It thus ruled on the question of the continuing possession by Munder of one of the qualifications of the office of the Mayor – being a registered voter of the municipality where he runs as a candidate.

[11] *Id.* at 44-46.

[12] *Id.* at 114-122.

The Comelec *En Banc* decided the case on a single issue – whether the person described in the CoC and in the Certificate of Live Birth referred to the same person in the Voter's Certification, petitioner Alfais Tocalo Munder. The Comelec *En Banc* ruled on this factual issue, stating that the said persons were not one and the same, as they had different birth years. The Comelec held thus:

> ...It is difficult to reconcile that the ALFAIS TOCALO MUNDER who filed his COC, showing his intent to run as municipal mayor of Bubong, Lanao del Sur is one and the same person as that of ALFAIS TOCALO MUNDER who registered as voter of Barangay Rogero, Bubong, Lanao del Sur when records show that the ALFAIS TOCALO MUNDER who filed his COC indicated his date of birth as MAY 7, 1987 (as supported by the Certificate of Live Birth issued by the NSO) while the ALFAIS TOCALO MUNDER who registered as voter of Barangay Rogero, Bubong, Lanao del Sur indicated his date of birth as MAY 7, 1984. No person can be born twice.[13]

The Comelec also disregarded the fact that Munder had already been proclaimed as mayor of Bubong, Lanao del Sur. Consequently, it ruled against him and proceeded to declare him disqualified to hold the office of the mayor, for which he had been elected. The Comelec *En Banc* held:

> The Supreme Court has time and again ruled that qualifications for an elective office are continuing requirements and once any of them is lost, title to the office is forfeited. Munder lacking the requisite qualification of being a registered voter, should be removed from office.[14]

It ordered Munder to vacate the Office of the Mayor, and the elected vice-mayor to assume the position of mayor. It further directed the Department of Interior and Local Government and the Philippine National Police (PNP) to implement the Resolution against Munder. From this Resolution originated the two petitions filed by the two rivals for the mayoral position.

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[13] *Id.* at 51.

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

At the instance of Munder, we issued on 18 January 2011, a Temporary Restraining Order against the Comelec, DILG and PNP from implementing the 4 October 2010 Resolution of the Comelec removing Munder from the office.[15] The impending execution of the Comelec's Resolution created divisiveness and disorder in the municipality of Bubong such that even the military attested that they were on "red alert" due to the volatile political situation in the area brought about by the possible ouster of Munder. The Vice Mayor also prematurely assumed the office of the mayor and allegedly withdrew the Internal Revenue Allocation without a resolution from the Sangguniang Bayan. This aggravated the tension that had already been created by the election dispute between the petitioners of these consolidated petitions. The Court, thus, deemed a TRO justified to prevent disorder and bloodshed in Bubong.

In his petition, Munder argues that the Comelec acted without or in excess of its jurisdiction in taking cognizance of Sarip's petition which was filed beyond the reglementary period provided by law. Munder claims that Sarip should have instead filed a petition for *quo warranto* after the former's proclamation as the winning candidate. Munder likewise asserts that the Comelec committed grave abuse of discretion in effectively ruling upon his right to vote, when it attacked his status as a registered voter, in order to disqualify him from the mayoralty office.

Sarip, on the other hand, argues that the Comelec *En Banc* also acted with grave abuse of discretion in not declaring him entitled to assume the office of the municipal mayor of Bubong, Lanao del Sur after the disqualification of respondent Munder.

Public respondent Comelec, through the Office of the Solicitor General, chose to file its Comment only with respect to G.R. No. 194160, Sarip's Petition. It reiterated the legal doctrine that the second placer cannot be declared a winner in case the candidate who obtained the highest number of votes is disqualified. The OSG opposed Sarip's prayer that he, instead of the Vice-Mayor, be installed as Mayor of Bubong, Lanao del Sur.

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[15] *Id.* at 215-219.

The Issues

(1) May a petition filed as a Petition for Disqualification properly invoke, as a ground, that the candidate sought to be disqualified was not a registered voter and thus not be barred by the earlier prescriptive period applicable to Petition to Deny Due Course to or to Cancel Certificate of Candidacy?

(2) Did the Comelec commit grave abuse of discretion in concluding that the Alfais Munder in the voters' list is not the same as Alfais Munder the candidate?

(3) Does Sarip have the right to be installed as Mayor of Bubong, Lanao del Sur for having placed second in the electoral contest therefor?

The Court's Ruling

The Comelec has the constitutional mandate to "enforce and administer all laws and regulations relative to the conduct of an election."[16] It has the power to create its own rules and regulations, a power it exercised on 11 November 2009 in promulgating Resolution No. 8696, or the "Rules on Disqualification of Cases filed in Connection with the May 10, 2010 Automated National and Local Elections." Section 4 thereof provides for the procedure to be followed in filing the following petitions: 1) Petition to Deny Due Course to or Cancel Certificate of Candidacy; 2) Petition to Declare a Nuisance Candidate, and 3) petition to disqualify a candidate pursuant to Section 68 of the Election Code and petition to disqualify for lack of qualifications or for possessing some grounds for disqualification.

Resolution No. 8696 provides for the venue for the filing of the petitions and the period within which they should be filed. The validity of the said Resolution has been recognized by this Court in the fairly recent case of *Amora v. Comelec*.[17]

Munder alleges that Sarip's petition with the Comelec should be considered as one to deny due course to or to cancel a CoC, and not for disqualification. One of the important differences

[16] 1987 Constitution, Art. IX, Sec. 2(1).

[17] G.R. No. 192280. January 25, 2011, 640 SCRA 473.

between the two petitions is their prescriptive periods. For a Petition to Deny Due Course or to Cancel a Certificate of Candidacy, the period to file is within five days from the last day of the filing of the certificate of candidacy, but not later than 25 days from the filing thereof. On the other hand, a petition to disqualify a candidate may be filed at any day after the last day of filing of the certificate of candidacy, but not later than the date of proclamation.

It has been argued by Munder, who was earlier sustained by the Comelec Second Division, that the petition for disqualification should be treated as a petition to deny due course to or to cancel a certificate of candidacy, which had already prescribed.

We agree with Munder as to the nature of the petition filed by Sarip. The main ground of the said petition is that Munder committed dishonesty in declaring that he was a registered voter of Barangay Rogero, Bubong, Lanao del Sur, when in fact he was not. This ground is appropriate for a Petition to Deny Due Course or to Cancel Certificate of Candidacy.

Amora v. Comelec is applicable to the present controversy. In that case, similar to the present one, a mayoralty candidate was disqualified by the Comelec pursuant to a Petition for Disqualification. The petition was filed by one of the candidates for councilor in the same municipality, on the ground that the CoC had not been properly sworn to. Amora won in the election, but was disqualified by the Comelec after he was proclaimed as mayor of Candijay, Bohol. One of the issues clarified in the said case was the distinction between a Petition for Disqualification and a Petition to Deny Due Course or to Cancel Certificate of Candidacy. The Court, in effect, held that the Comelec should have dismissed the petition outright, since it was premised on a wrong ground. A Petition for Disqualification has specific grounds different from those of a Petition to Deny Due Course to or to Cancel Certificate of Candidacy. The latter is anchored on the false representation by a candidate as to material information in the CoC.[18]

[18] See *Id.* at 482-483.

For a petition for disqualification, the law expressly enumerates the grounds in Section 68 of Batas Pambansa Blg. 881 as amended, and which was replicated in Section 4(b) of Comelec Resolution No. 8696. The grounds stated by respondent in his Petition for Disqualification – that Munder was not qualified to run for not being a registered voter therein – was not included in the enumeration of the grounds for disqualification. The grounds in Section 68 may be categorized into two. First, those comprising "prohibited" acts of candidates; and second, the fact of their permanent residency in another country when that fact affects the residency requirement of a candidate according to the law.

In the earlier case of *Fermin v. Comelec*,[19] the Court clarified the two remedies that may be availed of by a candidate to prevent another from running in an electoral race. The Court held:

> The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, *i.e.*, he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office *is not a ground for the "disqualification" of a candidate* under Section 68. The provision only refers to *the commission of prohibited acts and the possession of a permanent resident status in a foreign country* as grounds for disqualification….
>
> xxx xxx xxx
>
> To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. The petitions also have different effects. While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all, as if he/she never filed a CoC.[20]

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[19] G.R. No. 179695, 18 December 2008, 574 SCRA 782.

[20] *Id.* at 794-796.

In *Fermin*, the Court has debunked the interpretation that a petition for disqualification covers the absence of the substantive qualifications of a candidate (with the exception of the existence of the fact of the candidate's permanent residency abroad). It has, in effect, even struck down a Comelec Resolution - Resolution No. 7800, which enumerated the grounds for a petition for disqualification to include the non-registration of a candidate as voter in the locality where he or she is running as a candidate. In ruling as such, Resolution No. 7800 which was considered as infringement of the powers of the legislature, the Court reiterated an earlier ruling:

> A COMELEC rule or resolution cannot supplant or vary the legislative enactments that distinguish the grounds for disqualification from those of ineligibility, and the appropriate proceedings to raise the said grounds. In other words, Rule 25 and COMELEC Resolution No. 7800 cannot supersede the dissimilar requirements of the law for the filing of a petition for disqualification under Section 68, and a petition for the denial of due course to or cancellation of CoC under Section 78 of the OEC.[21]

Responding to the above ruling, the Comelec's subsequent Resolution on the same matter deleted the enumerated grounds, interpreted by the Court as improper for a petition for disqualification, found in Comelec Resolution 7800.[22]

It is thus clear that the ground invoked by Sarip in his Petition for Disqualification against Munder — the latter's alleged status as unregistered voter in the municipality — was inappropriate for the said petition. The said ground should have been raised in a petition to cancel Munder's CoC. Since the two remedies vary in nature, they also vary in their prescriptive period. A petition to cancel a CoC gives a registered candidate the chance to question the qualification of a rival candidate for a shorter period: within 5 days from the last day of their filing of CoCs,

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[21] *Id.* at 798, citing *Loong v. Commission on Elections*, G.R. No. 93986, 22 December 1992, 216 SCRA 760, 767, cited by Chief Justice Hilario G. Davide, Jr. (ret.) in his Dissenting Opinion in *Aquino v. Commission on Elections*, G.R. No. 120265, 18 September 1995, 248 SCRA 400, 445-447.

[22] See Comelec Resolution No. 8696.

but not later than 25 days from the filing of the CoC sought to be cancelled.[23] A petition for disqualification may be filed any day after the last day of the filing of CoC but not later than the date of the proclamation.[24]

The Comelec Second Division stated that the last day of filing of the CoCs was on 21 December 2009. Thus, the period to file a Petition to Deny Due Course or to Cancel Certificate of Candidacy had already prescribed when Sarip filed his petition against Munder.

It was therefore grave abuse of discretion on the part of the Comelec *En Banc* to gloss over the issue of whether the petition was one for disqualification or for the cancellation of CoC. The nature of the petition will determine whether the action has prescribed, and whether the Commission can take cognizance of the petition. In directly tackling the factual issues without determining whether it can properly take cognizance of the petition, the Comelec *En Banc* committed grave abuse of discretion.

Assuming *arguendo* that the Comelec *En Banc* could answer the factual issue of Munder's non-registration as a voter in Bubong by considering it as a ground for the disqualification of his candidacy, we find that the Comelec committed grave abuse of discretion in concluding that Munder the voter was not Munder the mayoralty candidate. We observe that the Comelec *En Banc* relied on the Voter's Certification indicating one Alfaiz Tocalo Munder registering for the first time in 2003, with 7 May 1984 as birth date, and stating therein that he was 18 years old at the time of the registration. We find this evidence insufficient to impeach the fact that he was a registered voter of Bubong, Lanao del Sur. In the first place, the registration was in 2003, while the election was in 2010. The said evidence would not negate the fact that in 2010, he had already attained eligibility to run for mayor. In such a small municipality like Bubong, the likelihood of not being able to know whether one has a namesake, especially when one is running for a public office, is very slim.

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[23] OEC, Sec. 69.

[24] Comelec Resolution No. 8696, Section 4(B).

Sarip should have proved that another Alfais Tocalo Munder is in existence, and that the latter is the registered voter and not herein petitioner. In such a case, Sarip's remedy is not a Petition for Disqualification, but a Petition to Deny Due Course or to Cancel Certificate of Candidacy which must comply with the prescriptive period. Otherwise, his remedy, after Munder has been proclaimed is to file a *quo warranto* action with the Regional Trial Court to prove that Munder lacks the eligibility required by law.

It may be true that in 2003, Munder, who was still a minor, registered himself as a voter and misrepresented that he was already of legal age. Even if it was deliberate, we cannot review his past political acts in this petition. Neither can the Comelec review those acts in an inappropriate remedy. In so doing, it committed grave abuse of discretion, and the act resulting therefrom must be nullified.

With this conclusion, Sarip's petition has become moot. There is no longer any issue of whether to apply the rule on succession to an elective office, since Munder is necessarily established in the position for which the people have elected him.

IN VIEW OF THE FOREGOING, G.R. No. 194076 is hereby *GRANTED*. The Comelec *En Banc* Resolution dated 4 October 2010 which granted the petition to disqualify Alfais Tocalo Munder as Mayor of Bubong, Lanao del Sur is hereby *NULLIFIED* and *SET ASIDE*. The Comelec Second Division Resolution dated 29 June 2010 dismissing the petition for disqualification filed by Atty. Tago R. Sarip against Alfais Tocalo Munder is *REINSTATED*. G.R. No. 194160 is hereby *DISMISSED*. For having been rendered moot by this Decision, the Temporary Restraining Order we issued on 18 January 2011 in favor of Alfais Tocalo Munder is hereby made permanent.

SO ORDERED.

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

EN BANC

[G.R. No. 196271. October 18, 2011]

DATU MICHAEL ABAS KIDA, in his personal capacity, and in representation of MAGUINDANAO FEDERATION OF AUTONOMOUS IRRIGATORS ASSOCIATION, INC., HADJI MUHMINA J. USMAN, JOHN ANTHONY L. LIM, JAMILON T. ODIN, ASRIN TIMBOL JAIYARI, MUJIB M. KALANG, ALIH AL-SAIDI J. SAPI-E, KESSAR DAMSIE ABDIL, and BASSAM ALUH SAUPI, *petitioners, vs.* **SENATE OF THE PHILIPPINES, represented by its President JUAN PONCE ENRILE, HOUSE OF REPRESENTATIVES, thru SPEAKER FELICIANO BELMONTE, COMMISSION ON ELECTIONS, thru its Chairman, SIXTO BRILLANTES, JR., PAQUITO OCHOA, JR., Office of the President Executive Secretary, FLORENCIO ABAD, JR., Secretary of Budget, and ROBERTO TAN, Treasurer of the Philippines,** *respondents.*

[G.R. No. 196305. October 18, 2011]

BASARI D. MAPUPUNO, *petitioner, vs.* **SIXTO BRILLANTES, in his capacity as Chairman of the Commission on Elections, FLORENCIO ABAD, JR. in his capacity as Secretary of the Department of Budget and Management, PACQUITO OCHOA, JR., in his capacity as Executive Secretary, JUAN PONCE ENRILE, in his capacity as Senate President, and FELICIANO BELMONTE, in his capacity as Speaker of the House of Representatives,** *respondents.*

[G.R. No. 197221. October 18, 2011]

REP. EDCEL C. LAGMAN, *petitioner, vs.* **PAQUITO N. OCHOA, JR., in his capacity as the Executive Secretary, and the COMMISSION ON ELECTIONS,** *respondents.*

[G.R. No. 197280. October 18, 2011]

ALMARIM CENTI TILLAH, DATU CASAN CONDING CANA, and PARTIDO DEMOKRATIKO PILIPINO LAKAS NG BAYAN (PDP-LABAN), *petitioners, vs.* **THE COMMISSION ON ELECTIONS, through its Chairman, SIXTO BRILLANTES, JR., HON. PAQUITO N. OCHOA, JR., in his capacity as Executive Secretary, HON. FLORENCIO B. ABAD, JR., in his capacity as Secretary of the Department of Budget and Management, and HON. ROBERTO B. TAN, in his capacity as Treasurer of the Philippines,** *respondents.*

[G.R. No. 197282. October 18, 2011]

ATTY. ROMULO B. MACALINTAL, *petitioner, vs.* **COMMISSION ON ELECTIONS and THE OFFICE OF THE PRESIDENT, through EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.,** *respondents.*

[G.R. No. 197392. October 18, 2011]

LOUIS "BAROK" BIRAOGO, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.,** *respondents.*

[G.R. No. 197454. October 18, 2011]

JACINTO V. PARAS, *petitioner, vs.* **EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., and the COMMISSION ON ELECTIONS,** *respondents.* **MINORITY RIGHTS FORUM, PHILIPPINES, INC.,** *respondents-intervenor.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; RA NO. 10153 [ON SYNCHRONIZATION OF ELECTIONS IN THE AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM) WITH THE NATIONAL AND LOCAL ELECTIONS]; SYNCHRONIZATION, A RECOGNIZED

CONSTITUTIONAL MANDATE.— We **UPHOLD the constitutionality of RA No. 10153** [on Synchronization of Elections in the Autonomous Region in Muslim Mindanao (ARMM) with the National and Local Elections and Interim Measures To Prevail in the Meanwhile] ***in toto***. x x x The respondent Office of the Solicitor General (*OSG*) argues that the Constitution mandates synchronization, and in support of this position, cites Sections 1, 2 and 5, Article XVIII (Transitory Provisions) of the 1987 Constitution. x x x **We agree with this position**. While the Constitution does not expressly state that Congress has to synchronize national and local elections, the clear intent towards this objective can be gleaned from the Transitory Provisions (Article XVIII) of the Constitution, which show the extent to which the Constitutional Commission, by deliberately making adjustments to the terms of the incumbent officials, sought to attain synchronization of elections. The objective behind setting a common termination date for all elective officials, done among others through the shortening the terms of the twelve winning senators with the least number of votes, is to synchronize the holding of all future elections – whether national or local – to once every three years. This intention finds full support in the discussions during the Constitutional Commission deliberations. These Constitutional Commission exchanges, read with the provisions of the Transitory Provisions of the Constitution, all serve as patent indicators of the constitutional mandate to hold synchronized national and local elections, starting the second Monday of May, 1992 and for all the following elections. This Court was not left behind in recognizing the synchronization of the national and local elections as a constitutional mandate. In *Osmeña v. Commission on Elections*, we explained: x x x Although called regional elections, the ARMM elections should be included among the elections to be synchronized as it is a "local" election based on the wording and structure of the Constitution. A basic rule in constitutional construction is that the words used should be understood in the sense that they have in common use and given their ordinary meaning, except when technical terms are employed, in which case the significance thus attached to them prevails. As this Court explained in *People v. Derilo*, "[a]s the Constitution is not primarily a lawyer's document, its language should be understood in the sense that it may have in common. Its words should be given their ordinary

meaning except where technical terms are employed." Understood in its ordinary sense, the word "local" refers to something that primarily serves the needs of a particular limited district, often a community or minor political subdivision. Regional elections in the ARMM for the positions of governor, vice-governor and regional assembly representatives obviously fall within this classification, since they pertain to the elected officials who will serve within the limited region of ARMM. From the perspective of the Constitution, autonomous regions are considered one of the forms of local governments, as evident from Article X of the Constitution entitled "Local Government." Autonomous regions are established and discussed under Sections 15 to 21 of this Article – the article wholly devoted to Local Government. That an autonomous region is considered a form of local government is also reflected in Section 1, Article X of the Constitution.

2. ID.; ID.; ID.; FAILURE OF RA NO. 10153 TO PASS THREE READINGS ON SEPARATE DAYS BEFORE BECOMING A LAW, EXCUSED BY THE NECESSITY OF ITS IMMEDIATE ENACTMENT AS CERTIFIED BY THE PRESIDENT.— The petitioners also challenge the validity of RA No. 10153 for its alleged failure to comply with Section 26(2), Article VI of the Constitution which provides that before bills passed by either the House or the Senate can become laws, they must pass through three readings on separate days. The exception is when the President certifies to the necessity of the bill's immediate enactment. The Court, in *Tolentino v. Secretary of Finance*, explained the effect of the President's certification of necessity in the following manner: x x x In the present case, the records show that the President wrote to the Speaker of the House of Representatives to certify the necessity of the immediate enactment of a law synchronizing the ARMM elections with the national and local elections. Following our *Tolentino* ruling, the President's certification exempted both the House and the Senate from having to comply with the three separate readings requirement. On the follow-up contention that no necessity existed for the immediate enactment of these bills since there was no public calamity or emergency that had to be met, again we hark back to our ruling in *Tolentino*: x x x **the factual basis of presidential certification of bills, which involves doing away with procedural requirements designed to insure that bills are**

duly considered by members of Congress, certainly should elicit a different standard of review. The House of Representatives and the Senate – in the exercise of their legislative discretion – gave full recognition to the President's certification and promptly enacted RA No. 10153. Under the circumstances, nothing short of grave abuse of discretion on the part of the two houses of Congress can justify our intrusion under our power of judicial review. The petitioners, however, failed to provide us with any cause or justification for this course of action. Hence, while the judicial department and this Court are not bound by the acceptance of the President's certification by both the House of Representatives and the Senate, prudent exercise of our powers and respect due our co-equal branches of government in matters committed to them by the Constitution, caution a stay of the judicial hand. In any case, despite the President's certification, the two-fold purpose that underlies the requirement for three readings on separate days of every bill must always be observed to enable our legislators and other parties interested in pending bills to intelligently respond to them. Specifically, the purpose with respect to Members of Congress is: (1) to inform the legislators of the matters they shall vote on and (2) to give them notice that a measure is in progress through the enactment process.

3. ID.; ID.; ID.; RA NO. 10153 TOGETHER WITH RA NO. 9333 (RESETTING THE ARMM REGIONAL ELECTIONS), NOT AN AMENDMENT TO RA NO. 9054 (WHICH PROVIDES ONLY SCHEDULE OF THE *FIRST* ARMM ELECTIONS). — The effectivity of RA No. 9333 and RA No. 10153 has also been challenged because they did not comply with Sections 1 and 3, Article XVII of RA No. 9054 in amending this law. x x x **We find no merit in this contention.** In the first place, neither RA No. 9333 nor RA No. 10153 amends RA No. 9054. As an examination of these laws will show, RA No. 9054 only provides for the schedule of the ***first*** ARMM elections and does not fix the date of the regular elections. A need therefore existed for the Congress to fix the date of the ***subsequent*** ARMM regular elections, which it did by enacting RA No. 9333 and thereafter, RA No. 10153. Obviously, these subsequent laws – ***RA No. 9333 and RA No. 10153 – cannot be considered amendments to RA No. 9054 as they did not change or revise any provision in the latter law***; they merely

filled in a gap in RA No. 9054 or supplemented the law by providing the date of the subsequent regular elections.

4. ID.; ID.; ID.; RA NO. 9054 REQUIRING TOTAL OF TWO-THIRDS (2/3) VOTING IN THE LEGISLATIVE BODY FOR ITS AMENDMENT, UNCONSTITUTIONAL.— [The] supermajority (2/3) voting requirement required under Section 1, Article XVII of RA No. 9054 has to be struck down for giving RA No. 9054 the character of an irrepealable law by requiring more than what the Constitution demands. Section 16(2), Article VI of the Constitution provides that a "majority of each House shall constitute a quorum to do business." In other words, as long as majority of the members of the House of Representatives or the Senate are present, these bodies have the quorum needed to conduct business and hold session. Within a quorum, a vote of majority is generally sufficient to enact laws or approve acts. In contrast, Section 1, Article XVII of RA No. 9054 requires a vote of no less than two-thirds (2/3) of the Members of the House of Representatives and of the Senate, voting separately, in order to effectively amend RA No. 9054. Clearly, this 2/3 voting requirement is higher than what the Constitution requires for the passage of bills, and served to restrain the plenary powers of Congress to amend, revise or repeal the laws it had passed. The Court's pronouncement in *City of Davao v. GSIS* on this subject best explains the basis and reason for the unconstitutionality: Moreover, it would be noxious **anathema to democratic principles** for a legislative body to have the ability to bind the actions of future legislative body, considering that both assemblies are regarded with equal footing, exercising as they do the same plenary powers. **Perpetual infallibility is not one of the attributes desired in a legislative body, and a legislature which attempts to forestall future amendments or repeals of its enactments labors under delusions of omniscience.** x x x A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors.

This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. **This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes**.

5. ID.; ID.; RA NO. 9054 EXCESSIVELY ENLARGING THE PLEBISCITE REQUIREMENT FOUND IN SEC. 18, ART. X (AUTONOMOUS REGIONS) OF THE CONSTITUTION, UNCONSTITUTIONAL.— The requirements of RA No. 9054 enlarged as well the plebiscite requirement, as embodied in its Section 3, Article XVII of that Act. [w]e find the enlargement of the plebiscite requirement required under Section 18, Article X of the Constitution to be excessive to point of absurdity and, hence, a violation of the Constitution. Section 18, Article X of the Constitution states that the plebiscite is required only for the creation of autonomous regions and for determining which provinces, cities and geographic areas will be included in the autonomous regions. While the settled rule is that amendments to the Organic Act have to comply with the plebiscite requirement in order to become effective, questions on the extent of the matters requiring ratification may unavoidably arise because of the seemingly general terms of the Constitution and the obvious absurdity that would result if a plebiscite were to be required for *every* statutory amendment. Section 18, Article X of the Constitution plainly states that "The creation of the autonomous region shall be effective when approved by the majority of the votes case by the constituent units in a plebiscite called for the purpose." With these wordings as standard, we interpret the requirement to mean that only amendments to, or revisions of, the Organic Act constitutionally-essential to the creation of autonomous regions – *i.e.*, those aspects specifically mentioned in the Constitution which Congress must provide for in the Organic Act – require ratification through a plebiscite. These amendments to the Organic Act are those that relate to: (a) the basic structure of the regional government; (b) the region's judicial system, *i.e.*, the special courts with personal, family, and property law jurisdiction; and, (c) the grant and extent of the legislative powers constitutionally conceded to

the regional government under Section 20, Article X of the Constitution.

6. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; LEGISLATIVE POWER AND ITS LIMITATIONS, ELUCIDATED.— The grant of legislative power to Congress is broad, general and comprehensive. The legislative body possesses plenary power for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere. Except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to all matters of general concern or common interest. The constitutional limitations on legislative power are either express or implied. The express limitations are generally provided in some provisions of the Declaration of Principles and State Policies (Article 2) and in the provisions Bill of Rights (Article 3). Other constitutional provisions (such as the initiative and referendum clause of Article 6, Sections 1 and 32, and the autonomy provisions of Article X) provide their own express limitations. The implied limitations are found "in the evident purpose which was in view and the circumstances and historical events which led to the enactment of the particular provision as a part of organic law."

7. ID.; ID.; AUTONOMOUS REGIONS; CONSTITUTIONAL PROVISIONS ON AUTONOMY CONSTITUTE EXPRESS LIMITATIONS ON LEGISLATIVE POWER. – The constitutional provisions on autonomy – specifically, Sections 15 to 21 of Article X of the Constitution – constitute express limitations on legislative power as they define autonomy, its requirements and its parameters, thus limiting what is otherwise the unlimited power of Congress to legislate on the governance of the autonomous region. Of particular relevance to the issues of the present case are the limitations posed by the prescribed basic structure of government – *i.e.*, that the government must have an executive department and a legislative assembly, both of which must be elective and representative of the constituent political units; national government, too, must not encroach on the legislative powers granted under Section 20, Article X. Conversely and as expressly reflected in Section 17, Article X, "*all powers and functions not granted by this Constitution*

or by law to the autonomous regions shall be vested in the National Government." The totality of Sections 15 to 21 of Article X should likewise serve as a standard that Congress must observe in dealing with legislation touching on the affairs of the autonomous regions. The terms of these sections leave no doubt on what the Constitution intends – the idea of self-rule or self-government, in particular, the power to legislate on a wide array of social, economic and administrative matters. But equally clear under these provisions are *the permeating principles of national sovereignty and the territorial integrity of the Republic,* as expressed in the above-quoted Section 17 and in Section 15. In other words, the Constitution and the supporting jurisprudence, as they now stand, reject the notion of *imperium et imperio* in the relationship between the national and the regional governments.

8. ID.; ID.; ID.; ARMM OFFICIALS ARE LOCAL OFFICIALS BOUND BY THE THREE-YEAR TERM LIMIT PRESCRIBED UNDER ART. X (LOCAL GOVERNMENT) OF THE CONSTITUTION WHICH CANNOT BE MODIFIED BY HOLDOVER EXTENSION NOR SHORTEND BY A CALL FOR SPECIAL ELECTIONS. – Section 8, Article X of the Constitution provides: Section 8. The **term of office of elective local officials**, except barangay officials, which shall be determined by law, **shall be three years** and no such official shall serve for more than three consecutive terms. Since elective ARMM officials are local officials, they are covered *and bound* by the three-year term limit prescribed by the Constitution; they cannot extend their term through a holdover. x x x [T]he terms of local officials has been fixed clearly and unequivocally, allowing no room for any implementing legislation with respect to the fixed term itself and no vagueness that would allow an interpretation from this Court. Thus, the term of three years for local officials should stay at three (3) years as fixed by the Constitution and cannot be extended by holdover by Congress. x x x [And] in the same way that the term of elective ARMM officials cannot be extended through a holdover, the term cannot be shortened **by putting an expiration date earlier than the three (3) years that the Constitution itself commands. This is what will happen – a term of less than two years – if a call for special elections shall prevail.**

9. ID.; ID.; COMMISSION ON ELECTIONS (COMELEC); NO AUTHORITY TO ORDER SPECIAL ELECTIONS AS THE POWER TO FIX DATE OF ELECTIONS IS ESSENTIALLY LEGISLATIVE IN NATURE. – The power to fix the date of elections is essentially legislative in nature, as evident from, and exemplified by, the following provisions of the Constitution: Section 8, Article VI, applicable to the legislature, provides: Section 8. **Unless otherwise provided by law**, the regular election of the Senators and the Members of the House of Representatives shall be held on the second Monday of May. Section 4(3), Article VII, with the same tenor but applicable solely to the President and Vice-President, x x x while Section 3, Article X, on local government, provides: x x x These provisions support the conclusion that no elections may be held on any other date x x x except when so provided by another Act of Congress, or upon orders of a body or officer to whom Congress may have delegated either the power or the authority to ascertain or fill in the details in the execution of that power. x x x After Congress has so acted, neither the Executive nor the Judiciary can act to the contrary by ordering special elections instead at the call of the COMELEC. x x x Furthermore, we have to bear in mind that the constitutional power of the COMELEC, in contrast with the power of Congress to call for, and to set the date of, elections, is limited to enforcing and administering all laws and regulations relative to the conduct of an election. Statutorily, COMELEC has no power to call for the holding of special elections unless pursuant to a specific statutory grant. True, Congress did grant, *via* Sections 5 and 6 of BP 881, COMELEC with the power to postpone elections to another date. However, this power is limited to, and can only be exercised within, the specific terms and circumstances provided for in the law.

10. ID.; ID.; EXECUTIVE DEPARTMENT; PRESIDENT'S POWER TO APPOINT; THOSE WHOM THE PRESIDENT MAY BE AUTHORIZED BY LAW TO APPOINT AS THAT IN RA NO. 10153.— [T]he power to appoint is essentially executive in nature, and the limitations on or qualifications to the exercise of this power should be strictly construed; these limitations or qualifications must be clearly stated in order to be recognized. The appointing power is embodied in Section 16, Article VII of the Constitution. x x x This provision classifies into four groups the officers that the President can

appoint. These are: x x x ***Third, those whom the President may be authorized by law to appoint;*** and x x x Since the President's authority to appoint OICs emanates from RA No. 10153, it falls under the third group of officials that the President can appoint pursuant to Section 16, Article VII of the Constitution. Thus, the assailed law *facially* rests on clear constitutional basis. x x x What RA No. 10153 in fact only does is to *"appoint officers-in-charge for the Office of the Regional Governor, Regional Vice Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office."*

11. STATUTORY CONSTRUCTION; THE CONSTITUTION MUST BE INTERPRETED AS A WHOLE.— [A] basic principle in constitutional construction – *ut magis valeat quam pereat*: that the Constitution is to be interpreted as a whole, and one mandate should not be given importance over the other except where the primacy of one over the other is clear.

12. POLITICAL LAW; AUTONOMOUS REGIONS; AUTONOMY IN THE ARMM DOES NOT MEAN INDEPENDENCE FROM THE NATIONAL GOVERNMENT.— [W]hile autonomous regions are granted political autonomy, the framers of the Constitution never equated autonomy with independence. The ARMM as a regional entity thus continues to operate within the larger framework of the State and is still subject to the national policies set by the national government, save only for those specific areas reserved by the Constitution for regional autonomous determination. x x x [T]he autonomy granted to the ARMM cannot be invoked to defeat national policies and concerns. Since the synchronization of elections is not just a regional concern but a national one, the ARMM is subject to it; the regional autonomy granted to the ARMM cannot be used to exempt the region from having to act in accordance with a national policy mandated by no less than the Constitution.

CARPIO, *J., dissenting opinion*:

1. POLITICAL LAW; ELECTIONS LAWS; RA NO. 10153 [ON SYNCHRONIZATION OF ELECTIONS IN THE

AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM) WITH THE NATIONAL AND LOCAL ELECTIONS]; PRESIDENT'S CERTIFICATION OF BILLS AS URGENT MEASURES NOT SUBJECT TO HEIGHTENED SCRUTINY.— [T]he President certified HB 4146 and SB 2756 as urgent measures, thus dispensing with the bills' separate reading and advanced distribution x x x. The Court has refused in the past to subject to heightened scrutiny presidential certifications on the urgency of the passage of legislative measures. In *Tolentino v. Secretary of Finance*, petitioners in that case questioned the sufficiency of the President's certification of a "growing budget deficit" as basis for the urgent passage of revenue measures, claiming that this does not amount to a public calamity or emergency. The Court declined to strike down the President's certification upon a showing that members of both Houses of Congress had the opportunity to study the bills and no fundamental constitutional rights were "at hazard" x x x As in *Tolentino*, Congress, in passing RA 10153, found sufficient the factual bases for President Aquino's certification of HB 4146 and SB 2756 as emergency measures. [T]here is nothing on record to show, that members of Congress were denied the opportunity to examine HB 4146 and SB 2756 because of the President's certification. There is thus no basis to depart from *Tolentino*.

2. ID.; ID.; ID.; RA NO. 9333 (RESETTING THE ARMM REGIONAL ELECTIONS) AND RA NO. 10153 SUPPLEMENT AND DO NOT AMEND RA NO. 9054 (WHICH PROVIDES ONLY THE SCHEDULE OF THE *FIRST* ARMM ELECTIONS).— Had Congress intended RA 9054 to govern not only the "***first*** regular elections" but also **succeeding** regular elections, it would have included in Section 7 of Article XVIII a provision stating to the effect that the succeeding regular elections shall be held on the same date every three years thereafter, consistent with the three-year term of office of elective officials in the ARMM. Instead, RA 9054 confines itself to the "***first*** regular elections." Tellingly, it is only in Section 1 of RA 9333 and Section 2 of RA 10153 that Congress touched on the **succeeding** regular elections in the ARMM, by uniformly providing that "**[s]ucceeding** regular elections shall be held" on the date indicated "every three years thereafter." The legislative practice of limiting the reach of

the ARMM Organic Act to the first regular elections, leaving the date of the succeeding regular elections for Congress to fix in a subsequent legislation, traces its roots in the ARMM's first Organic Act, RA 6734. Section 7, Article XIX of RA 6734 fixed the date of the "***first*** regular elections," to take place "not earlier than sixty (60) days or later than ninety (90) days" after the ratification of RA 6743. x x x To fix the date of the **succeeding** regular elections, Congress passed several measures, moving the election day as it deemed proper. Like RA 9333 and RA 10153, these enactments merely filled a void created by the narrow wording of RA 6734. **RA 9333 and RA 10153 are therefore separate, stand-alone statutes that do not amend any provision of RA 9054**.

3. ID.; ID.; RA NO. 9054 REQUIRING A TOTAL OF TWO-THIRDS (2/3) VOTING IN THE LEGISLATIVE BODY FOR ITS AMENDMENT, UNCONSTITUTIONAL.— Section 16 (2), Article VI of the Constitution provides that "**[a] majority of each House shall constitute a quorum to do business x x x**," a majority of a quorum, or a majority of a majority, can enact, amend or repeal laws or approve acts requiring the affirmative action of Congress, unless the Constitution prescribes a qualified or supermajority in specific cases. By providing that RA 9054 "may be reamended or revised by the Congress of the Philippines ***upon a vote of two-thirds (2/3)*** of the Members of the House of Representatives and of the Senate voting separately," Section 1, Article XVII of RA 9054 ***raised*** the vote threshold necessary to amend RA 9054 to a level higher than what Section 16 (2), Article VI of the Constitution requires. x x x The repugnancy between the statutory provision and the Constitution is irreconcilable. Needless to say, the Constitution prevails. Section 1, Article XVII of RA 9054 also runs afoul of the inherent limitation on Congress' power barring it from passing irrepealable laws.

4. ID.; ID.; RA NO. 9054 REQUIRING A PLEBISCITE IN THE ARMM TO APPROVE ANY AMENDMENT TO OR REVISION OF RA 9054 CONTRAVENES THE CONSTITUTION REQUIRING A PLEBISCITE IN THE AUTONOMOUS REGION ONLY FOR THE APPROVAL OF ITS CREATION.— The second paragraph of Section 18, Article X of the Constitution requires the holding of a plebiscite in the autonomous region for the approval of its ***creation***,

x x x. In sharp contrast to the narrow scope of Section 18 of Article X of the Constitution, Section 3, Article XVII of RA 9054 mandates the holding of a plebiscite in the ARMM to approve "***[a]ny*** amendment to or revision of" RA 9054, x x x including the fixing of the date of elections in the ARMM that RA 10153 mandates. x x x [I]t ***impermissibly expands*** the scope of the subject matter that the Constitution requires to be submitted to a plebiscite. By barring ***any change*** to RA 9054 from taking effect unless approved by ARMM voters in a plebiscite, even if unrelated to the ARMM's creation, reduction or expansion, Section 3 of Article XVII directly contravenes Section 18, Article X of the Constitution.

5. ID.; CONSTITUTIONAL LAW; CONGRESS' POWER TO SYNCHRONIZE NATIONAL AND LOCAL ELECTIONS DOES NOT ENCOMPASS APPOINTMENT OF OICS IN PLACE OF ELECTIVE OFFICIALS.— RA 10153 widens the ambit of the Constitution's policy of synchronizing elections by including the ARMM into the loop of synchronized elections. x x x Under Section 1, Article X of the Constitution, the ARMM is a local government unit just like provinces, cities, municipalities, and barangays. x x x Thus, elective officials of the ARMM are local officials x x x. Section 8, Article X of the Constitution provides that ***"[t]he term of office of elective local officials***, except barangay officials, which shall be determined by law, ***shall be three years*** x x x." In compliance with this provision, ARMM elective officials serve three-year terms under RA 9054. Congress cannot fix the term of elective local officials in the ARMM for less, or more, than three years. Clearly, elective officials in the ARMM are "local officials" and elections in the ARMM, a local government unit, are "local elections." Congress' power to provide for the simultaneous holding of elections for national and local officials, however, does not encompass the power to authorize the President to appoint officers-in-charge in place of elective local officials, canceling in the process scheduled local elections. To hold otherwise is to sanction the perversion of the Philippine State's democratic and republican nature. **Offices declared by the Constitution as elective must be filled up by election and not by appointment**. To appoint officials to offices mandated by the Constitution to be elective, absent an absolutely unavoidable necessity to keep functioning essential government

services, is a blatant violation of an express command of the Constitution.

6. ID.; ID.; RA NO. 10153 AUTHORIZING THE PRESIDENT TO APPOINT OICS IN ELECTIVE LOCAL OFFICES IN THE ARMM, UNCONSTITUTIONAL.— Where the law provides for the creation of a local government unit prior to the election of its local officials, it becomes ***absolutely necessary and unavoidable*** for the legislature to authorize the President to appoint interim officials in elective local offices to insure that essential government services start to function. In authorizing the President to appoint OICs in the ARMM, Section 3 of RA 10153 provides: *Appointment of Officers-in-Charge*.— The President shall appoint officers-in-charge for the Office of the Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office. Section 3 is supplemented by Section 4 which provides the manner and procedure of appointment while Section 5 states the qualifications for the OICs. It takes no extensive analysis to conclude that Section 3 is *neither necessary nor unavoidable* for the ARMM to function. The ARMM is an ***existing***, as opposed to a ***newly created* or *transitioning***, local government unit created more than two decades ago in 1989. At the time of the passage of RA 10153, elected officials occupied all the elective offices in the ARMM. No one claims that it is impossible to hold special local elections in the ARMM to determine its next set of elective officials. Section 3 of RA 10153 negates the representative and democratic nature of the Philippine State and its political subdivisions such as the ARMM. Section 18, Article X of the Constitution on the organic act of autonomous regions expressly requires the organic act to define the "[b]asic structure of government for the region consisting of the executive department and legislative assembly, *both of which shall be* ***elective and representative*** *of the constituent political units*." The ARMM's Organic Act, RA 6734, as amended by RA 9054, implements Section 18, Article X of the Constitution by mandating the popular election of its executive and legislative officials. Section 3 of RA 10153, however, negates Congress' implementation of the Constitution under RA 9054 by making the executive and legislative offices in the ARMM ***appointive***.

7. ID.; ID.; LOCAL GOVERNMENTS; PRESIDENT EXERCISING GENERAL SUPERVISION OVER ALL LOCAL GOVERNMENTS MAY APPOINT AN OIC IN CASE IT IS ABSOLUTELY NECESSARY AND UNAVOIDABLE TO KEEP FUNCTIONING ESSENTIAL GOVERNMENT SERVICES; CONDITION NOT PRESENT FOR THE APPOINTMENT OF OIC IN THE ARMM REGIONAL LEGISLATIVE ASSEMBLY.— [U]nder Section 4, Article X of the Constitution, the President exercises "general supervision" over all local governments. In case it is ***absolutely necessary and unavoidable to keep functioning essential government services***, the President may, under his power of general supervision over local governments, appoint OICs where vacancies occur in existing elective local offices and the law does not provide for succession, or where succession is inapplicable because the terms of elective officials have expired. Thus, the President may appoint an officer-in-charge in the office of the ARMM Governor pending the holding of special local elections in the ARMM. The appointment of such officer-in-charge is absolutely necessary and unavoidable because someone must insure that essential government services continue to function in the ARMM. The officer-in-charge shall exercise the powers and perform the functions of the ARMM Governor under RA 9054 and related laws until the assumption to office of the elected ARMM Governor. However, all appointments made by the officer-in-charge shall terminate upon the assumption to office of the elected Governor. It is, however, not absolutely necessary and unavoidable to appoint OICs in the ARMM Regional Legislative Assembly because Section 22, Article VII of RA 9054 provides for the automatic reenactment of the ARMM budget if the Regional Legislative Assembly fails to pass the appropriation bill for the ensuing fiscal year. Even without OIC regional assembly members, the ARMM will have an operational budget for the next fiscal year. However, following the Local Government Code, which applies suppletorily to the ARMM, "only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year" are deemed reenacted. The officer-in-charge in the office of the ARMM Governor shall disburse funds from the reenacted budget in accordance with the applicable

provisions of the Local Government Code and its implementing rules.

8. ID.; ID.; ID.; THREE-YEAR TERM OF OFFICE OF ELECTIVE LOCAL OFFICIALS LIKE THE ARMM OFFICIALS CANNOT BE EXTENDED BY A "HOLDOVER." – Section 8, Article X of the Constitution limits the term of office of elective local officials, except barangay officials, to three years: x x x Elective ARMM officials are "local officials" within the meaning of Section 8, Article X of the Constitution. x x x The question of whether a law may constitutionally mandate the "hold over" of local officials beyond the expiration of their term ***as fixed in the Constitution*** is not novel. The Court reviewed such a law in *Osmeña* and struck down the law, holding that "it is not competent of the legislature to extend the term of officers by providing that they shall hold over until their successors are elected and qualified ***where the [C]onstitution has x x x prescribed the term***" x x x. Thus, if a public office is created by the Constitution with a fixed term, or if the term of a public office created by Congress is fixed by the Constitution, Congress is devoid of any power to change the term of that office. Thus, statutes which extend the term of an elective office as fixed in the Constitution – either by postponing elections, changing the date of commencement of term of the successor, or authorizing the incumbent to remain in office until his successor is elected and qualified – are unconstitutional as it amounts to an appointment of an official by Congress to a constitutional office, a power vested either in the Executive or in the electorate, or a negation of the term of office fixed in the Constitution. [C]onstitutional provisions fixing the terms of elective officials serve the ends of democratic republicanism by depriving elective officials of any legal basis to remain in office after the end of their terms, ensuring the holding of elections, and paving the way for the newly elected officials to assume office. x x x In contrast, Section 7(1), Article VII of RA 9054, allowing for the hold over of elective local officials in the ARMM, finds no basis in the Constitution. Indeed, Section 7(1) contravenes the Constitution by extending the term of office of such elective local officials beyond the three year period fixed in Section 8, Article X of the Constitution.

9. ID.; ID.; ID.; ID.; PROPER REMEDY IS HOLDING OF SPECIAL ELECTIONS AS PROVIDED UNDER BP NO. 881.— The unconstitutionality of Section 7(1), Article VII of RA 9054 and Sections 3, 4 and 5 of RA 10153 leaves **the holding of special elections as the only constitutionally permissible option to fill up the offices of the ARMM Governor, Vice-Governor and members of the Regional Legislative Assembly after 30 September 2011**. Section 5 of Batas Pambansa Bilang 881 (BP 881), as amended, authorizes respondent COMELEC to hold special elections "***[w]hen for any serious cause*** such as x x x loss or destruction of election paraphernalia or records x x x ***the holding of a free, orderly and honest election should become impossible in any political subdivision*** x x x." The tight timeframe in the enactment and signing into law of RA 10153 on 30 June 2011, and the filing of the present petitions shortly before and after the signing, rendering impossible the holding of elections on 8 August 2011 as scheduled under RA 9333, is a cause analogous to the administrative mishaps covered in Section 5 of BP 881. The postponement of the ARMM elections was an unavoidable result of the time lag legislative and judicial processes normally entail. The ARMM officials to be elected in the special ARMM elections shall hold office until 30 June 2013, when the terms of office of elective national and local officials covered by the synchronized elections also expire.

10. ID.; ID.; AUTONOMOUS REGIONS; CONSTITUTION GUARANTEES THAT THE EXECUTIVE AND LEGISLATIVE OFFICES OF THE AUTONOMOUS REGIONS SHALL BE ELECTIVE AND REPRESENTATIVE OF THE CONSTITUENT POLITICAL UNITS; DEFIED WHERE SCHEDULED LOCAL ELECTIONS IN THE ARMM WERE CANCELLED AND OICs WERE APPOINTED IN PLACE OF ELECTED LOCAL OFFICIALS.— In any event, it is a terribly dangerous precedent for this Court to legitimize the cancelation of scheduled local elections in the ARMM and allow the appointment of OICs in place of elected local officials for the purpose of reforming the ARMM society and curing all social, political and economic ills plaguing it. If this can be done to the ARMM, it can also be done to other regions, provinces, cities and municipalities, and worse, it can even be done to the entire Philippines: cancel

scheduled elections, appoint OICs in place of elective officials, all for the ostensible purpose of reforming society – a purpose that is perpetually a work-in-progress. This Court cannot allow itself to be co-opted into such a social re-engineering in clear violation of the Constitution. One has to see the problem in the Muslim South in the larger canvass of the Filipino Muslims' centuries-old struggle for self-determination. The Muslim problem in southern Mindanao is rooted on the Philippine State's failure to craft solutions sensitive to the Filipino Muslims' "common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics." The framers of the 1987 Constitution, for the first time, recognized these causes and devised a solution by mandating the creation of an ***autonomous region*** in Muslim Mindanao, a political accommodation radically vesting State powers to the region, save those withheld by the Constitution and national laws. Lying at the heart of this unprecedented empowerment is the Constitution's guarantee that the executive and legislative offices of the autonomous region shall be "***be elective and representative of the constituent political units***." The essence of an autonomous region is the untrammeled right of the people in the region to freely choose those who will govern them. A region is not autonomous if its leaders are not elected by the people of the region but appointed by the central government in Manila. It is the solemn duty of this Court to uphold the genuine autonomy of the ARMM as crafted by the framers and enshrined in the Constitution. Otherwise, our Muslim brothers in the South who justifiably seek genuine autonomy for their region would find no peaceful solution under the Constitution. By disenfranchising voters in the ARMM, even for a single electoral cycle, denying them their fundamental right of electing their leaders and representatives, RA 10153 strikes at the heart of the Constitution's project of creating autonomous regions. In the opinion of the biggest Islamic rebel group in the region, the cancelation of elections under RA 10153 **"speaks loudly why this entity [ARMM] is not autonomous; it is controlled, nay dictated, by Manila**."

VELASCO, JR., *J., dissenting opinion*:

POLITICAL LAW; ELECTION LAWS; RA NO. 10153 [ON SYNCHRONIZATION OF ELECTIONS IN THE

AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM) WITH THE NATIONAL AND LOCAL ELECTIONS AND INTERIM MEASURES TO PREVAIL IN THE MEANWHILE]; PROVISION AUTHORIZING THE PRESIDENT TO APPOINT OICs IN PLACE OF ELECTIVE ARMM OFFICIALS IN THE MEANWHILE IS UNCONSTITUTIONAL; HOLDOVER OF THE ARMM INCUMBENTS IN THE MEANWHILE IS PROPER.— The *ponencia* sustains the constitutionality of RA 10153 *in toto*, while Justice Carpio's dissent declares unconstitutional Sections 3, 4, and 5 of RA 10153 authorizing the President to appoint OICs in place of elective ARMM officials, ordering instead the respondent COMELEC "to hold special elections in the ARMM as soon as possible." On this, I am in full agreement with Justice Carpio's dissent. But unlike Justice Carpio's curious proposal that in the *interregnum* and pending the holding of special elections, the President has the power to appoint an OIC in the Office of the ARMM Governor, I differ and vote for the holding over of the incumbent pursuant to Sec. 7(1), Article VII of RA 9054, which states: x x x The *ponencia* holds that the foregoing provision is unconstitutional in accordance with our previous ruling in *Osmeña v. COMELEC*. However, it must be noted that the issue in *Osmeña* on the power of local elective officials to hold on to their respective positions pending the election of their successors was not the very *lis mota* of the case. The main issue in *Osmeña* was the proposed **desynchronization** of the elections. Hence, the statement on the issue of holdover can be considered a mere *obiter dictum* that cannot be held a binding judicial precedent. x x x Nonetheless, even assuming that the pronouncement in *Osmeña v. COMELEC* on the issue of holdover is not an *obiter dictum*, the facts of the present case do not justify a similar conclusion, since the rule of *stare decisis et non quieta movere* states that **a principle of law laid down by the court as applicable to a certain state of facts will only be applied to cases involving the same facts**. x x x Further, **numerous American cases laid down the rule allowing holdover of officials beyond the term set by the Constitution as long as there is no constitutional proscription against it**. x x x More importantly, **neither Sec. 2, Art. XVIII or Sec. 8, Art. X of the Constitution contain any provision against a holdover**

by an elective local official of his office pending the election and qualification of his successor. x x x Also, besides the absence of a constitutional prohibition against a holdover, the legislature was conferred by the Constitution with (1) the power to create the executive and legislative offices in the ARMM, with the sole limitation that they be elective and representative, and therefore, (2) the authority to determine the commencement of the term of the ARMM local officials. Hence, in conformity with the foregoing American cases, the holdover clause in Sec. 7(1), Art. VII of RA 9054 is constitutional and must be respected as a valid legislative intent. x x x Furthermore, it should be considered that **a holdover is not technically an extension of the term** of the officer but a recognition of the incumbent as a *de facto* officer, which is made imperative by the necessity for a continuous performance of public functions. x x x Thus, considering the weight of authority and the circumstances of the present case, the incumbent ARMM officials have the right, as well as the duty, to continue in office under the principle of holdover pending the holding of the special elections and the election and qualification of their successors. x x x The alternative choice to allow the President to appoint the ARMM Governor pending the holding of the special elections is not only intrinsically infirm but also constitutionally invalid for violating the only limitation provided by the Constitution when it conferred on Congress the power to create the local offices of the ARMM. x x x Considering the express requirement that the executive and legislative offices in the ARMM be both "elective and representative," it should not have even been contemplated to allow the President to substitute his discretion for the will of the electorate by allowing him to appoint, no matter how briefly, the ARMM Governor pending the holding of the special elections. As can be clearly gleaned from Sec. 16, Art. VII of the Constitution, the appointing power of the President is limited only to appointive offices. x x x. **[T]he authority granted the President to appoint the ARMM Governor cannot be excused by an expanded interpretation of the President's power of "general supervision" over local governments** in Sec. 4, Art. X of the Constitution, as it is basic that "general supervision" does NOT authorize the President or any of his alter egos to interfere with local affairs.

APPEARANCES OF COUNSEL

Agabin Versola & Layaoen Law Offices for petitioners in G.R. No. 196271 & G.R. No. 196305.

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Aquilino Q. Pimentel for petitioners in G.R. No. 197280.

Edgardo Carlo L. Vistan for petitioners in G.R. No. 197282.

Senate Legal Counsel for Senate President Juan Ponce Enrile.

Louis C. Biraogo for and on his own behalf in G.R. No. 197392.

Jacinto V. Paras for and on his own behalf in G.R. No. 197454.

Legal Affairs Dept. (House of Representatives) for Speaker Feliciano R. Belmonte, Jr.

Algamar A. Latiph for Bangsamoro Solidarity Movement.

D E C I S I O N

BRION, *J.*:

On June 30, 2011, Republic Act (*RA*) No. 10153, entitled "*An Act Providing for the Synchronization of the Elections in the Autonomous Region in Muslim Mindanao (ARMM) with the National and Local Elections and for Other Purposes*" was enacted. The law reset the ARMM elections from the 8th of August 2011, to the second Monday of May 2013 and every three (3) years thereafter, to coincide with the country's regular national and local elections. The law as well granted the President the power to "appoint officers-in-charge (*OICs*) for the Office of the Regional Governor, the Regional Vice-Governor, and the Members of the Regional Legislative Assembly, who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office."

Even before its formal passage, the bills that became RA No. 10153 already spawned petitions against their validity; House Bill No. 4146 and Senate Bill No. 2756 were challenged in

petitions filed with this Court. These petitions multiplied after RA No. 10153 was passed.

Factual Antecedents

The State, through Sections 15 to 22, Article X of the 1987 Constitution, mandated the creation of autonomous regions in Muslim Mindanao and the Cordilleras. Section 15 states:

> Section 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

Section 18 of the Article, on the other hand, directed Congress to enact an organic act for these autonomous regions to concretely carry into effect the granted autonomy.

> Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family and property law jurisdiction consistent with the provisions of this Constitution and national laws.
>
> The creation of the autonomous region shall be effective when approved by a majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

On August 1, 1989 or two years after the effectivity of the 1987 Constitution, Congress acted through Republic Act (RA) No. 6734 entitled "*An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao*." A plebiscite was held on November 6, 1990 as required by Section 18(2), Article X of RA No. 6734, thus fully establishing the Autonomous

Region of Muslim Mindanao (*ARMM*). The initially assenting provinces were Lanao del Sur, Maguindanao, Sulu and Tawi-tawi. RA No. 6734 scheduled the first regular elections for the regional officials of the ARMM on a date not earlier than 60 days nor later than 90 days after its ratification.

RA No. 9054 (entitled "*An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, entitled An Act Providing for the Autonomous Region in Muslim Mindanao, as Amended*") was the next legislative act passed. This law provided further refinement in the basic ARMM structure first defined in the original organic act, and reset the regular elections for the ARMM regional officials to the second Monday of September 2001.

Congress passed the next law affecting ARMM – RA No. 9140[1] - on June 22, 2001. This law reset the first regular elections originally scheduled under RA No. 9054, to November 26, 2001. It likewise set the plebiscite to ratify RA No. 9054 to not later than August 15, 2001.

RA No. 9054 was ratified in a plebiscite held on August 14, 2001. The province of Basilan and Marawi City voted to join ARMM on the same date.

RA No. 9333[2] was subsequently passed by Congress to reset the ARMM regional elections to the 2nd Monday of August 2005,

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[1] Entitled "An act fixing the date of the plebiscite for the approval of the amendments to Republic Act No. 6734 and setting the date of the regular elections for elective officials of the Autonomous Region in Muslim Mindanao on the last Monday of November 2001, amending for the purpose Republic Act No. 9054, entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, amending for the purpose Republic Act No. 6734, entitled 'An Act Providing for the Autonomous Region in Muslim Mindanao,' as amended," and for other purposes.

[2] Entitled "An Act amending fixing the Date or Regular elections for Elective Officials of the Autonomous Region in Muslim Mindanao pursuant to Republic Act No. 9054, entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, amending for the purpose Republic Act No. 6734, entitled 'An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao," as amended"

and on the same date every 3 years thereafter. Unlike RA No. 6734 and RA No. 9054, RA No. 9333 was not ratified in a plebiscite.

Pursuant to RA No. 9333, the next ARMM regional elections should have been held on August 8, 2011. COMELEC had begun preparations for these elections and had accepted certificates of candidacies for the various regional offices to be elected. But on June 30, 2011, RA No. 10153 was enacted, resetting the ARMM elections to May 2013, to coincide with the regular national and local elections of the country.

RA No. 10153 originated in the House of Representatives as House Bill (*HB*) No. 4146, seeking the postponement of the ARMM elections scheduled on August 8, 2011. On March 22, 2011, the House of Representatives passed HB No. 4146, with one hundred ninety one (191) Members voting in its favor.

After the Senate received HB No. 4146, it adopted its own version, Senate Bill No. 2756 (SB No. 2756), on June 6, 2011. Thirteen (13) Senators voted favorably for its passage. On June 7, 2011, the House of Representative concurred with the Senate amendments, and on June 30, 2011, the President signed RA No. 10153 into law.

As mentioned, the early challenge to RA No. 10153 came through a petition filed with this Court – **G.R. No. 196271**[3] - assailing the constitutionality of both HB No. 4146 and SB No. 2756, and challenging the validity of RA No. 9333 as well for non-compliance with the constitutional plebiscite requirement. Thereafter, petitioner Basari Mapupuno in **G.R. No. 196305** filed another petition[4] also assailing the validity of RA No. 9333.

[3] Filed by petitioners Datu Michael Abas Kida, in his personal capacity, and in representation of Maguindanao Federation of Autonomous Irrigators Association, Inc., Hadji Muhmina Usman, John Anthony L. Lim, Jamilon T. Odin, Asrin Timbol Jaiyari, Mujib M. Kalang, Alih Al-Saidi J. Sapi-e, Kessar Damsie Abdil, and Bassam Aluh Saupi.

[4] Petition for Prohibition with Very Urgent Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order dated April 11, 2011 was filed against Sixto Brillantes, as Chairperson of COMELEC, to challenge the effectivity of RA No. 9333 for not having been submitted to a plebiscite. Since RA No. 9333 is inoperative, any other law seeking to amend it is also null and void.

With the enactment into law of RA No. 10153, the COMELEC stopped its preparations for the ARMM elections. The law gave rise as well to the filing of the following petitions against its constitutionality:

a) Petition for *Certiorari* and Prohibition[5] filed by Rep. Edcel Lagman as a member of the House of Representatives against Paquito Ochoa, Jr. (in his capacity as the Executive Secretary) and the COMELEC, docketed as **G.R. No. 197221;**

b) Petition for *Mandamus* and Prohibition[6] filed by Atty. Romulo Macalintal as a taxpayer against the COMELEC, docketed as **G.R. No. 197282;**

c) Petition for *Certiorari* and *Mandamus*, Injunction and Preliminary Injunction[7] filed by Louis "Barok" Biraogo against the COMELEC and Executive Secretary Paquito N. Ochoa, Jr., docketed as **G.R. No. 197392**; and

d) Petition for *Certiorari* and *Mandamus*[8] filed by Jacinto Paras as a member of the House of Representatives against Executive Secretary Paquito Ochoa, Jr. and the COMELEC, docketed as **G.R. No. 197454.**

Petitioners Alamarim Centi Tillah and Datu Casan Conding Cana as registered voters from the ARMM, with the Partido Demokratiko Pilipino Lakas ng Bayan (a political party with candidates in the ARMM regional elections scheduled for August 8, 2011), also filed a Petition for Prohibition and *Mandamus*[9]

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[5] With Prayer for the Issuance of a Temporary Restraining Order and/or Writs of Preliminary Prohibitive and Mandatory Injunction dated June 30, 2011.

[6] With Extremely Urgent Application for the Issuance of a *Status Quo* Order and Writ of Preliminary Mandatory Injunction dated July 1, 2011.

[7] With Prayer for the issuance of a Temporary Restraining Order dated July 12, 2011.

[8] With Injunction and Preliminary Injunction with prayer for temporary restraining order dated July 11, 2011.

[9] With Prayer for Temporary Restraining Order and the Issuance of Writs of Preliminary Injunction, Both Prohibitory and Mandatory dated July 1, 2011.

against the COMELEC, docketed as **G.R. No. 197280**, to assail the constitutionality of RA No. 9140, RA No. 9333 and RA No. 10153.

Subsequently, Anak Mindanao Party-List, Minority Rights Forum Philippines, Inc. and Bangsamoro Solidarity Movement filed their own Motion for Leave to Admit their Motion for Intervention and Comment-in-Intervention dated July 18, 2011. On July 26, 2011, the Court granted the motion. In the same Resolution, the Court ordered the consolidation of all the petitions relating to the constitutionality of HB No. 4146, SB No. 2756, RA No. 9333, and RA No. 10153.

Oral arguments were held on August 9, 2011 and August 16, 2011. Thereafter, the parties were instructed to submit their respective memoranda within twenty (20) days.

On September 13, 2011, the Court issued a temporary restraining order enjoining the implementation of RA No. 10153 and ordering the incumbent elective officials of ARMM to continue to perform their functions should these cases not be decided by the end of their term on September 30, 2011.

The Arguments

The petitioners assailing RA No. 9140, RA No. 9333 and RA No. 10153 assert that these laws amend RA No. 9054 and thus, have to comply with the supermajority vote and plebiscite requirements prescribed under Sections 1 and 3, Article XVII of RA No. 9094 in order to become effective.

The petitions assailing RA No. 10153 further maintain that it is unconstitutional for its failure to comply with the three-reading requirement of Section 26(2), Article VI of the Constitution. Also cited as grounds are the alleged violations of the right of suffrage of the people of ARMM, as well as the failure to adhere to the "elective and representative" character of the executive and legislative departments of the ARMM. Lastly, the petitioners challenged the grant to the President of the power to appoint OICs to undertake the functions of the elective ARMM officials until the officials elected under the May 2013 regular elections shall have assumed office. Corollarily, they also argue

that the power of appointment also gave the President the power of control over the ARMM, in complete violation of Section 16, Article X of the Constitution.

The Issues

From the parties' submissions, the following issues were recognized and argued by the parties in the oral arguments of August 9 and 16, 2011:

I. Whether the 1987 Constitution mandates the synchronization of elections

II. Whether the passage of RA No. 10153 violates Section 26(2), Article VI of the 1987 Constitution

III. Whether the passage of RA No. 10153 requires a supermajority vote and plebiscite

   A. Does the postponement of the ARMM regular elections constitute an amendment to Section 7, Article XVIII of RA No. 9054?

   B. Does the requirement of a supermajority vote for amendments or revisions to RA No. 9054 violate Section 1 and Section 16(2), Article VI of the 1987 Constitution and the corollary doctrine on irrepealable laws?

   C. Does the requirement of a plebiscite apply only in the creation of autonomous regions under paragraph 2, Section 18, Article X of the 1987 Constitution?

IV. Whether RA No. 10153 violates the autonomy granted to the ARMM

V. Whether the grant of the power to appoint OICs violates:

   A. Section 15, Article X of the 1987 Constitution

   B. Section 16, Article X of the 1987 Constitution

   C. Section 18, Article X of the 1987 Constitution

VI. Whether the proposal to hold special elections is constitutional and legal.

We shall discuss these issues in the order they are presented above.

OUR RULING

We resolve to **DISMISS** the petitions and thereby **UPHOLD the constitutionality of RA No. 10153 *in toto***.

I. *Synchronization as a recognized constitutional mandate*

The respondent Office of the Solicitor General (*OSG*) argues that the Constitution mandates synchronization, and in support of this position, cites Sections 1, 2 and 5, Article XVIII (Transitory Provisions) of the 1987 Constitution, which provides:

> Section 1. The first elections of Members of the Congress under this Constitution shall be held on the second Monday of May, 1987.
>
> The first local elections shall be held on a date to be determined by the President, which may be simultaneous with the election of the Members of the Congress. It shall include the election of all Members of the city or municipal councils in the Metropolitan Manila area.
>
> Section 2. The Senators, Members of the House of Representatives and the local officials first elected under this Constitution *shall serve until noon of June 30, 1992.*
>
> Of the Senators elected in the election in 1992, the first twelve obtaining the highest number of votes shall serve for six year and the remaining twelve for three years.
>
> xxx xxx xxx
>
> Section 5. The six-year term of the incumbent President and Vice President elected in the February 7, 1986 election is, *for purposes of synchronization of elections, hereby extended to noon of June 30, 1992*.
>
> The first regular elections for President and Vice-President under this Constitution shall be held on the second Monday of May, 1992.

We agree with this position.

While the Constitution does not expressly state that Congress has to synchronize national and local elections, the clear intent towards this objective can be gleaned from the Transitory

Provisions (Article XVIII) of the Constitution,[10] which show the extent to which the Constitutional Commission, by deliberately making adjustments to the terms of the incumbent officials, sought to attain synchronization of elections.[11]

The objective behind setting a common termination date for all elective officials, done among others through the shortening the terms of the twelve winning senators with the least number of votes, is to synchronize the holding of all future elections – whether national or local – to once every three years.[12] This

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[10] Section 1. The first elections of Members of the Congress under this Constitution shall be held on the **second Monday of May, 1987**.

The first local elections shall be held on a date to be determined by the President, which may be simultaneous with the election of the Members of the Congress. It shall include the election of all Members of the city or municipal councils in the Metropolitan Manila area.

Section 2. The **Senators**, **Members of the House of Representatives**, and the **local officials** first elected under this Constitution **shall serve until noon of June 30, 1992.**

Of the Senators elected in the election in 1992, the first twelve obtaining the highest number of votes shall serve for six years and the **remaining twelve for three years.**

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Section 5. The six-year term of the incumbent President and Vice President elected in the February 7, 1986 election is, ***for purposes of synchronization of elections,*** *hereby extended to noon of June 30, 1992*.

The first regular elections for President and Vice-President under this Constitution shall be held on the **second Monday of May, 1992**. [emphasis ours]

[11] To illustrate, while Section 8, Article X of the Constitution fixes the term of office of elective local officials at three years, under the above-quoted provisions, the terms of the incumbent local officials who were elected in January 1988, which should have expired on February 2, 1991, were fixed to expire at noon of June 30, 1992. In the same vein, the terms of the incumbent President and Vice President who were elected in February 1986 were extended to noon of June 30, 1992. On the other hand, in order to synchronize the elections of the Senators, who have six-year terms, the twelve Senators who obtained the lowest votes during the 1992 elections were made to serve only half the time of their terms.

[12] Joaquin Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* (1996 ed.), p. 1199, citing Records of the Constitutional Commission, Vol. V, p. 429-4.

intention finds full support in the discussions during the Constitutional Commission deliberations.[13]

[13] MR. MAAMBONG. For purposes of identification, I will now read a section which we will temporarily indicate as Section 14. It reads: "THE SENATORS, MEMBERS OF THE HOUSE OF REPRESENTATIVES AND THE LOCAL OFFICIALS ELECTED IN THE FIRST ELECTION SHALL SERVE FOR FIVE YEARS, TO EXPIRE AT NOON OF JUNE 1992."

This was presented by Commissioner Davide, so may we ask that Commissioner Davide be recognized.

THE PRESIDING OFFICER (Mr. Rodrigo). Commissioner Davide is recognized.

MR. DAVIDE. Before going to the proposed amendment, I would only state that in view of the action taken by the Commission on Section 2 earlier, I am formulating a new proposal. It will read as follows: "THE SENATORS, MEMBERS OF THE HOUSE OF REPRESENTATIVES AND THE LOCAL OFFICIALS FIRST ELECTED UNDER THIS CONSTITUTION SHALL SERVE UNTIL NOON OF JUNE 30, 1992."

I proposed this because of the proposed section of the Article on Transitory Provisions giving a term to the incumbent President and Vice-President until 1992. Necessarily then, since the term provided by the Commission for Members of the Lower House and for local officials is three years, if there will be an election in 1987, the next election for said officers will be in 1990, and it would be very close to 1992. We could never attain, subsequently, any synchronization of election which is once every three years.

So under my proposal we will be able to begin actual synchronization in 1992, and consequently, we should not have a local election or an election for Members of the Lower House in 1990 for them to be able to complete their term of three years each. And if we also stagger the Senate, upon the first election it will result in an election in 1993 for the Senate alone, and there will be an election for 12 Senators in 1990. But for the remaining 12 who will be elected in 1987, if their term is for six years, their election will be in 1993. So, consequently we will have elections in 1990, in 1992 and in 1993. The later election will be limited to only 12 Senators and of course to local officials and the Members of the Lower House. But, definitely, thereafter we can never have an election once every three years, therefore defeating the very purpose of the Commission when we adopted the term of six years for the President and another six years for the Senators with the possibility of staggering with 12 to serve for six years and 12 for three years insofar as the first Senators are concerned. **And so my proposal is the only way to effect the first synchronized election which would mean, necessarily, a bonus of two years to the Members of the Lower House and a bonus of two years to the local elective officials.**

THE PRESIDING OFFICER (Mr. Rodrigo). What does the committee say?

These Constitutional Commission exchanges, read with the provisions of the Transitory Provisions of the Constitution, all serve as patent indicators of the constitutional mandate to hold synchronized national and local elections, starting the second Monday of May, 1992 and for all the following elections.

This Court was not left behind in recognizing the synchronization of the national and local elections as a

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MR. DE CASTRO. Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Rodrigo). Commissioner de Castro is recognized.

MR. DE CASTRO. Thank you.

During the discussion on the legislative and the synchronization of elections, I was the one who proposed that in order to synchronize the elections every three years, which the body approved — the first national and local officials to be elected in 1987 shall continue in office for five years, the same thing the Honorable Davide is now proposing. That means they will all serve until 1992, assuming that the term of the President will be for six years and continue beginning in 1986. So from 1992, we will again have national, local and presidential elections. **This time, in 1992, the President shall have a term until 1998 and the first twelve Senators will serve until 1998, while the next 12 shall serve until 1995, and then the local officials elected in 1992 will serve until 1995. From then on, we shall have an election every three years.**

So, I will say that the proposition of Commissioner Davide is in order, if we have to synchronize our elections every three years which was already approved by the body.

Thank you, Mr. Presiding Officer.

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MR. GUINGONA. What will be synchronized, therefore, is the election of the incumbent President and Vice-President in 1992.

MR. DAVIDE. Yes.

MR. GUINGONA. Not the reverse. Will the committee not synchronize the election of the Senators and local officials with the election of the President?

MR. DAVIDE. It works both ways, Mr. Presiding Officer. The attempt here is on the assumption that the provision of the Transitory Provisions on the term of the incumbent President and Vice-President would really end in 1992.

MR. GUINGONA. Yes.

MR. DAVIDE. **In other words, there will be a single election in 1992 for all, from the President up to the municipal officials. [emphasis ours] (V Record of the Constitutional Commission, pp. 429-431; October 3, 1986)**

constitutional mandate. In *Osmeña v. Commission on Elections*,[14] we explained:

> It is clear from the aforequoted provisions of the 1987 Constitution that the terms of office of Senators, Members of the House of Representatives, the local officials, the President and the Vice-President have been synchronized to end on the same hour, date and year — noon of June 30, 1992.
>
> It is likewise evident from the wording of the above-mentioned Sections that the term of *synchronization* is used synonymously as the phrase *holding simultaneously* since this is the precise intent in terminating their Office Tenure on the same *day or occasion*. This common termination date will synchronize future elections to once every three years (Bernas, *the Constitution of the Republic of the Philippines*, Vol. II, p. 605).
>
> That the election for Senators, Members of the House of Representatives and the local officials (under Sec. 2, Art. XVIII) will have to be synchronized with the election for President and Vice President (under Sec. 5, Art. XVIII) is likewise evident from the x x x records of the proceedings in the Constitutional Commission. [Emphasis supplied.]

Although called regional elections, the ARMM elections should be included among the elections to be synchronized as it is a "local" election based on the wording and structure of the Constitution.

A basic rule in constitutional construction is that the words used should be understood in the sense that they have in common use and given their ordinary meaning, except when technical terms are employed, in which case the significance thus attached to them prevails.[15] As this Court explained in *People v. Derilo*,[16]

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[14] G.R. Nos. 100318, 100308, 100417 and 100420, July 30, 1991, 199 SCRA 750, 758.

[15] *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, G.R. No. 21064, February 18, 1970, 31 SCRA 413; *Ordillo v. Commission on Elections*, 192 SCRA 100 (1990).

[16] 271 SCRA 633, 668 (1997); *Occena v. Commission on Elections*, G.R. No. 52265, January 28, 1980, 95 SCRA 755.

"[a]s the Constitution is not primarily a lawyer's document, its language should be understood in the sense that it may have in common. Its words should be given their ordinary meaning except where technical terms are employed."

Understood in its ordinary sense, the word "local" refers to something that primarily serves the needs of a particular limited district, often a community or minor political subdivision.[17] Regional elections in the ARMM for the positions of governor, vice-governor and regional assembly representatives obviously fall within this classification, since they pertain to the elected officials who will serve within the limited region of ARMM.

From the perspective of the Constitution, autonomous regions are considered one of the forms of local governments, as evident from Article X of the Constitution entitled "Local Government." Autonomous regions are established and discussed under Sections 15 to 21 of this Article – the article wholly devoted to Local Government. That an autonomous region is considered a form of local government is also reflected in Section 1, Article X of the Constitution, which provides:

> Section 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao, and the Cordilleras as hereinafter provided.

Thus, we find the contention – that the synchronization mandated by the Constitution does not include the regional elections of the ARMM –unmeritorious. We shall refer to synchronization in the course of our discussions below, as this concept permeates the consideration of the various issues posed in this case and must be recalled time and again for its complete resolution.

II. *The President's Certification on the Urgency of RA No. 10153*

The petitioners in **G.R. No. 197280** also challenge the validity of RA No. 10153 for its alleged failure to comply with Section 26(2),

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[17] Webster's Third New International Dictionary Unabridged, p.1327 (1993).

Article VI of the Constitution[18] which provides that before bills passed by either the House or the Senate can become laws, they must pass through three readings on separate days. The exception is when the President certifies to the necessity of the bill's immediate enactment.

The Court, in *Tolentino v. Secretary of Finance*,[19] explained the effect of the President's certification of necessity in the following manner:

> The presidential certification dispensed with the requirement not only of printing but also that of reading the bill on separate days. The phrase "except when the President certifies to the necessity of its immediate enactment, *etc*." in Art. VI, Section 26[2] qualifies the two stated conditions before a bill can become a law: [i] the bill has passed three readings on separate days and [ii] it has been printed in its final form and distributed three days before it is finally approved.
>
> xxx xxx xxx
>
> That upon the certification of a bill by the President, the requirement of three readings on separate days and of printing and distribution can be dispensed with is supported by the weight of legislative practice. For example, the bill defining the certiorari jurisdiction of this Court which, in consolidation with the Senate version, became Republic Act No. 5440, was passed on second and third readings in the House of Representatives on the same day [May 14, 1968] after the bill had been certified by the President as urgent.

In the present case, the records show that the President wrote to the Speaker of the House of Representatives to certify the necessity of the immediate enactment of a law synchronizing

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[18] Section 26(2) No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the *yeas* and *nays* entered in the Journal.

[19] G.R. No. 115455, August 25, 1994, 235 SCRA 630.

the ARMM elections with the national and local elections.[20] Following our *Tolentino* ruling, the President's certification exempted both the House and the Senate from having to comply with the three separate readings requirement.

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[20] A copy of the letter that the President wrote to Honorable Feliciano Belmonte, Jr. as Speaker of the House of Representatives dated March 4, 2011 is reproduced below:

OFFICE OF THE PRESIDENT
of the Philippines
Malacañang

14 March 2011
HON. FELICIANO R. BELMONTE, JR.
Speaker
House of Representatives
Quezon City

Dear Speaker Belmonte:

Pursuant to the provisions of Article VI, Section 26 (2) of the 1987 Constitution, I hereby certify to the necessity of the immediate enactment of House Bill No. 4146, entitled:

"AN ACT PROVIDING FOR THE SYNCHRONIZATION OF THE ELECTIONS AND THE TERM OF OFFICE OF THE ELECTIVE OFFICIALS OF THE AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM) WITH THOSE OF THE NATIONAL AND OTHER LOCAL OFFICIALS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9333, ENTITLED 'AN ACT FIXING THE DATE FOR REGULAR ELECTIONS FOR ELECTIVE OFFICIALS OF THE AUTONOMOUS REGION IN MUSLIM MINDANAO', AND FOR OTHER PURPOSES"

to address the urgent need to protect and strengthen ARMM's autonomy by synchronizing its elections with the regular elections of national and other local officials, to ensure that the on-going peace talks in the region will not be hindered, and to provide a mechanism to institutionalize electoral reforms in the interim, all for the development, peace and security of the region.

Best wishes.
Very truly yours,
(Sgd.) BENIGNO SIMEON C. AQUINO III

cc: HON. JUAN PONCE ENRILE
Senate President
Philippine Senate
Pasay City
Taken from: http://www.congress.gov.ph/download/congrec/15th/1st/15C_1RS-64b-031611.pdf. Last accessed on September 26, 2011.

On the follow-up contention that no necessity existed for the immediate enactment of these bills since there was no public calamity or emergency that had to be met, again we hark back to our ruling in *Tolentino*:

> The sufficiency of the factual basis of the suspension of the writ of *habeas corpus* or declaration of martial law Art. VII, Section 18, or the existence of a national emergency justifying the delegation of extraordinary powers to the President under Art. VI, Section 23(2) is subject to judicial review because basic rights of individuals may be of hazard. **But the factual basis of presidential certification of bills, which involves doing away with procedural requirements designed to insure that bills are duly considered by members of Congress, certainly should elicit a different standard of review.** [Emphasis supplied.]

The House of Representatives and the Senate – in the exercise of their legislative discretion – gave full recognition to the President's certification and promptly enacted RA No. 10153. Under the circumstances, nothing short of grave abuse of discretion on the part of the two houses of Congress can justify our intrusion under our power of judicial review.[21]

The petitioners, however, failed to provide us with any cause or justification for this course of action. Hence, while the judicial department and this Court are not bound by the acceptance of the President's certification by both the House of Representatives and the Senate, prudent exercise of our powers and respect due our co-equal branches of government in matters committed to them by the Constitution, caution a stay of the judicial hand.[22]

In any case, despite the President's certification, the two-fold purpose that underlies the requirement for three readings on separate days of every bill must always be observed to enable our legislators and other parties interested in pending bills to intelligently respond to them. Specifically, the purpose with

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[21] See *Gutierrez v. House of Representatives*, G.R. No. 193459, February 15, 2011.

[22] *Tolentino v. Secretary of Finance*, G.R. No. 115455, October 30, 1995.

respect to Members of Congress is: (1) to inform the legislators of the matters they shall vote on and (2) to give them notice that a measure is in progress through the enactment process.[23]

We find, based on the records of the deliberations on the law, that both advocates and the opponents of the proposed measure had sufficient opportunities to present their views. In this light, no reason exists to nullify RA No. 10153 on the cited ground.

III. A. ***RA No. 9333 and RA No. 10153 are not amendments to RA No. 9054***

The effectivity of RA No. 9333 and RA No. 10153 has also been challenged because they did not comply with Sections 1 and 3, Article XVII of RA No. 9054 in amending this law. These provisions require:

> Section 1. Consistent with the provisions of the Constitution, this Organic Act may be reamended or revised by the Congress of the Philippines upon a vote of two-thirds (2/3) of the Members of the House of Representatives and of the Senate voting separately.
>
> Section 3. Any amendment to or revision of this Organic Act shall become effective only when approved by a majority of the vote cast in a plebiscite called for the purpose, which shall be held not earlier than sixty (60) days or later than ninety (90) days after the approval of such amendment or revision.

We find no merit in this contention.

In the first place, neither RA No. 9333 nor RA No. 10153 amends RA No. 9054. As an examination of these laws will show, RA No. 9054 only provides for the schedule of the ***first*** ARMM elections and does not fix the date of the regular elections. A need therefore existed for the Congress to fix the date of the ***subsequent*** ARMM regular elections, which it did by enacting RA No. 9333 and thereafter, RA No. 10153. Obviously, these subsequent laws – ***RA No. 9333 and RA No. 10153 – cannot be considered amendments to RA No. 9054 as they did not***

[23] *Tolentino, id.*, citing 1 J. G. Sutherland, *Statutes and Statutory Construction* §10.04, p. 282 (1972).

change or revise any provision in the latter law; they merely filled in a gap in RA No. 9054 or supplemented the law by providing the date of the subsequent regular elections.

This view – that Congress thought it best to leave the determination of the date of succeeding ARMM elections to legislative discretion – finds support in ARMM's recent history.

To recall, RA No. 10153 is not the first law passed that rescheduled the ARMM elections. The First Organic Act – RA No. 6734 – not only did not fix the date of the subsequent elections; it did not even fix the specific date of the first ARMM elections,[24] leaving the date to be fixed in another legislative enactment. Consequently, RA No. 7647,[25] RA No. 8176,[26] RA No. 8746,[27]

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[24] Section 7, Article XIX of RA No. 6734 states: "The first regular elections of the Regional Governor, Vice-Governor and Members of the Regional Assembly under this Organic Act shall be held not earlier than sixty (60) days or later than ninety (90) days after the ratification of this Act. The Commission on Elections shall promulgate such rules and regulations as may be necessary for the conduct of said election."

[25] Entitled "An Act Providing for the Date of Regular Elections for Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly for the Autonomous Region in Muslim Mindanao and for other purposes," which fixed the date of the ARMM elections on the *second Monday after the Muslim month of Ramadhan*.

[26] Entitled "An Act Changing the Date of Elections for the Elective Officials of the Autonomous Region for Muslim Mindanao, Amending for the Purpose Section One of Republic Act Numbered Seventy-Six Hundred and Forty-Seven Entitled 'An Act Providing for the Date of the Regular Elections for Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly for the Autonomous Region in Muslim Mindanao and for other purposes", which changed the date of the ARMM elections to the *second Monday of March, 1993 and every three (3) years thereafter*.

[27] Entitled "An Act Providing for the Date of the Regular Elections of Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao (ARMM) Further Amending for the Purpose Republic Act No. 7647 entitled 'An Act Providing for the Date of Regular Elections for Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly for the Autonomous Region in Muslim Mindanao and for other purposes,' As Amended, and for other purposes", which moved the regional elections to the *second Monday of September and every three (3) years thereafter*.

RA No. 8753,[28] and RA No. 9012[29] were all enacted by Congress to fix the dates of the ARMM elections. Since these laws did not change or modify any part or provision of RA No. 6734, they were not amendments to this latter law. Consequently, there was no need to submit them to any plebiscite for ratification.

The Second Organic Act – **RA No. 9054** – which lapsed into law on March 31, 2001, provided that the first elections would be held on the second Monday of September 2001. Thereafter, Congress passed RA No. 9140[30] to reset the date of the ARMM elections. Significantly, while RA No. 9140 also scheduled the plebiscite for the ratification of the Second Organic Act (RA No. 9054), **the new date of the ARMM regional elections fixed in RA No. 9140 was not among the provisions ratified in the plebiscite held to approve RA No. 9054**. Thereafter, Congress passed RA No. 9333,[31] which further reset the date of the ARMM regional elections. Again, this law was not ratified through a plebiscite.

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[28] Entitled "An Act Resetting the Regular Elections for the Elective Officials of the Autonomous Region in Muslim Mindanao Provided for Under Republic Act No. 8746 and for other purposes", which reset the regional elections, *scheduled on September 13, 1999, to the second Monday of September 2000*.

[29] Entitled "An Act Resetting the Regular Elections for Elective Officials of the Autonomous Region in Muslim Mindanao to the Second Monday of September 2001, Amending for the Purpose Republic Act No. 8953", which *reset the May 2001 elections in ARMM to September 2001*.

[30] Entitled "An Act Fixing the Date of the Plebiscite for the Approval of the Amendments to Republic Act No. 6734 and setting the date of the regular elections for elective officials of the Autonomous Region in Muslim Mindanao on the Last Monday of November 2001, Amending for the Purpose Republic Act No. 9054, Entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled 'An Act Providing for the Autonomous Region in Muslim Mindanao,' as amended," and For Other Purposes."

[31] Entitled "An Act Fixing the Date of Regular Elections for Elective Officials of the Autonomous Region in Muslim Mindanao Pursuant to Republic Act no. 9054, Entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled 'An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao', as Amended,"

From these legislative actions, we see the clear intention of Congress to treat the laws which fix the date of the subsequent ARMM elections as separate and distinct from the Organic Acts. Congress only acted consistently with this intent when it passed RA No. 10153 without requiring compliance with the amendment prerequisites embodied in Section 1 and Section 3, Article XVII of RA No. 9054.

III. B. *Supermajority voting requirement unconstitutional for giving RA No. 9054 the character of an irrepealable law*

Even assuming that RA No. 9333 and RA No. 10153 did in fact amend RA No. 9054, the supermajority (2/3) voting requirement required under Section 1, Article XVII of RA No. 9054[32] has to be struck down for giving RA No. 9054 the character of an irrepealable law by requiring more than what the Constitution demands.

Section 16(2), Article VI of the Constitution provides that a "majority of each House shall constitute a quorum to do business." In other words, as long as majority of the members of the House of Representatives or the Senate are present, these bodies have the quorum needed to conduct business and hold session. Within a quorum, a vote of majority is generally sufficient to enact laws or approve acts.

In contrast, Section 1, Article XVII of RA No. 9054 requires a vote of no less than two-thirds (2/3) of the Members of the House of Representatives and of the Senate, voting separately, in order to effectively amend RA No. 9054. Clearly, this 2/3 voting requirement is higher than what the Constitution requires for the passage of bills, and served to restrain the plenary powers of Congress to amend, revise or repeal the laws it had passed. The Court's pronouncement in *City of Davao v. GSIS*[33] on this

which rescheduled the ARMM regional elections scheduled for the last Monday of November 2004 to "the second Monday of August 2005."

[32] Section 1. Consistent with the provisions of the Constitution, this Organic Act may be reamended or revised by the Congress of the Philippines upon a vote of two-thirds (2/3) of the Members of the House of Representatives and of the Senate voting separately.

[33] G.R. No. 127383, August 18, 2005, 467 SCRA 280.

subject best explains the basis and reason for the unconstitutionality:

> Moreover, it would be noxious **anathema to democratic principles** for a legislative body to have the ability to bind the actions of future legislative body, considering that both assemblies are regarded with equal footing, exercising as they do the same plenary powers. **Perpetual infallibility is not one of the attributes desired in a legislative body, and a legislature which attempts to forestall future amendments or repeals of its enactments labors under delusions of omniscience.**
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> xxx xxx xxx
>
> A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. **This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes**.[34] (Emphasis ours.)

Thus, while a supermajority is not a total ban against a repeal, it is a limitation in excess of what the Constitution requires on the passage of bills and is constitutionally obnoxious because it significantly constricts the future legislators' room for action and flexibility.

III. C. *Section 3, Article XVII of RA No. 9054 excessively enlarged the plebiscite requirement found in Section 18, Article X of the Constitution*

The requirements of RA No. 9054 not only required an unwarranted supermajority, but enlarged as well the plebiscite

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[34] *Id.* at 295-297, citing *Duarte v. Dade*, 32 Phil. 36 (1915); *Lewis Southerland on Statutory Construction*, Vol. 1, Section 244, pp. 456-457.

requirement, as embodied in its Section 3, Article XVII of that Act. As we did on the supermajority requirement, we find the enlargement of the plebiscite requirement required under Section 18, Article X of the Constitution to be excessive to point of absurdity and, hence, a violation of the Constitution.

Section 18, Article X of the Constitution states that the plebiscite is required only for the creation of autonomous regions and for determining which provinces, cities and geographic areas will be included in the autonomous regions. While the settled rule is that amendments to the Organic Act have to comply with the plebiscite requirement in order to become effective,[35] questions on the extent of the matters requiring ratification may unavoidably arise because of the seemingly general terms of the Constitution and the obvious absurdity that would result if a plebiscite were to be required for *every* statutory amendment.

Section 18, Article X of the Constitution plainly states that "The creation of the autonomous region shall be effective when approved by the majority of the votes case by the constituent units in a plebiscite called for the purpose." With these wordings as standard, we interpret the requirement to mean that only amendments to, or revisions of, the Organic Act constitutionally-essential to the creation of autonomous regions – *i.e.*, those

[35] This has been established by the following exchange during the Constitutional Commission debates:

FR. BERNAS. So, the questions I have raised so far with respect to this organic act are: What segment of the population will participate in the plebiscite? In what capacity would the legislature be acting when it passes this? Will it be a constituent assembly or merely a legislative body? What is the nature, therefore, of this organic act in relation to ordinary statutes and the Constitution? Finally, if we are going to amend this organic act, what process will be followed?

MR. NOLLEDO. May I answer that, please, in the light of what is now appearing in our report.

First, only the people who are residing in the units composing the region should be allowed to participate in the plebiscite. Second, the organic act has the character of a charter passed by Congress, not as a constituent assembly, but as an ordinary legislature and, therefore, the organic act will still be subject to amendments in the ordinary legislative process as now constituted, unless the Gentleman has another purpose.

aspects specifically mentioned in the Constitution which Congress must provide for in the Organic Act – require ratification through a plebiscite. These amendments to the Organic Act are those that relate to: (a) the basic structure of the regional government; (b) the region's judicial system, *i.e.*, the special courts with personal, family, and property law jurisdiction; and, (c) the grant and extent of the legislative powers constitutionally conceded to the regional government under Section 20, Article X of the Constitution.[36]

The date of the ARMM elections does not fall under any of the matters that the Constitution specifically mandated Congress to provide for in the Organic Act. Therefore, even assuming that the supermajority votes and the plebiscite requirements are valid, any change in the date of elections cannot be construed as a substantial amendment of the Organic Act that would require compliance with these requirements.

IV. *The synchronization issue*

As we discussed above, synchronization of national and local elections is a constitutional mandate that Congress must provide for and this synchronization must include the ARMM elections. On this point, an existing law in fact already exists – RA No. 7166 – as the forerunner of the current RA No. 10153. RA No. 7166

FR. BERNAS. **But with plebiscite again. [Emphasis ours.];**

III Record of the Constitutional Commission, pp.182-183; August 11, 1986.

[36] Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

(1) Administrative organization;
(2) Creation of sources of revenues;
(3) Ancestral domain and natural resources;
(4) Personal, family, and property relations;
(5) Regional urban and rural planning development;
(6) Economic, social, and tourism development;
(7) Educational policies;
(8) Preservation and development of the cultural heritage; and
(9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

already provides for the synchronization of local elections with the national and congressional elections. Thus, what RA No. 10153 provides is an old matter for local governments (with the exception of *barangay* and *Sanggunian Kabataan* elections where the terms are not constitutionally provided) and is technically a reiteration of what is already reflected in the law, given that regional elections are in reality local elections by express constitutional recognition.[37]

To achieve synchronization, Congress ***necessarily*** has to reconcile the schedule of the ARMM's regular elections (which should have been held in August 2011 based on RA No. 9333) with the fixed schedule of the national and local elections (fixed by RA No. 7166 to be held in May 2013).

During the oral arguments, the Court identified the three options open to Congress in order to resolve this problem. These options are: (1) to allow the elective officials in the ARMM to remain in office in a hold over capacity, pursuant to Section 7(1), Article VII of RA No. 9054, until those elected in the synchronized elections assume office;[38] (2) to hold special elections in the ARMM, with the terms of those elected to expire when those elected in the synchronized elections assume office; or (3) to authorize the President to appoint OICs, pursuant to Section 3 of RA No. 10153, also until those elected in the synchronized elections assume office.

As will be abundantly clear in the discussion below, Congress, in choosing to grant the President the power to appoint OICs, chose the correct option and passed RA No. 10153 as a completely valid law.

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[37] See discussions at pp. 14-15.

[38] Section 7. *Terms of Office of Elective Regional Officials.* – (1) Terms of Office. The terms of office of the Regional Governor, Regional Vice Governor and members of the Regional Assembly shall be for a period of three (3) years, which shall begin at noon on the 30th day of September next following the day of the election and shall end at noon of the same date three (3) years thereafter. **The incumbent elective officials of the autonomous region shall continue in effect until their successors are elected and qualified. [emphasis ours]**

V. The Constitutionality of RA No. 10153

A. *Basic Underlying Premises*

To fully appreciate the available options, certain underlying material premises must be fully understood. The ***first*** is the extent of the powers of Congress to legislate; the ***second*** is the constitutional mandate for the synchronization of elections; and the ***third*** is on the concept of autonomy as recognized and established under the 1987 Constitution.

The grant of legislative power to Congress is broad, general and comprehensive.[39] The legislative body possesses plenary power for all purposes of civil government.[40] Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere.[41] Except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to all matters of general concern or common interest.[42]

The constitutional limitations on legislative power are either express or implied. The express limitations are generally provided in some provisions of the Declaration of Principles and State Policies (Article 2) and in the provisions Bill of Rights (Article 3). Other constitutional provisions (such as the initiative and referendum clause of Article 6, Sections 1 and 32, and the autonomy provisions of Article X) provide their own express limitations. The implied limitations are found "in the evident purpose which was in view and the circumstances and historical events which led to the enactment of the particular provision as a part of organic law."[43]

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[39] Fernando, *The Philippine Constitution*, pp. 175-176 (1974).

[40] *Id.* at 177; citing the concurring opinion of Justice Jose P. Laurel in *Schneckenburger v. Moran*, 63 Phil. 249, 266 (1936).

[41] *Vera v. Avelino*, 77 Phil. 192, 212 (1946).

[42] *Ople v. Torres, et al.*, 354 Phil. 948 (1998); see concurring opinion of Justice Jose P. Laurel in *Schneckenburger v. Moran, supra* note 40, at 266.

[43] *State ex rel. Green v. Collison,* 39 Del 245, cited in Defensor-Santiago, *Constitutional Law*, Vol. 1 (2000 ed.)

The constitutional provisions on autonomy – specifically, Sections 15 to 21 of Article X of the Constitution – constitute express limitations on legislative power as they define autonomy, its requirements and its parameters, thus limiting what is otherwise the unlimited power of Congress to legislate on the governance of the autonomous region.

Of particular relevance to the issues of the present case are the limitations posed by the prescribed basic structure of government – *i.e.,* that the government must have an executive department and a legislative assembly, both of which must be elective and representative of the constituent political units; national government, too, must not encroach on the legislative powers granted under Section 20, Article X. Conversely and as expressly reflected in Section 17, Article X, *"all powers and functions not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government."*

The totality of Sections 15 to 21 of Article X should likewise serve as a standard that Congress must observe in dealing with legislation touching on the affairs of the autonomous regions. The terms of these sections leave no doubt on what the Constitution intends – the idea of self-rule or self-government, in particular, the power to legislate on a wide array of social, economic and administrative matters. But equally clear under these provisions are *the permeating principles of national sovereignty and the territorial integrity of the Republic*, as expressed in the above-quoted Section 17 and in Section 15.[44] In other words, the Constitution and the supporting jurisprudence, as they now stand, reject the notion of *imperium et imperio*[45] in the relationship between the national and the regional governments.

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[44] Sec. 15. There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities and municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics ***within the framework of this Constitution and the national sovereignty as well as the territorial integrity of the Republic of the Philippines.***

[45] An empire within an empire.

In relation with synchronization, both autonomy and the synchronization of national and local elections are recognized and established constitutional mandates, with one being as compelling as the other. If their compelling force differs at all, the difference is in their coverage; synchronization operates on and affects the whole country, while regional autonomy – as the term suggests – directly carries a narrower regional effect although its national effect cannot be discounted.

These underlying basic concepts characterize the powers and limitations of Congress when it acted on RA No. 10153. To succinctly describe the legal situation that faced Congress then, its decision to synchronize the regional elections with the national, congressional and all other local elections (save for *barangay* and *sangguniang kabataan* elections) left it with the problem of ***how to provide the ARMM with governance in the intervening period*** between the expiration of the term of those elected in August 2008 and the assumption to office – twenty-one (21) months away – of those who will win in the synchronized elections on May 13, 2013.

The problem, in other words, was for ***interim measures*** for this period, consistent with the terms of the Constitution and its established supporting jurisprudence, and with the respect due to the concept of autonomy. Interim measures, to be sure, is not a strange phenomenon in the Philippine legal landscape. The Constitution's Transitory Provisions themselves collectively provide measures for transition from the old constitution to the new[46] and for the introduction of new concepts.[47] As previously mentioned, the adjustment of elective terms and of elections towards the goal of synchronization first transpired under the

[46] Bernas, Joaquin, *Constitutional Structure and Powers of Government Notes and Cases* Part I, 2005 ed., p. 1249.

[47] Such as the addition of sectoral representatives in the House of Representatives (paragraph 2, Section 5, of Article VI of the Constitution), and the validation of the power of the Presidential Commission on Good Government to issue sequestration, freeze orders, and the provisional takeover orders of ill-gotten business enterprises, embodied in Section 26 of the Transitory Provisions.

Transitory Provisions. The adjustments, however, failed to look far enough or deeply enough, particularly into the problems that synchronizing regional autonomous elections would entail; thus, the present problem is with us today.

The creation of local government units also represents instances when interim measures are required. In the creation of Quezon del Sur[48] and Dinagat Islands,[49] the creating statutes authorized the President to appoint an interim governor, vice-governor and members of the *sangguniang panlalawigan* although these positions are essentially elective in character; the appointive officials were to serve until a new set of provincial officials shall have been elected and qualified.[50] A similar authority to appoint is provided in the transition of a local government from a sub-province to a province.[51]

In all these, the need for interim measures is dictated by necessity; out-of-the-way arrangements and approaches were adopted or used in order to adjust to the goal or objective in sight in a manner that does not do violence to the Constitution and to reasonably accepted norms. Under these limitations, the choice of measures was a question of wisdom left to congressional discretion.

To return to the underlying basic concepts, these concepts shall serve as the guideposts and markers in our discussion of the options available to Congress to address the problems brought about by the synchronization of the ARMM elections, properly understood as interim measures that Congress had to provide. The proper understanding of the options as interim measures assume prime materiality as ***it is under these terms that the passage of RA No. 10153 should be measured, i.e., given the constitutional objective of synchronization that cannot legally***

[48] RA No. 9495 which created the Province of Quezon del Sur Province was rejected by the voters of Quezon Province in the plebiscite of November 13, 2008.

[49] RA No. 9355.

[50] Section 50, RA No. 9355 and Section 52 of RA No. 9495.

[51] Section 462, RA No. 7160.

be faulted, did Congress gravely abuse its discretion or violate the Constitution when it addressed through RA No. 10153 the concomitant problems that the adjustment of elections necessarily brought with it?

B. Holdover Option is Unconstitutional

We rule out the first option – holdover for those who were elected in executive and legislative positions in the ARMM during the 2008-2011 term – as an option that Congress could have chosen because a holdover violates Section 8, Article X of the Constitution. This provision states:

> Section 8. The **term of office of elective local officials**, except barangay officials, which shall be determined by law, **shall be three years** and no such official shall serve for more than three consecutive terms. [emphases ours]

Since elective ARMM officials are local officials, they are covered *and bound* by the three-year term limit prescribed by the Constitution; they cannot extend their term through a holdover. As this Court put in *Osmeña v. COMELEC:*[52]

> It is not competent for the legislature to extend the term of officers by providing that they shall hold over until their successors are elected and qualified where the constitution has in effect or by clear implication prescribed the term and when the Constitution fixes the day on which the official term shall begin, there is no legislative authority to continue the office beyond that period, even though the successors fail to qualify within the time.
>
> In American Jurisprudence it has been stated as follows:
>
> > "It has been broadly stated that **the legislature cannot, by an act postponing the election to fill an office the term of which is limited by the Constitution, extend the term of the incumbent beyond the period as limited by the Constitution**." [Emphasis ours.]

Independently of the *Osmeña* ruling, the primacy of the Constitution as the supreme law of the land dictates that where

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[52] *Supra* note 14.

the Constitution has itself made a determination or given its mandate, then the matters so determined or mandated should be respected until the Constitution itself is changed by amendment or repeal through the applicable constitutional process. A necessary corollary is that none of the three branches of government can deviate from the constitutional mandate except only as the Constitution itself may allow.[53] If at all, Congress may only pass legislation filing in details to fully operationalize the constitutional command or to implement it by legislation if it is non-self-executing; this Court, on the other hand, may only interpret the mandate if an interpretation is appropriate and called for.[54]

In the case of the terms of local officials, their term has been fixed clearly and unequivocally, allowing no room for any implementing legislation with respect to the fixed term itself and no vagueness that would allow an interpretation from this Court. Thus, the term of three years for local officials should stay at three (3) years as fixed by the Constitution and cannot be extended by holdover by Congress.

If it will be claimed that the holdover period is effectively another term mandated by Congress, the net result is for Congress to create a new term and to appoint the occupant for the new term. This view – like the extension of the elective term – is constitutionally infirm because Congress cannot do indirectly

[53] In *Mutuc v. Commission on Elections* [146 Phil. 798 (1970)] the Court held that, **"**The three departments of government in the discharge of the functions with which it is [sic] entrusted have no choice but to yield obedience to [the Constitution's] commands. Whatever limits it imposes must be observed." 146 Phil. 798 (1970).

[54] In *J.M. Tuason & Co., Inc. v. Land Tenure Administration* [No. L-21064, February 18, 1970, 31 SCRA 413, 423], the Court, speaking through former Chief Justice Enrique, stated: As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus these are cases where the need for construction is reduced to a minimum.

what it cannot do directly, *i.e.*, to act in a way that would effectively extend the term of the incumbents. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.[55] Congress cannot also create a new term and effectively appoint the occupant of the position for the new term. This is effectively an act of appointment by Congress and an unconstitutional intrusion into the constitutional appointment power of the President.[56] Hence, holdover – whichever way it is viewed – is a constitutionally infirm option that Congress could not have undertaken.

Jurisprudence, of course, is not without examples of cases where the question of holdover was brought before, and given the imprimatur of approval by, this Court. The present case though differs significantly from past cases with contrary rulings, particularly from *Sambarani v. COMELEC*,[57] *Adap v. Comelec*,[58] and *Montesclaros v. Comelec*,[59] where the Court ruled that the elective officials could hold on to their positions in a hold over capacity.

All these past cases refer to elective *barangay* or *sangguniang kabataan* officials whose terms of office are not explicitly provided for in the Constitution; the present case, on the other hand, refers to local elective officials – the ARMM Governor, the ARMM Vice-Governor, and the members of the Regional Legislative Assembly – whose terms fall within the three-year term limit set by Section 8, Article X of the Constitution. Because of their constitutionally limited term, Congress cannot legislate an extension beyond the term for which they were originally elected.

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[55] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, March 22, 2011.

[56] *Pimentel v. Ermita*, G.R. No. 164978, October 13, 2005, citing Bernas, Joaquin, *The 1987 Constitution of the Republic of the Philippines*: *A Commentary* (1996 ed.) 768.

[57] 481 Phil. 661 (2004).

[58] G.R. No. 161984, February 21, 2007, 516 SCRA 403.

[59] G.R. No. 152295, July 9, 2011.

Even assuming that holdover is constitutionally permissible, and there had been statutory basis for it (namely Section 7, Article VII of RA No. 9054) in the past,[60] we have to remember that **the rule of holdover can only apply as an available option where no express or implied legislative intent to the contrary exists; it cannot apply where such contrary intent is evident.**[61]

Congress, in passing RA No. 10153, made it explicitly clear that it had the intention of suppressing the holdover rule that prevailed under RA No. 9054 by completely removing this provision. The deletion is a policy decision that is wholly within the discretion of Congress to make in the exercise of its plenary legislative powers; this Court cannot pass upon *questions* of *wisdom*, justice or expediency of legislation,[62] except where an attendant unconstitutionality or grave abuse of discretion results.

C. ***The COMELEC has no authority to order special elections***

Another option proposed by the petitioner in G.R. No. 197282 is for this Court to compel COMELEC to immediately conduct special elections pursuant to Section 5 and 6 of *Batas Pambansa Bilang* (BP) 881.

The power to fix the date of elections is essentially legislative in nature, as evident from, and exemplified by, the following provisions of the Constitution:

Section 8, Article VI, applicable to the legislature, provides:

Section 8. **Unless otherwise provided by law**, the regular election of the Senators and the Members of the House of

[60] Section 7. Terms of Office of Elective Regional Officials. – (1) Terms of Office. The terms of office of the Regional Governor, Regional Vice Governor, and members of the Regional Legislative Assembly shall be for a period of three (3) years, which shall begin at noon on the 30th day of September next following the day of the election and shall end at noon of the same date three (3) years thereafter. **The incumbent elective officials of the autonomous region shall continue in effect until their successors are elected and qualified.**

[61] *Guekeko v. Santos,* 76 Phil. 237 (1946).

[62] *Lozano v. Nograles*, G.R. 187883, June 16, 2009, 589 SCRA 356.

Representatives shall be held on the second Monday of May. [Emphasis ours]

Section 4(3), Article VII, with the same tenor but applicable solely to the President and Vice-President, states:

xxx xxx xxx

Section 4. xxx **Unless otherwise provided by law**, the regular election for President and Vice-President shall be held on the second Monday of May. [Emphasis ours]

while Section 3, Article X, on local government, provides:

Section 3. **The Congress shall enact a local government code** which shall provide for xxx the qualifications, **election**, appointment and removal, term, salaries, powers and functions and duties of **local officials[**.] [Emphases ours]

These provisions support the conclusion that no elections may be held on any other date for the positions of President, Vice President, Members of Congress and local officials, except when so provided by another Act of Congress, or upon orders of a body or officer to whom Congress may have delegated either the power or the authority to ascertain or fill in the details in the execution of that power.[63]

Notably, Congress has acted on the ARMM elections by postponing the scheduled August 2011 elections and setting another date – May 13, 2011 – for regional elections synchronized with the presidential, congressional and other local elections. By so doing, Congress itself has made ***a policy decision in the exercise of its legislative wisdom that it shall not call special elections*** as an adjustment measure in synchronizing the ARMM elections with the other elections.

After Congress has so acted, neither the Executive nor the Judiciary can act to the contrary by ordering special elections instead at the call of the COMELEC. This Court, particularly, cannot make this call without thereby supplanting the legislative

[63] *Ututalum v. Commission on Elections*, No. L-25349, December 3, 1965, 15 SCRA 465.

decision and effectively legislating. To be sure, the Court is not without the power to declare an act of Congress null and void for being unconstitutional or for having been exercised in grave abuse of discretion.[64] ***But our power rests on very narrow ground and is merely to annul a contravening act of Congress; it is not to supplant the decision of Congress nor to mandate what Congress itself should have done in the exercise of its legislative powers.*** Thus, contrary to what the petition in G.R. No. 197282 urges, we cannot compel COMELEC to call for special elections.

Furthermore, we have to bear in mind that the constitutional power of the COMELEC, in contrast with the power of Congress to call for, and to set the date of, elections, is limited to enforcing and administering all laws and regulations relative to the conduct of an election.[65] Statutorily, COMELEC has no power to call for the holding of special elections unless pursuant to a specific statutory grant. True, Congress did grant, *via* Sections 5 and 6 of BP 881, COMELEC with the power to postpone elections to another date. However, this power is limited to, and can only be exercised within, the specific terms and circumstances provided for in the law. We quote:

> Section 5. *Postponement of election.* - When for any serious cause such as **violence**, **terrorism**, **loss or destruction of election paraphernalia** or records, *force majeure*, and **other analogous causes** of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision, the Commission, *motu proprio* or upon a verified petition by any interested party, and after due notice and hearing, whereby all interested parties are afforded equal opportunity to be heard, shall **postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect** but not later than thirty days after the cessation of the cause for such postponement or suspension of the election or failure to elect.

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[64] See CONSTITUTION, Article VIII, Section 1.

[65] See CONSTITUTION, Article IX (C), Section 2(1).

Section 6. Failure of election. - If, on account of ***force majeure***, **violence**, **terrorism**, **fraud**, or **other analogous causes the election in any polling place has not been held on the date fixed,** or **had been suspended** before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, **such election results in a failure to elect**, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect. [Emphasis ours]

A close reading of Section 5 of BP 881 reveals that it is meant to address instances where **elections have already been scheduled to take place but have to be postponed** because of (a) violence, (b) terrorism, (c) loss or destruction of election paraphernalia or records, (d) *force majeure*, and (e) other analogous causes *of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision*. Under the principle of *ejusdem generis,* the term "analogous causes" will be restricted to those **unforeseen** or **unexpected** events that prevent the holding of the scheduled elections. These "analogous causes" are further defined by the phrase "*of such nature that the holding of a free, orderly and honest election should become impossible*."

Similarly, Section 6 of BP 881 applies only to those situations where elections have already been scheduled but do not take place because of (a) ***force majeure***, (b) **violence**, (c) **terrorism**, (d) **fraud**, or (e) **other analogous causes the election in any polling place has not been held on the date fixed,** or **had been suspended** before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, **such election results in a failure to elect.** As in Section 5 of BP 881, Section 6 addresses instances where

the elections do not occur or had to be suspended because of **unexpected** and **unforeseen** circumstances.

In the present case, **the postponement of the ARMM elections is by law** – *i.e.*, by congressional policy – and is **pursuant to the constitutional mandate of synchronization** of national and local elections. By no stretch of the imagination can these reasons be given the same character as the circumstances contemplated by Section 5 or Section 6 of BP 881, which all pertain to extralegal causes that obstruct the holding of elections. Courts, to be sure, cannot enlarge the scope of a statute under the guise of interpretation, nor include situations not provided nor intended by the lawmakers.[66] Clearly, neither Section 5 nor Section 6 of BP 881 can apply to the present case and this Court has absolutely no legal basis to compel the COMELEC to hold special elections.

D. ***The Court has no power to shorten the terms of elective officials***

Even assuming that it is legally permissible for the Court to compel the COMELEC to hold special elections, no legal basis likewise exists to rule that the newly elected ARMM officials shall hold office only until the ARMM officials elected in the synchronized elections shall have assumed office.

In the first place, the Court is not empowered to adjust the terms of elective officials. Based on the Constitution, the power to fix the term of office of elective officials, which can be exercised only in the case of *barangay* officials,[67] is specifically given to Congress. Even Congress itself may be denied such power, as shown when the Constitution shortened the terms of twelve Senators obtaining the least votes,[68] and extended the terms of

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[66] *Balagtas Multi-Purpose Cooperative, Inc. v. Court of Appeals*, G.R. No. 159268, October 27, 2006, 505 SCRA 654, 663, citing *Lapid v. CA*, G.R. No. 142261, June 29, 2000, 334 SCRA 738, quoting *Morales v. Subido*, G.R. No. 29658, November 29, 1968, 26 SCRA 150.

[67] CONSTITUTION, Article X, Section 8.

[68] Article XVIII, Section 2. The Senators, Members of the House of Representatives, and the local officials first elected under this Constitution shall serve until noon of June 30, 1992.

the President and the Vice-President[69] in order to synchronize elections; Congress was not granted this same power. The settled rule is that terms fixed by the Constitution cannot be changed by mere statute.[70] More particularly, not even Congress and certainly not this Court, has the authority to fix the terms of elective local officials in the ARMM for ***less***, ***or more, than the constitutionally mandated three years***[71] as this tinkering would directly contravene Section 8, Article X of the Constitution as we ruled in *Osmena.*

Thus, in the same way that the term of elective ARMM officials cannot be extended through a holdover, the term cannot be shortened **by putting an expiration date earlier than the three (3) years that the Constitution itself commands. This is what will happen – a term of less than two years – if a call for special elections shall prevail.** In sum, while synchronization is achieved, the result is at the cost of a violation of an express provision of the Constitution.

Neither we nor Congress can opt to shorten the tenure of those officials to be elected in the ARMM elections instead of acting on their term (where the "term" means the time during which the officer may claim to hold office as of right and fixes the interval after which the several incumbents shall succeed one another, while the "tenure" represents the term during which the incumbent actually holds the office).[72] As with the fixing of

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Of the Senators elected in the elections in 1992, the first twelve obtaining the highest number of votes shall serve for six years and the remaining twelve for three years.

[69] Article XVIII, Section 5. The six-year term of the incumbent President and Vice-President elected in the February 7, 1986 election is, for purposes of synchronization of elections, hereby extended to noon of June 30, 1992.

The first regular elections for the President and Vice-President under this Constitution shall be held on the second Monday of May, 1992.

[70] Cruz, Carlo. *The Law of Public Officers*, 2007 edition, p. 285, citing Mechem, Section 387.

[71] *Ponencia*, p. 21.

[72] See *Topacio Nueno v. Angeles*, 76 Phil. 12, 21-22 (1946); *Alba, etc. v. Evangelista, etc., et al.,* 100 Phil. 683, 694 (1957); *Aparri v. Court of Appeals*, No. L-30057, January 31, 1984, 127 SCRA 231.

the elective term, neither Congress nor the Court has any legal basis to shorten the tenure of elective ARMM officials. They would commit an unconstitutional act and gravely abuse their discretion if they do so.

E. *The President's Power to Appoint OICs*

The above considerations leave only Congress' chosen interim measure – RA No. 10153 and the appointment by the President of OICs to govern the ARMM during the pre-synchronization period pursuant to Sections 3, 4 and 5 of this law – as the only measure that Congress can make. This choice itself, however, should be examined for any attendant constitutional infirmity.

At the outset, the power to appoint is essentially executive in nature, and the limitations on or qualifications to the exercise of this power should be strictly construed; these limitations or qualifications must be clearly stated in order to be recognized.[73] The appointing power is embodied in Section 16, Article VII of the Constitution, which states:

> Section 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. **He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint.** The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards. [emphasis ours]

This provision classifies into four groups the officers that the President can appoint. These are:

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[73] *Hon. Luis Mario M. General, Commissioner, National Police Commission v. Hon. Alejandro S. Urro, et al.*, G.R. No. 191560, March 29, 2011, citing *Sarmiento III v. Mison*, No. 79974, December 17, 1987, 156 SCRA 549.

First, the heads of the executive departments; ambassadors; other public ministers and consuls; officers of the Armed Forces of the Philippines, from the rank of colonel or naval captain; and other officers whose appointments are vested in the President in this Constitution;

Second, all other officers of the government whose appointments are not otherwise provided for by law;

Third, those whom the President may be authorized by law to appoint; and

Fourth, officers lower in rank whose appointments the Congress may by law vest in the President alone.[74]

Since the President's authority to appoint OICs emanates from RA No. 10153, it falls under the third group of officials that the President can appoint pursuant to Section 16, Article VII of the Constitution. Thus, the assailed law *facially* rests on clear constitutional basis.

If at all, the gravest challenge posed by the petitions to the authority to appoint OICs under Section 3 of RA No. 10153 is the assertion that the Constitution requires that the ARMM executive and legislative officials to be "elective and representative of the constituent political units." This requirement indeed is an express limitation whose non-observance in the assailed law leaves the appointment of OICs constitutionally defective.

After fully examining the issue, we hold that this alleged constitutional problem is more apparent than real and becomes very real only if RA No. 10153 were to be ***mistakenly read as a law that changes the elective and representative character of ARMM positions.*** RA No. 10153, however, does not in any way amend what the organic law of the ARMM (RA No. 9054) sets out in terms of structure of governance. What RA No. 10153 in fact only does is to *"appoint officers-in-charge for the Office of the Regional Governor, Regional Vice Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly*

[74] *Sarmiento III v. Mison, supra.*

elected in the May 2013 elections shall have qualified and assumed office." This power is far different from appointing elective ARMM officials for the abbreviated term ending on the assumption to office of the officials elected in the May 2013 elections.

As we have already established in our discussion of the supermajority and plebiscite requirements, the legal reality is that **RA No. 10153 did not amend RA No. 9054.** ***RA No. 10153, in fact, provides only for synchronization of elections and for the interim measures that must in the meanwhile prevail.*** And this is how RA No. 10153 should be read – in the manner it was written and based on its unambiguous facial terms.[75] ***Aside from its order for synchronization, it is purely and simply an interim measure responding to the adjustments that the synchronization requires.***

Thus, the appropriate question to ask is whether the interim measure is an unreasonable move for Congress to adopt, given the legal situation that the synchronization unavoidably brought with it. In more concrete terms and based on the above considerations, ***given the plain unconstitutionality of providing for a holdover and the unavailability of constitutional possibilities for lengthening or shortening the term of the elected ARMM officials, is the choice of the President's power to appoint – for a fixed and specific period as an interim measure, and as allowed under Section 16, Article VII of the Constitution – an unconstitutional or unreasonable choice for Congress to make?***

Admittedly, the grant of the power to the President *under other situations* or *where the power of appointment would extend beyond the adjustment period for synchronization* would be to foster a government that is not "democratic and republican." For then, the people's right to choose the leaders to govern them may be said to be ***systemically*** withdrawn to the point of fostering an undemocratic regime. This is the grant that would

[75] If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *De Jesus v. Commission on Audit*, 451 Phil. 812 (2003).

frontally breach the "elective and representative" governance requirement of Section 18, Article X of the Constitution.

But this conclusion would not be true under the very limited circumstances contemplated in RA No. 10153 where the period is fixed and, more importantly, the terms of governance – both under Section 18, Article X of the Constitution and RA No. 9054 – will not ***systemically*** be touched nor affected at all. To repeat what has previously been said, RA No. 9054 will govern unchanged and continuously, with full effect in accordance with the Constitution, save only for the interim and temporary measures that synchronization of elections requires.

Viewed from another perspective, synchronization will temporarily disrupt the election process in a local community, the ARMM, as well as the community's choice of leaders, but this will take place under a situation of necessity and as an interim measure in the manner that interim measures have been adopted and used in the creation of local government units[76] and the adjustments of sub-provinces to the status of provinces.[77] These measures, too, are used in light of the wider national demand for the synchronization of elections (considered *vis-à-vis* the regional interests involved). The adoption of these measures, in other words, is no different from the exercise by Congress of the inherent police power of the State, where one of the essential tests is the reasonableness of the interim measure taken in light of the given circumstances.

Furthermore, the "representative" character of the chosen leaders need not necessarily be affected by the appointment of OICs as this requirement is really a function of the appointment process; only the "elective" aspect shall be supplanted by the appointment of OICs. In this regard, RA No. 10153 significantly seeks to address concerns arising from the appointments by providing, under Sections 3, 4 and 5 of the assailed law, concrete terms in the Appointment of OIC, the Manner and Procedure of Appointing OICs, and their Qualifications.

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[76] *Supra* notes 47 and 48.

[77] *Supra* note 50.

Based on these considerations, we hold that RA No. 10153 – viewed in its proper context – is a law that is not violative of the Constitution (specifically, its autonomy provisions), and one that is reasonable as well under the circumstances.

VI. *Other Constitutional Concerns*

Outside of the above concerns, it has been argued during the oral arguments that upholding the constitutionality of RA No. 10153 would set a dangerous precedent of giving the President the power to cancel elections anywhere in the country, thus allowing him to replace elective officials with OICs.

This claim apparently misunderstands that an across-the-board cancellation of elections is a matter for Congress, not for the President, to address. It is a power that falls within the powers of Congress in the exercise of its legislative powers. Even Congress, as discussed above, is limited in what it can legislatively undertake with respect to elections.

If RA No. 10153 cancelled the regular August 2011 elections, it was for a very specific and limited purpose – the synchronization of elections. It was a temporary means to a lasting end – the synchronization of elections. Thus, RA No. 10153 and the support that the Court gives this legislation are likewise clear and specific, and cannot be transferred or applied to any other cause for the cancellation of elections. Any other localized cancellation of elections and call for special elections can occur only in accordance with the power already delegated by Congress to the COMELEC, as above discussed.

Given that the incumbent ARMM elective officials cannot continue to act in a holdover capacity upon the expiration of their terms, and this Court cannot compel the COMELEC to conduct special elections, the Court now has to deal with the dilemma of a vacuum in governance in the ARMM.

To emphasize the dire situation a vacuum brings, it should not be forgotten that a period of 21 months – or close to 2 years – intervenes from the time that the incumbent ARMM elective officials' terms expired and the time the new ARMM

elective officials begin their terms in 2013. As the lessons of our Mindanao history – past and current – teach us, many developments, some of them critical and adverse, can transpire in the country's Muslim areas in this span of time in the way they transpired in the past.[78] Thus, it would be reckless to assume that the presence of an acting ARMM Governor, an acting Vice-Governor and a fully functioning Regional Legislative Assembly can be done away with even temporarily. To our mind, the appointment of OICs under the present circumstances is an absolute necessity.

Significantly, the grant to the President of the power to appoint OICs to undertake the functions of the elective members of the Regional Legislative Assembly is neither novel nor innovative. We hark back to our earlier pronouncement in *Menzon v. Petilla, etc., et al.*:[79]

> It may be noted that under Commonwealth Act No. 588 and the Revised Administrative Code of 1987, the President is empowered to make temporary appointments in certain public offices, in case of any vacancy that may occur. **Albeit both laws deal only with the filling of vacancies in appointive positions. However, in the absence of any contrary provision in the Local Government Code and in the best interest of public service, we see no cogent reason why the procedure thus outlined by the two laws may not be similarly applied in the present case**. The respondents contend that the provincial board is the correct appointing power. This argument has no merit. As between the President who has supervision over local governments as provided by law and the members of the board who are junior to the vice-governor, we have no problem ruling in favor of the President, until the law provides otherwise.
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> A vacancy creates an anomalous situation and finds no approbation under the law for it deprives the constituents of their right of representation and governance in their own local government.

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[78] The after-effects of the Maguindanao massacre where the Ampatuans stand charged, the insurrection by the MILF and its various factions, and the on-going peace negotiations, among others, are immediately past and present events that the nation has to vigilant about.

[79] 274 Phil. 523 (1991).

In a republican form of government, the majority rules through their chosen few, and if one of them is incapacitated or absent, *etc*., the management of governmental affairs is, to that extent, may be hampered. **Necessarily, there will be a consequent delay in the delivery of basic services to the people of Leyte if the Governor or the Vice-Governor is missing**.[80](Emphasis ours.)

As in *Menzon*, leaving the positions of ARMM Governor, Vice Governor, and members of the Regional Legislative Assembly vacant for 21 months, or almost 2 years, would clearly cause disruptions and delays in the delivery of basic services to the people, in the proper management of the affairs of the regional government, and in responding to critical developments that may arise. When viewed in this context, allowing the President in the exercise of his constitutionally-recognized appointment power to appoint OICs is, in our judgment, a reasonable measure to take.

B. ***Autonomy in the ARMM***

It is further argued that while synchronization may be constitutionally mandated, it cannot be used to defeat or to impede the autonomy that the Constitution granted to the ARMM. Phrased in this manner, one would presume that there exists a conflict between two recognized Constitutional mandates – synchronization and regional autonomy – such that it is necessary to choose one over the other.

We find this to be an erroneous approach that violates a basic principle in constitutional construction – *ut magis valeat quam pereat*: that the Constitution is to be interpreted as a whole,[81] and one mandate should not be given importance over the other except where the primacy of one over the other is clear.[82] We refer to the Court's declaration in *Ang-Angco v. Castillo, et al.*,[83] thus:

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[80] *Id.* at 532.

[81] *Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, November 23, 2010, 635 SCRA 783.

[82] As noted under footnote 37.

[83] 118 Phil. 1468 (1963).

A provision of the constitution should not be construed in isolation from the rest. Rather, the constitution must be interpreted as a whole, and apparently, **conflicting provisions should be reconciled and harmonized in a manner that may give to all of them full force and effect.** [Emphasis supplied.]

Synchronization is an interest that is as constitutionally entrenched as regional autonomy. They are interests that this Court should reconcile and give effect to, in the way that Congress did in RA No. 10153 which provides the measure to transit to synchronized regional elections with the least disturbance on the interests that must be respected. Particularly, regional autonomy will be respected instead of being sidelined, as the law does not in any way alter, change or modify its governing features, except in a very temporary manner and only as necessitated by the attendant circumstances.

Elsewhere, it has also been argued that the ARMM elections should not be synchronized with the national and local elections in order to maintain the autonomy of the ARMM and insulate its own electoral processes from the rough and tumble of nationwide and local elections. This argument leaves us far from convinced of its merits.

As heretofore mentioned and discussed, while autonomous regions are granted political autonomy, the framers of the Constitution never equated autonomy with independence. The ARMM as a regional entity thus continues to operate within the larger framework of the State and is still subject to the national policies set by the national government, save only for those specific areas reserved by the Constitution for regional autonomous determination. As reflected during the constitutional deliberations of the provisions on autonomous regions:

Mr. Bennagen. xxx We do not see here a complete separation from the central government, but rather an efficient working relationship between the autonomous region and the central government. We see this as an effective partnership, not a separation.

Mr. Romulo. Therefore, complete autonomy is not really thought of as complete independence.

Mr. Ople. **We define it as a measure of self-government within the larger political framework of the nation**.[84] [Emphasis supplied.]

This exchange of course is fully and expressly reflected in the above-quoted Section 17, Article X of the Constitution, and by the express reservation under Section 1 of the same Article that autonomy shall be *"within the framework of this Constitution and the national sovereignty as well as the territorial integrity of the Republic of the Philippines."*

Interestingly, the framers of the Constitution initially proposed to remove Section 17 of Article X, believing it to be unnecessary in light of the enumeration of powers granted to autonomous regions in Section 20, Article X of the Constitution. Upon further reflection, the framers decided to reinstate the provision in order to "make it clear, once and for all, that these are the limits of the powers of the autonomous government. **Those not enumerated are actually to be exercised by the national government**[.]"[85] Of note is the Court's pronouncement in *Pimentel, Jr. v. Hon. Aguirre*[86] which we quote:

> Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. **But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress.** [Emphasis ours.]

In other words, the autonomy granted to the ARMM cannot be invoked to defeat national policies and concerns. Since the synchronization of elections is not just a regional concern but

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[84] Record of the Constitutional Commission, Vol. III, August 11, 1986, p. 179.

[85] Records of the Constitutional Commission, Vol. III, p. 560.

[86] 391 Phil. 84, 102 (2000).

a national one, the ARMM is subject to it; the regional autonomy granted to the ARMM cannot be used to exempt the region from having to act in accordance with a national policy mandated by no less than the Constitution.

Conclusion

Congress acted within its powers and pursuant to a constitutional mandate – the synchronization of national and local elections – when it enacted RA No. 10153. This Court cannot question the manner by which Congress undertook this task; the Judiciary does not and cannot pass upon questions of wisdom, justice or expediency of legislation.[87] As judges, we can only interpret and apply the law and, despite our doubts about its wisdom, cannot repeal or amend it.[88]

Nor can the Court presume to dictate the means by which Congress should address what is essentially a legislative problem. It is not within the Court's power to enlarge or abridge laws; otherwise, the Court will be guilty of usurping the exclusive prerogative of Congress.[89] The petitioners, in asking this Court to compel COMELEC to hold special elections despite its lack of authority to do so, are essentially asking us to venture into the realm of judicial legislation, which is abhorrent to one of the most basic principles of a republican and democratic government – the separation of powers.

The petitioners allege, too, that we should act because Congress acted with grave abuse of discretion in enacting RA No. 10153. Grave abuse of discretion is such capricious and whimsical exercise of judgment that is patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of the

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[87] *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[88] *Commissioner of Internal Revenue v. Santos*, 343 Phil. 411, 427 (1997) citing *Pangilinan v. Maglaya*, 225 SCRA 511 (1993).

[89] *Manotok IV v. Heirs of Homer L. Barque*, G.R. Nos. 162335 and 162605, December 18, 2008, 574 SCRA 468, 581.

law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[90]

We find that Congress, in passing RA No. 10153, acted strictly within its constitutional mandate. Given an array of choices, it acted within due constitutional bounds and with marked reasonableness in light of the necessary adjustments that synchronization demands. Congress, therefore, cannot be accused of any evasion of a positive duty or of a refusal to perform its duty. We thus find no reason to accord merit to the petitioners' claims of grave abuse of discretion.

On the general claim that RA No. 10153 is unconstitutional, we can only reiterate the established rule that every statute is presumed valid.[91] Congress, thus, has in its favor the presumption of constitutionality of its acts, and the party challenging the validity of a statute has the onerous task of rebutting this presumption.[92] Any reasonable doubt about the validity of the law should be resolved in favor of its constitutionality.[93] As this Court declared in *Garcia v. Executive Secretary*:[94]

> The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a

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[90] *Ligeralde v. Patalinghug*, G.R. No. 168796**,** April 15, 2010, 618 SCRA 315.

[91] *Heirs of Juancho Ardona, etc., et al. v. Hon. Reyes, etc., et al.*, 210 Phil. 187, 207 (1983); *Peralta v. Commission on Elections*, Nos. L-47771, L-47803, L-47816, L-47767, L-47791 and L-47827, March 11, 1978, 82 SCRA 30; *Ermita-Malate Hotel & Motel Operations Association, Inc. v. City Mayor of Manila*, No. L-24693, July 31, 1967, 20 SCRA 849.

[92] See *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001); *Heirs of Juancho Ardona, etc., et al. v. Hon. Reyes, etc., et al., supra*; *Peralta v. Commission on Elections, supra*.

[93] *Heirs of Juancho Ardona, etc., et al. v. Hon. Reyes, etc., et al., supra*; *Peralta v. Commission on Elections, supra*.

[94] G.R. No. 100883, December 2, 1991, 204 SCRA 516.

becoming respect for the acts of the other departments. The theory is that **as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted**.[95] [Emphasis ours.]

Given the failure of the petitioners to rebut the presumption of constitutionality in favor of RA No. 10153, we must support and confirm its validity.

WHEREFORE, premises considered, we *DISMISS* the consolidated petitions assailing the validity of RA No. 10153 for lack of merit, and *UPHOLD* the constitutionality of this law. We likewise *LIFT* the temporary restraining order we issued in our Resolution of September 13, 2011. No costs.

SO ORDERED.

Peralta, Bersamin, Del Castillo, Villarama, Jr., Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Corona, C.J., joins the dissent of J. Velasco with respect to the appointment of the OIC Governor and vote to hold the law as unconstitutional.

Carpio, J., see dissenting opinion.

Velasco, Jr. J., joins the dissent of J. Carpio but disagree on the power of the Pres. to appoint OIC-Governor of ARMM. Please see dissenting opinion.

Leonardo-de Castro and *Abad, JJ.,* joins the dissent of Justice Velasco.

Perez and *Sereno, JJ.,* joins the dissent of J. Carpio.

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[95] *Id.* at 523.

DISSENTING OPINION

CARPIO, *J.*:

The Cases

These are original actions[1] assailing the validity of statutes and bills on the holding of elections in the Autonomous Region in Muslim Mindanao (ARMM).

Background

The ARMM Organic Act, Republic Act No. 6734 (RA 6734), as amended by Republic Act No. 9054 (RA 9054), mandated the holding of the "first regular elections for Governor, Vice-Governor and Members of the Regional Legislative Assembly x x x on the second Monday of September 2001."[2] The elected officials would serve a three-year term beginning 30 September 2001.[3] Before the September 2001 elections could take place, however, Congress moved the elections to 26 November 2001 by enacting Republic Act No. 9140 (RA 9140).[4]

Nearly four years later, Congress enacted Republic Act No. 9333 (RA 9333) fixing the date of the "regular elections" in the ARMM "on the second Monday of August 2005 [and] x x x every three years thereafter."[5] Elections in the ARMM took place on the second Mondays of August 2005 and August 2008 following RA 9333.

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[1] For the writs of *certiorari*, prohibition and *mandamus*.

[2] Section 7, Article XVIII of RA 9054.

[3] Section 4, Article VI and Section 7, Article VII of RA 9054.

[4] Section 2 of RA 9140 provides: "First Regular Election. - The first regular election for Regional Governor, Vice-Governor and Members of the Regional Legislative Assembly under Republic Act No. 9054 shall be held on November 26, 2001."

[5] Section 1 of RA 9333 provides: "*Date of Election.* – The regular election for regional Governor and Regional Vice-Governor and Members of the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao (ARMM) shall be held on the second Monday of August 2005. Succeeding regular elections shall be held on the same date every three years thereafter." RA 9333 took effect upon its publication on 29 September 2004.

A few months before the ARMM elections on the second Monday of August 2011, several members of the House of Representatives jointly filed House Bill No. 4146 (HB 4146), moving the date of the elections to "the second Monday of May 2013 and x x x every three years thereafter." As the term of office of the then incumbent elective officials in the ARMM would expire on 30 September 2011, HB 4146 authorized the President to appoint officers-in-charge who would hold office from 30 September 2011 until 30 June 2013 when the officials elected in the May 2013 elections would have assumed office. HB 4146 aimed to synchronize the ARMM elections with the local and national elections scheduled on the second Monday of May 2013.[6] The House of Representatives approved HB 4146 on 23 March 2011, voting 191-47 with two abstentions.

After receiving HB 4146, the Senate, where a counterpart measure (Senate Bill No. 2756 [SB 2756]) was pending, approved its own version on 6 June 2011 by a vote of 13-7, modifying some parts of HB 4146 but otherwise leaving its core provisions intact. The affirmative votes were two votes short of 2/3 of the Senate membership (23). The following day, the House of Representatives adopted the Senate's version. On 30 June 2011, the President signed the measure into law as Republic Act No. 10153 (RA 10153).

After the House of Representatives approved HB 4146, petitioners in G.R. No. 196271 filed their petition assailing the constitutionality of HB 4146, SB 2756 and RA 9333. Soon after, petitioner in G.R. No. 196305 filed suit assailing the constitutionality of RA 9333. After the President signed into law RA 10153, petitioners in G.R. Nos. 197221, 197280, 197282, 197392 and 197454 filed their petitions assailing the constitutionality of RA 10153. Petitioners in G.R. No. 197280

[6] Section 1 of HB 4146 provides: "Regular Elections. – For purposes of synchronization of elections, which is envisioned by the 1987 Constitution, the regular elections for the Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao (ARMM) shall be held on the second (2nd) Monday of May 2013. Succeeding regular elections shall be held on the same date every three (3) years thereafter."

also assail the constitutionality of RA 9140 and RA 9333. In a supplemental petition, petitioners in G.R. No. 196271 joined these latter petitions in questioning the constitutionality of RA 10153.

The petitions against RA 9140, RA 9333 and RA 10153[7] treat these laws as amending RA 9054 and charge Congress with failing to comply with the twin requirements prescribed in Sections 1 and 3, Article XVII of RA 9054[8] for amending RA 9054. These twin requirements are: (1) approval by a 2/3 vote of the members of the House of Representatives and the Senate voting separately, and (2) submission of the amendments to ARMM voters in a plebiscite. RA 9140, RA 9333 and RA 10153 do not provide for their submission to ARMM voters in a plebiscite. On the other hand, although the 191 affirmative votes in the Lower House for HB 4146 satisfied the 2/3 vote threshold in RA 9054, the 13 affirmative votes in the Senate for SB 2756 fell two votes short of the 2/3 vote threshold.

Petitioners' unanimity ends here, however, for they differ on when the elections in the ARMM should take place. The petitions against RA 10153 favor the holding of elections on the second Monday of August 2011[9] while those attacking RA 9333 only,[10] or together with RA 9140 and RA 10153,[11] seek the holding of elections on the second Monday of September 2011, purportedly

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[7] G.R. Nos. 197221, 197280, 197282, 197392 and 196271 (in a supplemental petition).

[8] These provide:

> Section 1. Consistent with the provisions of the Constitution, this Organic Act may be reamended or revised by the Congress of the Philippines upon a vote of two-thirds (2/3) of the Members of the House of Representatives and of the Senate voting separately.
>
> Section 3. Any amendment to or revision of this Organic Act shall become effective only when approved by a majority of the vote cast in a plebiscite called for the purpose, which shall be held not earlier than sixty (60) days or later than ninety (90) days after the approval of such amendment or revision.

[9] G.R. Nos. 197221, 197392, and 197454.

[10] G.R. Nos. 196271 and 196305.

[11] G.R. No. 197280.

following RA 9054. Another petition, which finds RA 10153 unconstitutional, leave it to the Court to order special elections within a period "reasonably close" to the elections mandated in RA 9333.[12]

The petitions against RA 10153 further raise the following issues: (1) postponing the ARMM elections to the second Monday of May 2013 undermines the republican and autonomous nature of the ARMM, in violation of the Constitution and RA 9054; (2) granting the President the power to appoint OICs unconstitutionally expands his power over the ARMM to encompass not only general supervision but also control; and, for the petition in G.R. No. 197280, (3) Congress, in enacting RA 10153, defectively waived the Constitution's requirement for the separate reading of bills and the advance distribution of their printed copies because the President's certification for the urgent passage of HB 4146 and SB 2756 was not grounded on public calamity or emergency.

The petition in G.R. No. 196271 extends the reach of its attack to HB 4146 and SB 2756, for failing to include a provision requiring the submission of the anticipated law to ARMM voters in a plebiscite.

In their separate Comments to the petitions in G.R. No. 196271 and G.R. No. 196305, the Senate and the House of Representatives

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[12] Petition (G.R. No. 197282), p. 29. The petitioner proceeds from the theory that although unconstitutional, RA 9333 was validated by acquiescence. On the other hand, if the Court were to strike down RA 9333, it is impossible to comply with the election scheduled under RA 9054, the last cycle of which allegedly fell on the second Monday of September 2010.

In their Memoranda, the petitioners in G.R. Nos. 196271, G.R. No. 196305, and 197280, conceding the impracticality of holding elections on the second Monday of September this year as they initially espoused, called for the holding of special elections nearest to that schedule or at least this year. (Memorandum [G.R. No. 196271], p. 47; Memorandum [G.R. No. 196305], p. 49; Memorandum [G.R. No. 197280], p. 25).

Similarly, the petitioners G.R. No. 197221 and G.R. No. 197454, who initially favored holding the elections on the second Monday of August 2011, prayed in their Memoranda that the elections be held as soon as possible. (Memorandum [G.R. No. 197221], p. 76l; Memorandum [G.R. No. 197454, p. 22).

pray for the dismissal of the petitions. The Senate disagrees with the proposition that RA 9333 constitutes an amendment to RA 9054, treating RA 9333 as merely filling the void left by RA 9054 in failing to schedule the succeeding regular elections in the ARMM. Thus, the Senate finds irrelevant the twin requirements in RA 9054 in the enactment of the assailed laws. Alternatively, the Senate gives a narrow construction to the plebiscite requirement in RA 9054, limiting the plebiscite to cover amendatory laws affecting "substantive matters," as opposed to "administrative concerns" such as fixing election dates.[13]

The House of Representatives accepts the amendatory nature of RA 9333 but attacks the constitutionality of the twin requirements in RA 9054 mandating a supermajority vote of each House of Congress and the approval by ARMM voters in a plebiscite for purposes of amending RA 9054. The Lower House grounds its attack on two points: (1) save in exceptional cases not applicable to the present petitions, the Constitution only requires a simple majority of a quorum in each House of Congress to enact, amend or repeal laws; and (2) the rule against the passage of irrepealable laws. Alternatively, the House of Representatives, like the Senate, narrowly construes the plebiscite requirement in RA 9054 to cover only amendatory laws creating or expanding the ARMM's territory.

The Senate and the House of Representatives uniformly contend that the question on the constitutionality of HB 4146 and SB 2756 is non-justiciable.

The Office of the Solicitor General (OSG), representing respondent Commission on Elections (COMELEC) and the other individual public respondents, joined causes with the House of Representatives on the issue of the validity of the twin requirements in RA 9054 for the passage of amendatory laws. In defending the President's authority under RA 10153 to appoint OICs, the OSG treats the authority as a species of legislation falling under Section 16, Article VII of the Constitution authorizing the President to appoint "those whom he may be

[13] Comment (Senate), pp. 5-7.

authorized by law to appoint." The OSG rejects petitioners' treatment of this authority as granting the President control over the ARMM, contending instead that it is analogous to Section 7, Article XVIII of the Constitution, authorizing the President for a limited period to appoint sectoral representatives in the House of Representatives.

On 9 August 2011, the Court heard the parties in oral argument.

On 13 September 2011, the Court issued a temporary restraining order enjoining respondents from implementing RA 10153. Meanwhile, the Court authorized the then incumbent elective officials in the ARMM to continue in office in the event that the present petitions remain unresolved after the officials' term of office expires on 30 September 2011.

The Court granted intervention to four groups of parties who filed comments-in-intervention joining causes with respondents.

The Issues

The following are the issues for resolution:

I. Did the passage of RA 10153 violate Section 26(2), Article VI of the Constitution?

II. Do Section 2 of RA 10153, Section 1 of RA 9333 and Section 2 of RA 9140 constitute an amendment to Section 7, Article XVIII of RA 9054? If in the affirmative –

   A. Is Section 1, Article XVII of RA 9054 repugnant to Section 1 and Section 16(2), Article VI of the Constitution and violative of the rule against the passage of irrepealable laws?; and

   B. Does Section 3, Article XVII of RA 9054 apply only in the creation of autonomous regions under paragraph 2, Section 18, Article X of the Constitution?

III. Do Sections 3, 4 and 5 of RA 10153 –

   A. Violate Sections 15, 16, and 18, Article X of the Constitution?;

   B. Fall under Section 16, Article VII of the Constitution?; and

C. Repeal the second sentence of Section 7(1), Article VII of RA 9054?

IV. Does RA 10153 implement Sections 2 and 5, Article XVIII of the Constitution?

I vote to declare RA 9333 constitutional, and RA 10153 partly unconstitutional. The synchronization of the ARMM elections with the national and local elections under RA 10153 is constitutional. However, Sections 3, 4 and 5 of RA 10153 authorizing the President to appoint OICs in place of elective ARMM officials are unconstitutional. Save in newly created local government units prior to special or regular elections, elective officials of local government units like the ARMM cannot be appointed by the President but must be elected in special or regular elections. Hence, respondent COMELEC should be ordered to hold special elections in the ARMM as soon as possible.

Pending the assumption to office of the elected ARMM Governor, the President, under his general supervision over local governments, may appoint an officer-in-charge in the office of the ARMM Governor. Such appointment is absolutely necessary and unavoidable to keep functioning essential government services in the ARMM. On the other hand, I vote to declare unconstitutional the second sentence of Section 7(1), Article VII of RA 9054 authorizing ARMM elective officials to hold over until the election and qualification of their successors. Such hold over violates the fixed term of office of elective local officials under the Constitution.

The challenge against the constitutionality of HB 4146 and SB 2756 raises a non-justiciable question, hence immediately dismissible. Until legislative bills become laws, attacks against their constitutionality are premature, lying beyond the pale of judicial review.[14]

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[14] *Macalawi v. Brillantes*, G.R. No. 196270, 31 May 2011, Resolution dismissing for prematurity a petition questioning the validity of HB 4146 and SB 2756; *Montesclaros v. COMELEC*, 433 Phil. 620 (2002).

The President's Certification on Urgency of Legislation Not Subject to Heightened Scrutiny

Petitioners in G.R. No. 197280 claim that Congress defectively passed RA 10153 for failing to comply with the requirement in the Constitution for the reading of bills on three separate days and the advanced distribution of their printed copies in final form under the second paragraph of Section 26, Article VI, which provides:

> No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, **except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency**. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal. (Emphasis supplied)

Although the President certified HB 4146 and SB 2756 as urgent measures, thus dispensing with the bills' separate reading and advanced distribution, petitioners in G.R. No. 197280 find the basis of the President's certification, namely, the "need to protect x x x ARMM's autonomy x x x and provide mechanism to institutionalize electoral reforms," as "flimsy," falling short of the Constitution's requirement of public calamity or emergency.[15]

The Court has refused in the past to subject to heightened scrutiny presidential certifications on the urgency of the passage of legislative measures. In *Tolentino v. Secretary of Finance*,[16] petitioners in that case questioned the sufficiency of the President's certification of a "growing budget deficit" as basis for the urgent passage of revenue measures, claiming that this does not amount to a public calamity or emergency. The Court declined to strike down the President's certification upon a showing that members of both Houses of Congress had the opportunity to study the bills and no fundamental constitutional rights were "at hazard":

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[15] *Rollo* (G.R. No. 197280), pp. 28-30.

[16] G.R. No. 115455, 25 August 1994, 235 SCRA 630, 666.

It is nonetheless urged that the certification of the bill in this case was invalid because there was no emergency, the condition stated in the certification of a "growing budget deficit" not being an unusual condition in this country.

It is noteworthy that no member of the Senate saw fit to controvert the reality of the factual basis of the certification. To the contrary, by passing S. No. 1630 on second and third readings on March 24, 1994, the Senate accepted the President's certification. Should such certification be now reviewed by this Court, especially when no evidence has been shown that, because S. No. 1630 was taken up on second and third readings on the same day, the members of the Senate were deprived of the time needed for the study of a vital piece of legislation?

The sufficiency of the factual basis of the suspension of the writ of habeas corpus or declaration of martial law under Art. VII, § 18, or the existence of a national emergency justifying the delegation of extraordinary powers to the President under Art. VI, § 23(2), is subject to judicial review because basic rights of individuals may be at hazard. But the factual basis of presidential certification of bills, which involves doing away with procedural requirements designed to insure that bills are duly considered by members of Congress, certainly should elicit a different standard of review. (Emphasis supplied)

As in *Tolentino*, Congress, in passing RA 10153, found sufficient the factual bases for President Aquino's certification of HB 4146 and SB 2756 as emergency measures. Petitioners in G.R. No. 197280 do not allege, and there is nothing on record to show, that members of Congress were denied the opportunity to examine HB 4146 and SB 2756 because of the President's certification. There is thus no basis to depart from *Tolentino*.[17]

RA 9333 and RA 10153 Supplement and do not Amend RA 9054

The petitions assailing RA 9333 and RA 10153 are united in their contention that these amendatory laws to RA 9054 are

[17] Petitioners in G.R. No. 196271 belatedly joined the petitioners in G.R. No. 197280 on this issue, arguing for the first time in their Memorandum that heightened scrutiny of the President's certification is warranted because the right to suffrage is basic, thus falling under *Tolentino*'s exemption

invalid for failure to comply with the twin requirements in RA 9054, namely, that the amendments must be approved by a 2/3 vote of each House of Congress and submitted to ARMM voters in a plebiscite. The underlying assumption of petitioners' theory – that RA 9333 and RA 10153 amend RA 9054 – is legally baseless.

Section 7, Article XVIII of RA 9054 on the holding of ARMM elections provides in part:

> ***First Regular Elections*. – The first regular elections** of the Regional Governor, Regional Vice-Governor and members of the regional legislative assembly under this Organic Act *shall be held on the second Monday of September 2001*. The Commission on Elections shall promulgate rules and regulations as may be necessary for the conduct of said election. (Emphasis supplied)
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> xxx xxx xxx

The ambit of Section 7 is narrow, confined to the "***first*** regular elections," scheduled "on the second Monday of September 2001." This left open the scheduling of elections **succeeding** the "***first*** regular elections."

(Memorandum [G.R. No. 196271], pp. 18-19). The question whether the right to suffrage is fundamental for purposes of using strict scrutiny to review the sufficiency of the factual bases of executive and legislative acts has never been raised before the Court. Our jurisprudence merely advert to the rule in the United States treating such right as fundamental (see *e.g*. *White Light Corporation v. City of Manila*, G.R. No. 122846, 20 January 2009, 576 SCRA 416 [reviewing an ordinance prohibiting the certain business practices of motels and similar establishments]; *Serrano v. Gallant Maritime Services, Inc*., G.R. No. 167614, 24 March 2009, 582 SCRA 254 [reviewing a statutory rule on the reimbursement of placement fees of overseas workers]) or state such rule as *dicta* (see *e.g*. *ABS-CBN Broadcasting Corporation v. Commission on Elections*, 380 Phil. 780 (2000) [reviewing the constitutionality of a regulation prohibiting the conduct of exit polls]). At any rate, *Tolentino*'s exemption relates to "basic rights" put at hazard following the suspension of the writ of *habeas corpus* or declaration of martial law under Art. VII, § 18, or during the existence of a national emergency under Art. VI, § 23(2) such as the right against illegal arrests and detentions, right to free speech, assembly and of the press, and right against torture. The right to suffrage lies far afield from this core of fundamental rights the Constitution protects in times of national emergency, war or national security crisis by requiring heightened judicial scrutiny of the assailed measure.

In the exercise of its plenary legislative power, Congress filled this void by enacting RA 9333, Section 1 of which provides:

> **Section 1.** ***Date of Election*****. – The regular election** for regional Governor and Regional Vice-Governor and Members of the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao (ARMM) **shall be held on the second Monday of August 2005.** ***Succeeding regular elections shall be held on the same date every three years thereafter***. (Emphasis supplied)

In the discharge of the same power, Congress subsequently passed RA 10153, Section 2 of which states:

> **SEC. 2.** ***Regular Elections*****. - The regular elections** for the Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao (ARMM) **shall be held on the second (2nd) Monday of May 2013.** ***Succeeding regular elections shall be held on the same date every three (3) years thereafter***. (Emphasis supplied)

Had Congress intended RA 9054 to govern not only the "***first*** regular elections" but also **succeeding** regular elections, it would have included in Section 7 of Article XVIII a provision stating to the effect that the succeeding regular elections shall be held on the same date every three years thereafter, consistent with the three-year term of office of elective officials in the ARMM.[18] Instead, RA 9054 confines itself to the "***first*** regular elections." Tellingly, it is only in Section 1 of RA 9333 and Section 2 of RA 10153 that Congress touched on the **succeeding** regular elections in the ARMM, by uniformly providing that "**[s]ucceeding** regular elections shall be held" on the date indicated "every three years thereafter."

The legislative practice of limiting the reach of the ARMM Organic Act to the first regular elections, leaving the date of the succeeding regular elections for Congress to fix in a subsequent legislation, traces its roots in the ARMM's first Organic Act, RA 6734. Section 7, Article XIX of RA 6734 fixed the date of the "***first*** regular elections," to take place "not earlier than sixty

[18] Under Section 7, Article VII of RA 9054.

(60) days or later than ninety (90) days" after the ratification of RA 6743. Section 7 reads in full:

> The ***first*** regular elections of the Regional Governor, Vice-Governor and Members of the Regional Assembly under this Organic Act shall be held not earlier than sixty (60) days or later than ninety (90) days after the ratification of this Act. The Commission on Elections shall promulgate such rules and regulations as may be necessary for the conduct of said election. (Emphasis supplied)

To fix the date of the **succeeding** regular elections, Congress passed several measures, moving the election day as it deemed proper.[19] Like RA 9333 and RA 10153, these enactments merely filled a void created by the narrow wording of RA 6734. **RA 9333 and RA 10153 are therefore separate, stand-alone statutes that do not amend any provision of RA 9054**.

RA 9140 Rendered Functus Officio after 26 November 2001 Elections

Petitioners in G.R. No. 197280 attack Section 2 of RA 9140 also for its failure to comply with the twin requirements in amending RA 9054.[20] To recall, under Section 2 of RA 9140, which immediately preceded RA 9333, the date of the first elections in the ARMM under RA 9054 was moved to 26 November 2001.

There is no reason to traverse this issue for the simple reason that Congress passed RA 9140 solely for the narrow purpose of fixing the date of the plebiscite for RA 9054 (Section 1) and the date of the first regular elections in the ARMM under RA 9054 (Section 2). These electoral exercises took place on 14 August 2001 and 26 November 2001, respectively. Hence, RA 9140 became *functus officio* after 26 November 2001. It is futile, in this case, to review the validity of a *functus officio* law.

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[19] See Republic Act No. 7647, Republic Act No. 8176, Republic Act No. 8746, Republic Act No. 8753, Republic Act No. 8953, and Republic Act No. 9012.

[20] Memorandum (G.R. No. 197280), pp. 17-28, 52.

Granting that RA 9333 and RA 10153 Amend RA 9054, these Laws Remain Valid

That RA 9333 and RA 10153 merely filled a void in RA 9054 would have sufficed to dispose of the argument that these laws are invalid for non-compliance with the twin requirements in RA 9054. These requirements would have been left unreviewed were it not for the fact that respondents and intervenors vigorously insist on their invalidity. The issue having been raised squarely, the Court should pass upon it.

Section 1, Article XVII of RA 9054 Requiring 2/3 Vote to Amend RA 9054 Unconstitutional

Section 1, Article XVII of RA 9054 requires a 2/3 supermajority vote of the members of each House of Congress to amend or repeal RA 9054. This provision states:

> Consistent with the provisions of the Constitution, this Organic Act may be reamended or revised by the Congress of the Philippines **upon a vote of two-thirds (2/3) of the Members of the House of Representatives and of the Senate voting separately**. (Emphasis supplied)

Respondents House of Representatives, COMELEC and individual officials assail this provision's constitutionality on two grounds. First, it is repugnant to Section 16 (2), Article VI of the Constitution requiring a mere majority of members of both Houses of Congress to constitute a quorum to do business.[21] Second, it violates the doctrine barring the passage of irrepealable laws, a doctrine rooted on the plenary power of Congress to amend or repeal laws that it enacts.

Section 16 (2), Article VI of the Constitution, which provides that "**[a] majority of each House shall constitute a quorum to do business x x x**," sets the vote threshold for Congress to conduct its legislative work in plenary session. Under this provision, a majority of each House suffices for Congress to hold sessions and pass, amend, or repeal bills and resolutions,

[21] Section 16(2), Article VI of the Constitution.

upon a vote of a majority of the members present who constitute a quorum. In short, a majority of a quorum, or a majority of a majority, can enact, amend or repeal laws or approve acts requiring the affirmative action of Congress, unless the Constitution prescribes a qualified or supermajority in specific cases.[22]

By providing that RA 9054 "may be reamended or revised by the Congress of the Philippines ***upon a vote of two-thirds (2/3)*** of the Members of the House of Representatives and of the Senate voting separately," Section 1, Article XVII of RA 9054 ***raised*** the vote threshold necessary to amend RA 9054 to a level higher than what Section 16 (2), Article VI of the Constitution requires. Thus, without Section 1, Article XVII of RA 9054, it takes only 72[23] votes in the Lower House and 7[24] votes in the Senate to pass amendments or revisions to RA 9054, assuming a simple quorum in attendance in either House. With the same provision in the statute books, at least 189 votes in the House of Representatives and at least 15 in the Senate are needed to enact the same amendatory or repealing legislation, assuming the same simple quorum in either House. The repugnancy between the statutory provision and the Constitution is irreconcilable. Needless to say, the Constitution prevails.

Section 1, Article XVII of RA 9054 also runs afoul of the inherent limitation on Congress' power barring it from passing irrepealable laws.[25] Section 1, Article XVII of RA 9054 erects

[22] Section 28(4), Article VI of the Constitution provides: "No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress." Thus, the rule of a "majority of a majority" to enact, amend or repeal laws does not apply to the grant of tax exemptions. For other cases requiring a qualified or supermajority of Congress, see note 26.

[23] This is the majority of a quorum of 143. Although the House of Representatives has a total of 285 members, only 284 is considered for quorum purposes.

[24] This is the majority of a quorum of 12. The Senate currently has 23 members.

[25] *Asociacion De Agricultores De Talisay-Silay, Inc. v. Talisay-Silay Milling Co., Inc.*, 177 Phil. 247 (1979).

a high vote threshold for each House of Congress to surmount, effectively and unconstitutionally, taking RA 9054 beyond the reach of Congress' amendatory powers. One Congress cannot limit or reduce the plenary legislative power of succeeding Congresses by requiring a higher vote threshold than what the Constitution requires to enact, amend or repeal laws. No law can be passed fixing such a higher vote threshold because Congress has no power, by ordinary legislation, to amend the Constitution.

The Constitution's rule allowing a simple majority of each House of Congress to do business evinces the framers' familiarity with the perennial difficulty plaguing national legislative assemblies in constituting a quorum. Set the quorum requirement any higher and plenary legislative work will most likely slow down if not grind to a halt. The 2/3 vote threshold in Section 1, Article XVII of RA 9054 effectively ensures the near immutability of RA 9054, in derogation of Congress' plenary power to amend or repeal laws. Unless the Constitution itself mandates a higher vote threshold to enact, amend or repeal laws,[26] each House of Congress can do so by simple majority of the members present who constitute a quorum.

There is no merit in the proposition that Section 1, Article XVII of RA 9054 is an "additional safeguard[] to protect and guarantee" the autonomy of the ARMM.[27] Autonomy, even of the expanded type prevailing in the ARMM, means vesting of more powers and resources to the local or regional government units. To say that autonomy means shackling the hands of

[26] The 1987 Constitution requires a qualified or supermajority vote in certain instances, none of which, however, relates to the amendment or repeal of the organic act of the autonomous regions [See Section 23(1), Article VI (to declare war); Section 28(4), Article VI (to grant tax exemption); Section 16(3), Article VI (to expel or suspend a member of either House of Congress); Section 11, Article VII (to break an impasse between the cabinet and the President on the latter's capacity to discharge the powers and duties of his office); Section 21, Article VII (for the Senate to concur in treaty ratification); Section 3(6), Article XI (for the Senate to impeach the President); Section 3, Article XVII (to call a constitutional convention)].

[27] Memorandum (G.R. No. 197221), p. 22. The petitioners in G.R. No. 197280 also adopt this view (Memorandum [G.R. No. 197280], p. 46).

Congress in improving laws or passing remedial legislations betrays a gross misconception of autonomy.

Nor is the provision in Section 27(1), Article VI of the Constitution requiring a 2/3 vote for Congress to override a presidential veto an argument for the validity of Section 1, Article XVII of RA 9054. The veto-override provision neither negates the simple majority rule for Congress to legislate nor allows the passage of irrepealable laws. The Presidential veto is a power of the Executive to reject a law[28] passed by Congress, with the associated power of Congress to override such veto by a 2/3 vote. This associated power of Congress is ***not*** an independent power to prescribe a higher vote threshold to enact, amend or repeal laws, an act which does not involve any Presidential veto but operates as an auto-limitation on the plenary power of Congress to legislate.

The veto-override provision is a small but vital mechanism presidential systems adopt to calibrate the balance of power between the Executive and the Legislature. It ensures the Executive a substantial voice in legislation by requiring the Legislature to surmount a vote threshold higher than the simple majority required to pass the vetoed legislation. The veto-override provision cannot be used to immobilize future Congresses from amending or repealing laws by a simple majority vote as provided in Section 16(2), Article VI of the Constitution.

Plebiscite Mandatory only in Approving Creation or Expansion of the ARMM

The second paragraph of Section 18, Article X of the Constitution requires the holding of a plebiscite in the autonomous region for the approval of its ***creation***, thus:

> **The creation** of the autonomous region shall be effective when approved by a majority of the votes cast by the constituent units in a plebiscite called for the purpose. (Emphasis supplied)

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[28] Or an item or items in an appropriation, revenue or tariff bill. See Section 27(2), Article VI of the Constitution.

Section 18 of Article X is substantially similar to Section 10, Article X of the Constitution, mandating that no local government unit shall be "created, divided, merged, abolished, or its boundaries substantially altered"[29] unless, among others, voters of the affected units approve the proposed measure in a plebiscite.

The narrow ambit of these constitutional provisions, limiting the plebiscite to changes in the size of the unit's territory, is commonsensical. The Constitution requires that territorial changes, affecting the jurisdiction, income, and population of a local government unit, should not be left solely for politicians to decide but must be submitted for approval or rejection by the people affected.[30]

In sharp contrast to the narrow scope of Section 10 and Section 18 of Article X of the Constitution, Section 3, Article XVII of RA 9054 mandates the holding of a plebiscite in the ARMM to approve "***[a]ny*** amendment to or revision of" RA 9054, thus:

> **Any amendment to or revision of this Organic Act** shall become effective only when approved by a majority of the vote cast in a plebiscite called for the purpose, which shall be held not earlier than sixty (60) days or later than ninety (90) days after the approval of such amendment or revision. (Emphasis supplied)

Petitioners give a literal interpretation to this provision by applying it to ***all*** amendments to or revisions of RA 9054, including the fixing of the date of elections in the ARMM that RA 10153 mandates.

By requiring the holding of a plebiscite to approve "***any*** amendment to or revision" of RA 9054, Section 3, Article XVII

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[29] "Section 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected." In *Miranda v. Aguirre*, 373 Phil. 386 (1999), the Court extended the plebiscite requirement in the downgrading of a city's status from independent to component city.

[30] In local governance, the plebiscite is seen as a check "against the pernicious practice of gerrymandering." *Miranda v. Aguirre*, *supra* at 405.

of RA 9054, a supposed statutory implementation of the second paragraph of Section 18, Article X of the Constitution, ***impermissibly expands*** the scope of the subject matter that the Constitution requires to be submitted to a plebiscite. By barring ***any change*** to RA 9054 from taking effect unless approved by ARMM voters in a plebiscite, even if unrelated to the ARMM's creation, reduction or expansion, Section 3 of Article XVII directly contravenes Section 18, Article X of the Constitution.[31]

True, the Court held in *Disomangcop v. Datumanong*[32] that Republic Act No. 8999 (RA 8999) creating an engineering office within the ARMM is an "amendatory law which should x x x first obtain the approval of the people of the ARMM before it can validly take effect."[33] This statement, obviously an *obiter dicta*, furnishes no ground to support petitioners' interpretation of Section 3, Article XVII of RA 9054. What the Court resolved in *Disomangcop* was whether RA 8999, creating an office performing functions inconsistent with those created under the ARMM Organic Act, prevails over the latter. The Court anchored its negative answer, not on the ground that RA 8999 was invalid for not having been approved in a plebiscite, but on the fact that RA 8999, signed into law in January 2001, "was repealed and superseded by RA 9054," enacted in March 2001. Thus, in disposing of the case, we ruled:

WHEREFORE, ***considering that Republic Act No. 9054*** <u>*repealed*</u> ***Republic Act No. 8999*** and rendered DPWH Department Order No. 119 *functus officio*, the petition insofar as it seeks the writs of *certiorari* and prohibition is GRANTED.[34] x x x x (Emphasis supplied)

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[31] Taken to its logical extreme, petitioners' interpretation leads to preposterous scenarios. The smallest change to RA 9054 such as mandating its official promulgation (not just translation) into all native dialects widely spoken in the region, amending Section 6, Article VI for the purpose, will be subjected to the rigors and expense of a plebiscite.

[32] G.R. No. 149848, 25 November 2004, 444 SCRA 203.

[33] *Id.* at 225.

[34] *Id.* at 249.

The Court was not confronted in *Disomangcop*, as it is now, with the issue of whether a law changing the date of elections in the ARMM should be submitted to ARMM voters in a plebiscite.

Congress' Power to Synchronize National and Local Elections does not Encompass Appointment of OICs in Place of Elective Officials

The Constitution impliedly requires the synchronization of elections for President, Vice-President, members of Congress and local officials after the end of their first term by simultaneously ending their tenure on 30 June 1992, extending in the process the initial tenure of the members of Congress and local officials.[35] As the Court confirmed in *Osmeña v. Commission on Elections*:[36] "[t]he Constitution has mandated a synchronized national and local election prior to June 30, 1992 or more specifically as provided for in Article XVIII, Sec. 5 – on the second Monday of May 1992."[37] After the Court struck down Republic Act No. 7065 in *Osmeña* for *desynchronizing* local and national elections, Congress subsequently passed Republic Act No. 7166 (RA 7166) synchronizing elections for presidential, vice-presidential, congressional, provincial, city and municipal officials. RA 10153 widens the ambit of the Constitution's policy of synchronizing elections by including the ARMM into the loop of synchronized elections. With the passage of RA 10153, only *barangay* and *sangguniang kabataan* elections are excluded from the synchronized national and local elections.[38]

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[35] Under Section 2 ("The Senators, Members of the House of Representatives, and the local officials first elected under this Constitution shall serve until noon of June 30, 1992.") and Section 5 ("The six-year term of the incumbent President and Vice-President elected in the February 7, 1986 election is, for purposes of synchronization of elections, hereby extended to noon of June 30, 1992. The first regular elections for the President and Vice-President under this Constitution shall be held on the second Monday of May, 1992."), Article XVIII.

[36] G.R. No. 100318, 30 July 1991, 199 SCRA 750.

[37] *Id.* at 762.

[38] Under Section 8, Article X of the Constitution, "[t]he term of office of elective local officials x x x shall be three years," except for *barangay* officials whose term of office is fixed by law.

The contention of petitioners in G.R. No. 196271 that the elections in the ARMM cannot be synchronized with the existing synchronized national and local elections is untenable. Petitioners advance the theory that elections in the ARMM are not "local elections" because ARMM officials are not "local officials" within the meaning of Sections 2 and 5, Article XVIII of the Constitution.[39]

Under Section 1, Article X of the Constitution, the ARMM is a local government unit just like provinces, cities, municipalities, and *barangays*. Section 1, Article X of the Constitution provides:

> The *territorial and political subdivisions of the Republic of the Philippines are* the provinces, cities, municipalities, and *barangays*. *There shall be autonomous regions in Muslim Mindanao* and the Cordilleras *as hereinafter provided*. (Emphasis supplied)

The entire Article X of the Constitution is entitled "***Local Government***" because Article X governs the creation of, and the grant of powers to, all local government units, including autonomous regions.[40] Thus, elective officials of the ARMM are local officials because the ARMM is a local government unit, just like provinces, cities and municipalities.

Section 8, Article X of the Constitution provides that ***"[t]he term of office of elective local officials***, except *barangay* officials, which shall be determined by law, ***shall be three years*** x x x." In compliance with this provision, ARMM elective officials serve three-year terms under RA 9054.[41] Congress cannot fix the term of elective local officials in the ARMM for less, or more, than three years. Clearly, elective officials in the ARMM are "local officials" and elections in the ARMM, a local government unit, are "local elections."

Congress' power to provide for the simultaneous holding of elections for national and local officials, however, does not encompass the power to authorize the President to appoint officers-

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[39] *Rollo* (G.R. No. 196271 Supplemental Petition), p. 20.

[40] See Sections 15, 16, 17, 18, 19, 20 and 21, Article X of the Constitution.

[41] Section 7, Article VII of RA 9054.

in-charge in place of elective local officials, canceling in the process scheduled local elections. To hold otherwise is to sanction the perversion of the Philippine State's democratic and republican nature.[42] **Offices declared by the Constitution as elective must be filled up by election and not by appointment**. To appoint officials to offices mandated by the Constitution to be elective, absent an absolutely unavoidable necessity to keep functioning essential government services, is a blatant violation of an express command of the Constitution.

Options to Fill Vacancies in the ARMM Elective Offices After 30 September 2011

In desiring to include elections in the ARMM in the existing synchronized national and local elections, Congress faced a dilemma arising from the different schedules of the election cycles under RA 7166 and RA 9333. Under RA 7166, national and local elections simultaneously take place every second Monday of May in a three-year cycle starting 1992. On the other hand, under RA 9333, elections in the ARMM take place every second Monday of August in a three-year cycle starting 2005. Thus, a 21-month gap separates the two electoral cycles. The horn of the dilemma lies in how to fill up elective offices in the ARMM during this gap.

There are three apparent ways out of this dilemma, namely: (1) allow the elective officials in the ARMM to remain in office in a hold over capacity; (2) authorize the President to appoint OICs; or (3) hold special elections in the ARMM, with the terms of those elected to expire on 30 June 2013. Two petitions favor partial hold over pending the holding of special elections.[43] On the other hand, the OSG defends Congress' choice under RA 10153 authorizing the President to appoint OICs who will hold office until 30 June 2013.

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[42] Section 1, Article II of the Constitution.

[43] G.R. Nos. 197221 and 197282.

Sections 3, 4 and 5 of RA 10153 Authorizing the President to Appoint OICs in Elective Local Offices in the ARMM Unconstitutional

Historically, the legislature has authorized the President to appoint OICs for elective local offices only as an ***incident*** to the creation of a new local government unit or to its transition from a sub-unit to a full-fledged political subdivision. Thus, statutes creating the provinces of Quezon del Sur[44] and Dinagat Islands[45] uniformly authorized the President to appoint "an interim governor, vice-governor and members of the *sangguniang panlalawigan*, who shall serve only *until a new set of provincial officials have been elected and qualified*."[46] Similarly, the statute creating the municipality of T'boli in South Cotabato authorized the President to "appoint the elective officials of the new Municipality who shall hold office *until their successors shall have been duly elected in the general elections next following the issuance of this Decree*."[47] The same authorization is found in the Local Government Code for sub-provinces, authorizing the President to appoint the interim governor, vice-governor and members of the *sangguniang panlalawigan* while the sub-provinces are transitioning to the status of a province.[48]

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[44] Republic Act No. 9495 (RA 9495). The creation of Quezon del Sur Province was rejected by the voters of Quezon Province in the plebiscite of 13 November 2008.

[45] Republic Act No. 9355 (RA 9355).

[46] Section 50 of 9355 and Section 52 of RA 9495 (emphasis supplied).

[47] Presidential Decree No. 407, Section 3 (emphasis supplied).

[48] Section 462, paragraph 3 of Republic Act No. 7160 (RA 7160) provides: "The incumbent elected officials of the said subprovinces converted into regular provinces shall continue to hold office until June 30, 1992. *Any vacancy occurring in the offices occupied by said incumbent elected officials, or resulting from expiration of their terms of office in case of a negative vote in the plebiscite results, shall be filled by appointment by the President. The appointees shall hold office until their successors shall have been elected in the regular local elections following the plebiscite mentioned herein and qualified.* After effectivity of such conversion, the *President shall fill up the position of governor of the newly-created province through*

These legislative authorizations are rendered imperative by the fact that incipient or transitioning local government units are devoid of elective officials prior to special or regular local elections. Where the law provides for the creation of a local government unit prior to the election of its local officials, it becomes ***absolutely necessary and unavoidable*** for the legislature to authorize the President to appoint interim officials in elective local offices to insure that essential government services start to function.

In authorizing the President to appoint OICs in the ARMM, Section 3 of RA 10153 provides:

Appointment of Officers-in-Charge.—The President shall appoint officers-in-charge for the Office of the Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office.

Section 3 is supplemented by Section 4 which provides the manner and procedure of appointment[49] while Section 5 states the qualifications for the OICs.[50]

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appointment if none has yet been appointed to the same as hereinbefore provided, and shall also appoint a vice-governor and the other members of the sangguniang panlalawigan, all of whom shall likewise hold office until their successors shall have been elected in the next regular local elections and qualified." (Emphasis supplied)

[49] Section 4 provides: "*Manner and Procedure of Appointing Officers-in-Charge*.—There shall be created a screening committee, whose members shall be appointed by the President, which shall screen and recommend, in consultation with the Speaker of the House of Representatives and the Senate President, the persons who will be appointed as Officers-in-Charge."

[50] Section 5 reads: "*Qualifications*.—No person shall be appointed officer-in-charge unless he or she complies with the qualifications for Regional Governor, Regional Vice Governor or Members of the Regional Legislative Assembly of the ARMM, as provided in Republic Act No. 6734, entitled: 'An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao', as amended by Republic Act No. 9054, entitled: 'An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734."'

It takes no extensive analysis to conclude that Section 3 is *neither necessary nor unavoidable* for the ARMM to function. The ARMM is an ***existing***, as opposed to a ***newly created* or *transitioning***, local government unit created more than two decades ago in 1989. At the time of the passage of RA 10153, elected officials occupied all the elective offices in the ARMM. No one claims that it is impossible to hold special local elections in the ARMM to determine its next set of elective officials.

Section 3 of RA 10153 negates the representative and democratic nature of the Philippine State and its political subdivisions such as the ARMM.[51] Section 18, Article X of the Constitution on the organic act of autonomous regions expressly requires the organic act to define the "[b]asic structure of government for the region consisting of the executive department and legislative assembly, *both of which shall be* ***elective and representative*** *of the constituent political units*."[52] The ARMM's Organic Act, RA 6734, as amended by RA 9054, implements Section 18, Article X of the Constitution by mandating the popular election of its executive and legislative officials.[53] Section 3 of RA 10153, however, negates Congress' implementation of the Constitution under RA 9054 by making the executive and legislative offices in the ARMM ***appointive***.

There is no merit in the OSG's argument that Section 3 of RA 10153 is similar to Section 7, Article XVIII of the 1987 Constitution, authorizing the President to appoint sectoral

[51] Expressed in Section 1, Article II of the Constitution: "The Philippines is a democratic and republican State. x x x"

[52] Paragraph 1, Section 18, Article X of the Constitution provides: "The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multi-sectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws."

[53] Section 2, Article VI and Sections 1 and 4, Article VII of RA 9054.

representatives in Congress pending the passage of legislation on party-list representation.[54] The filling of seats in the House of Representatives under Section 7, Article XVIII of the Constitution is authorized by the Constitution itself and thus can never be questioned as unconstitutional. In ratifying the Constitution, the Filipino people authorized the President to appoint sectoral representatives for a limited period. However, the appointment by the President of OICs in the ARMM under Sections 3, 4 and 5 of RA 10153 is not authorized under the Constitution but is in fact in violation of the Constitution that the Filipino people ratified overwhelmingly.

What Section 3 of RA 10153 approximates is the provision in the Freedom Constitution allowing "[a]ll elective x x x officials [to] continue in office *until otherwise provided by proclamation or executive order or upon the designation or appointment* and qualification *of their successors*, if such is made within a period of one year from February 25, 1986."[55] Wisely enough, none of the respondents saw fit to invoke this provision as precedent. The mass replacement of elective local officials following the EDSA uprising in 1986 was part of the then revolutionary government's purging of the local government ranks of officials linked to the excesses of the previous regime. In making her appointments, then President Corazon C. Aquino wielded executive and legislative powers unconstrained by any specific constitutional limitation. This is not the situation in the present case.

Nor is Section 3 of RA 10153 a species of legislation falling under Section 16, Article VII of the Constitution authorizing the President to appoint "those whom he may be authorized by

[54] OSG Memorandum, p. 46. The provision states: "Until a law is passed, the President may fill by appointment from a list of nominees by the respective sectors, the seats reserved for sectoral representation in paragraph (2), Section 5 of Article V1 of this Constitution."

[55] Section 2, Article III of the Freedom Constitution provides: "All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986."

law to appoint." This provision does not empower Congress to authorize the President to fill up by appointment positions that, by express mandate of the Constitution, are "***elective and representative***" offices. Section 16, Article VII of the Constitution obviously refers only to appointive and not elective offices.

Clearly, authorizing the President to appoint OICs in place of elective officials in the ARMM, an *existing* local government unit, contravenes Section 18, Article X of the Constitution, which mandates that the "***executive department and legislative assembly***" of the ARMM "***shall be elective and representative***." Elective local offices in the ARMM, after the ARMM's creation and holding of regular local elections, cannot be filled up through the appointment of OICs by the President without violating Section 18, Article X of the Constitution.

However, under Section 4, Article X of the Constitution, the President exercises "general supervision" over all local governments. In case it is ***absolutely necessary and unavoidable to keep functioning essential government services***, the President may, under his power of general supervision over local governments, appoint OICs where vacancies occur in existing elective local offices and the law does not provide for succession, or where succession is inapplicable because the terms of elective officials have expired.

Thus, the President may appoint an officer-in-charge in the office of the ARMM Governor pending the holding of special local elections in the ARMM. The appointment of such officer-in-charge is absolutely necessary and unavoidable because someone must insure that essential government services continue to function in the ARMM. The officer-in-charge shall exercise the powers and perform the functions of the ARMM Governor under RA 9054 and related laws until the assumption to office of the elected ARMM Governor. However, all appointments made by the officer-in-charge shall terminate upon the assumption to office of the elected Governor.

It is, however, not absolutely necessary and unavoidable to appoint OICs in the ARMM Regional Legislative Assembly because Section 22, Article VII of RA 9054 provides for the

automatic reenactment of the ARMM budget if the Regional Legislative Assembly fails to pass the appropriation bill for the ensuing fiscal year.[56] Even without OIC regional assembly members, the ARMM will have an operational budget for the next fiscal year. However, following the Local Government Code, which applies suppletorily to the ARMM,[57] "only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year" are deemed reenacted.[58] The officer-in-charge in the office of the ARMM Governor shall disburse funds from the reenacted budget in accordance with the applicable provisions of the Local Government Code and its implementing rules.

Second Sentence of Section 7(1), Article VII of RA 9054 Authorizing the Hold Over of ARMM Officials Unconstitutional

Petitioner in G.R. No. 197282 invokes the second sentence of Section 7(1), Article VII of RA 9054, which provides:

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[56] This provides: "*Budget Approval; Automatic Reenactment*. – The Regional Governor shall approve the budget of the autonomous region within one (1) month from its passage by the Regional Assembly. If, by the end of a fiscal year, the Regional Assembly shall have failed to pass the regional appropriations bill for the ensuing fiscal year, the Regional Appropriations Act for the preceding fiscal year shall be deemed automatically reenacted and shall remain in force and effect until the regional appropriations bill is passed by the Regional Assembly."

[57] Under Section 4 of RA 7160, which provides: "*Scope of Application*. - This Code shall apply to all provinces, cities, municipalities, barangays, and **other political subdivisions as may be created by law**, and, to the extent herein provided, to officials, offices, or agencies of the national government." (Emphasis supplied)

[58] Under the first paragraph of Section 323 of RA 7160 which provides: "*Failure to Enact the Annual Appropriations*. - In case the sanggunian concerned fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year, it shall continue to hold sessions, without additional remuneration for its members, until such ordinance is approved, and no other business may be taken up during such sessions. If the sanggunian still fails to enact such ordinance after ninety (90) days

Terms of Office of Elective Regional Officials. – (1) Terms of Office. The terms of office of the Regional Governor, Regional Vice-Governor and members of the Regional Assembly shall be for a period of three (3) years, which shall begin at noon on the 30th day of September next following the day of the election and shall end at noon of the same date three (3) years thereafter. **The incumbent elective officials of the autonomous region shall continue in office until their successors are elected and qualified**.[59] (Emphasis supplied)

as statutory authorization for ARMM elective officials at the time of the passage of RA 10153 to remain in office until their successors, elected in special elections, assume office. Petitioner in G.R. No. 197221 adopts the same view. On the other hand, respondents-intervenors[60] consider the same provision unconstitutional for extending the term of office of ARMM officials beyond the three years mandated in Section 8, Article X of the Constitution. There is merit to this latter claim.

Section 8, Article X of the Constitution limits the term of office of elective local officials, except *barangay* officials, to three years:

The term of office of elective local officials, except *barangay* officials, which shall be determined by law, **shall be three years**

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from the beginning of the fiscal year, the ordinance authorizing the appropriations of the preceding year shall be deemed reenacted and shall remain in force and effect until the ordinance authorizing the proposed appropriations is passed by the sanggunian concerned. However, **only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith**." x x x x (Emphasis supplied)

[59] A substantially similar provision is found in Section 8, Article XVIII of RA 9054 which provides: "The incumbent Regional Governor, Regional Vice Governor, and members of the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao shall continue in office pursuant to existing laws and until their successors shall have been duly elected and qualified."

[60] *E.g.* Bangsamoro Solidarity Movement, Inc. and Minority Rights Forum Philippines, Inc.

and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (Emphasis supplied)

Elective ARMM officials are "local officials"[61] within the meaning of Section 8, Article X of the Constitution. The ARMM Charter, RA 9054, complies with Section 8, Article X of the Constitution by providing that "[t]he terms of office of the Regional Governor, Regional Vice-Governor and members of the Regional Assembly shall be for a period of three (3) years."[62]

The question of whether a law may constitutionally mandate the "hold over" of local officials beyond the expiration of their term ***as fixed in the Constitution*** is not novel. The Court reviewed such a law in *Osmeña* and struck down the law, holding that "it is not competent of the legislature to extend the term of officers by providing that they shall hold over until their successors are elected and qualified ***where the [C]onstitution has x x x prescribed the term*****:**"

> [S]ection 2, Article XVIII of the Constitution x x x provides that the local official first elected under the Constitution shall serve until noon of June 30, 1992. But under Sec. 3 of RA 7056, **these incumbent local officials shall hold over beyond June 30, 1992 and shall serve until their successors shall have been duly elected and qualified**. It has been held that:
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> > It is not competent for the legislature to extend the term of officers ***by providing that they shall hold over*** **until their successors are elected and qualified where the *constitution has in effect or by clear implication prescribed the term*** and when the Constitution fixes the day on which the official term shall begin, there is no legislative authority to continue the office beyond that period, even though the successors fail to qualify with the time. x x x x

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[61] See *Sema v. Commission on Elections*, G.R. No. 177597, 16 July 2008, 558 SCRA 700; *Paras v. Commission on Elections*, 332 Phil. 56, 66 (1996), Davide, *J.*, concurring.

[62] Section 7, Article VII of RA 9054.

In American Jurisprudence it has been stated as follows:

> **It has been broadly stated that the legislature cannot, by an act postponing the election to fill an office the term of which is limited by the Constitution, extend the term of the incumbent beyond the period as limited by the Constitution**.

Also, there is Section 8, Article X of the Constitution which provides that:

> The term of office of elective local officials, except *barangay* officials which shall be determined by law shall be three years and no such official shall serve for more than three consecutive terms. . .

x x x .[63] (Boldfacing supplied; italicization in the original)

Osmeña is grounded on reasons of power and public policy. First, the power of Congress to fix the terms of public offices stems from (1) its inherent power to create such public offices or (2) a constitutionally delegated power to that effect. Thus, if a public office is created by the Constitution with a fixed term, or if the term of a public office created by Congress is fixed by the Constitution, Congress is devoid of any power to change the term of that office. Thus, statutes which extend the term of an elective office as fixed in the Constitution – either by postponing elections, changing the date of commencement of term of the successor, or authorizing the incumbent to remain in office until his successor is elected and qualified – are unconstitutional as it amounts to an appointment of an official by Congress to a constitutional office, a power vested either in the Executive or in the electorate,[64] or a negation of the term of office fixed in the Constitution.

Second, constitutional provisions fixing the terms of elective officials serve the ends of democratic republicanism by depriving

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[63] G.R. No. 100318, 30 July 1991, 199 SCRA 750, 763 (internal citations omitted).

[64] See *Board of Elections for Franklin County v. State ex. rel. Schneider*, 128 Ohio St. 273, 191 N.E. 115 (1934).

elective officials of any legal basis to remain in office after the end of their terms, ensuring the holding of elections, and paving the way for the newly elected officials to assume office.[65] Such provisions, which are found in the 1987 Constitution, are framed upon the belief that to ensure democratic values, there must be periodic electoral exercises. By refusing to include hold over provisions in fixing the terms of elective national and non-*barangay* local officials, the framers of the 1987 Constitution guaranteed not only the elective nature of these offices[66] but also secured our democratic values.

The wisdom of *Osmeña* is magnified when the evils it seeks to bar are applied to the elective officials whose terms of office the 1987 Constitution fixed, namely:

1. President, with a single term of six years, beginning at noon on the thirtieth day of June next following the day of the election;[67]
2. Vice-President, with a term of six years beginning at noon on the thirtieth day of June next following the day of the election, eligible for one reelection;[68]
3. Senators, with a term of six years beginning at noon on the thirtieth day of June next following the day of the election, unless otherwise provided by law, eligible for two consecutive reelections;[69]
4. Members of the House of Representatives, with a term of three years beginning at noon on the thirtieth day of June next following the day of the election, unless

[65] *Id.*

[66] This contrasts with some state constitutions in the United States which allow the hold over of elective officials.

[67] Section 4, Article VII.

[68] Section 4, Article VII.

[69] Section 4, Article VI. Under RA 7166, Senatorial term commences on 30 June following the elections.

otherwise provided by law, eligible for two consecutive reelections;[70] and

5. Local officials, except *barangay* officials, with a term of three years, for a maximum of three consecutive terms.[71]

A ruling contrary to *Osmeña* would allow Congress to pass a law, in the guise of ensuring the continuity of public service and preventing a hiatus in office, mandating the President, Vice-President, Senators, Congressmen and elective local officials other than *barangay* officials to remain in office "until their successors are elected and qualified." In doing so, Congress would have arrogated to itself the power to lengthen the terms of office of the President, Vice-President, Senators, Congressmen and non-*barangay* elective local officials in contravention of their terms as fixed in the Constitution. The absence in the Constitution of any provision allowing the hold over of national and non-*barangay* elective local officials or of any provision vesting on Congress the power to fix the terms of office of these officials means that any alteration in their terms of office can only be effected through a constitutional amendment.

The Local Government Code does not authorize the hold over of elective local officials.[72] This is consistent with the

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[70] Section 7, Article VI. Under RA 7166, Congressional term commences on 30 June following the elections.

[71] Section 8, Article X.

[72] The Code's implementing rules (Section 210(d)(3)) extended the term of the heads of the ***barangay leagues*** as *ex officio* members of *sanggunians* until 31 May 1994, when their term as punong barangays end under Republic Act No. 6679 (RA 6679). The extension of the *ex officio* term of these ***barangay officials***, which the Court upheld in *Galarosa v. Valencia*, G.R. No. 109455, 11 November 1993, 227 SCRA 728, was rendered necessary by the different length of terms of elective *barangay* officials under RA 6679 (five years starting 1 May 1989) and other elective local officials under the Code (three years starting 30 June 1992). RA 9164 subsequently shortened the term of elective barangay officials to three years.

The 1917 Revised Administrative Code authorized elective provincial and municipal officials to "hold over until a successor shall be duly qualified."

constitutional provision fixing the term, without hold over, of all elective non-*barangay* local officials. With the exception of the hold over provision in RA 9054, Congress refrained from passing laws allowing hold over of non-*barangay* elective local officials. Congress passed a law to that effect (Section 5 of Republic Act No. 9164 [RA 9164]) only for *barangay* and *sangguniang kabataan* officials which the Court reviewed and upheld in *Sambarani v. COMELEC*.[73] The legislature's passage of RA 9164 is in accord with the Constitution's grant to Congress of the power to determine the term of *barangay* officials.

In contrast, Section 7(1), Article VII of RA 9054, allowing for the hold over of elective local officials in the ARMM, finds no basis in the Constitution. Indeed, Section 7(1) contravenes the Constitution by extending the term of office of such elective local officials beyond the three year period fixed in Section 8, Article X of the Constitution.

Beyond the question of power, *Osmeña* protects democratic values and assures public order. The certainty of departure from office that term endings and term limits bring carries with it the certainty of the holding of regular and periodic elections, securing the voters' right to elect the officials for the new term. On the other hand, faced with no choice but to leave office on the day their terms end, elective officials stand to gain nothing in sabotaging electoral processes to extend their stay in office.

It is immaterial that the laws Congress enacted in the past postponing elections in the ARMM all contained provisions for the hold over of the incumbents until the election of their successors.[74]

(under Sections 2074 and 2177, respectively). These provisions were, however, repealed by Commonwealth Act No. 357 (under Section 184).

[73] G.R. No. 160427, 15 September 2004, 438 SCRA 319, reiterated in *Adap v. COMELEC*, G.R. No. 161984, 21 February 2007, 516 SCRA 403. In *Montesclaros v. COMELEC*, 433 Phil. 620, 640 (2002), the Court dismissed a premature challenge against the legislative bills for RA 9164 as they relate to *sangguniang kabataan* members.

[74] Under Republic Act No. 7647, Republic Act No. 8746, Republic Act No. 8753, Republic Act No. 8953, and Republic Act No. 9140.

None of these laws were challenged before the Court, thus the Court had no occasion to pass upon their validity.[75]

Nor is the Court's Resolution of 13 September 2011 authorizing the then incumbent ARMM elective officials to continue in office under Section 7(1), Article VII of RA 9054 a prejudgment of the provision's validity. The Resolution of 13 September 2011 is a preliminary, ancillary remedy to ensure the continued functioning of essential government services in the ARMM. Implicit in the issuance of the Resolution of 13 September 2011 is the understanding that such was without prejudice to the resolution of the issues raised in these petitions, including the validity of Section 7(1), Article VII of RA 9054.

Section 5, BP 881 Basis for Holding of Special Elections

The unconstitutionality of Section 7(1), Article VII of RA 9054 and Sections 3, 4 and 5 of RA 10153 leaves **the holding of special elections as the only constitutionally permissible option to fill up the offices of the ARMM Governor, Vice-Governor and members of the Regional Legislative Assembly after 30 September 2011**. Section 5 of *Batas Pambansa Bilang* 881 (BP 881), as amended, authorizes respondent COMELEC to hold special elections "***[w]hen for any serious cause*** such as x x x loss or destruction of election paraphernalia or records x x x ***the holding of a free, orderly and honest election should become impossible in any political subdivision*** x x x."[76] The tight timeframe in the enactment and signing into

[75] The cases invoked by the petitioner in G.R. No. 197282, namely, *Sambarani v. Commission on Elections*, G.R. No. 160427, 15 September 2004, 438 SCRA 319 and *Adap v. Commission on Elections*, G.R. No. 161984, 21 February 2007, 516 SCRA 403, are not in point. They all involve *barangay* officials, whose term of office is fixed by law, not by the Constitution.

[76] The provision reads in full: "Sec. 5. *Postponement of election*.— When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision, the Commission, *motu proprio* or upon a verified petition by any interested party, and after

law of RA 10153 on 30 June 2011, and the filing of the present petitions shortly before and after the signing, rendering impossible the holding of elections on 8 August 2011 as scheduled under RA 9333, is a cause analogous to the administrative mishaps covered in Section 5 of BP 881. The postponement of the ARMM elections was an unavoidable result of the time lag legislative and judicial processes normally entail. The ARMM officials to be elected in the special ARMM elections shall hold office until 30 June 2013, when the terms of office of elective national and local officials covered by the synchronized elections also expire.

Electoral and Other Reforms Must be Consistent With Principles of Regional Autonomy and Representative Democracy

Beyond the expressly stated policy in RA 10153 of synchronizing national and local elections, the OSG calls the Court's attention to the government's other policy goals in enacting RA 10153. The OSG presents RA 10153 as the cure for the ills plaguing the ARMM, manifested in the symptoms of padded voters' list, rampant criminality and highly dynastic politics, among others. "Genuine regional autonomy," in the OSG's view, starts upon the assumption to office of the newly elected officials on 30 June 2013, when the national government, through the OICs, is done cleaning the ARMM government.[77]

In the first place, these policy goals to reform the ARMM society are nowhere stated or even implied in RA 10153. Electoral reform is mentioned in the President's certification on the urgency of HB 4146 and SB 2756 but RA 10153 itself is silent on such policy goal. The only apparent reason for the enactment of RA 10153 is to synchronize the ARMM elections with the national and local elections, a policy the legislature can pursue

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due notice and hearing, whereby all interested parties are afforded equal opportunity to be heard, shall postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause for such postponement or suspension of the election or failure to elect."

[77] OSG Memorandum, pp. 5-6, 50-58.

even in the absence of a constitutional directive to synchronize all elections.

In any event, it is a terribly dangerous precedent for this Court to legitimize the cancelation of scheduled local elections in the ARMM and allow the appointment of OICs in place of elected local officials for the purpose of reforming the ARMM society and curing all social, political and economic ills plaguing it. If this can be done to the ARMM, it can also be done to other regions, provinces, cities and municipalities, and worse, it can even be done to the entire Philippines: cancel scheduled elections, appoint OICs in place of elective officials, all for the ostensible purpose of reforming society – a purpose that is perpetually a work-in-progress. This Court cannot allow itself to be co-opted into such a social re-engineering in clear violation of the Constitution.

One has to see the problem in the Muslim South in the larger canvass of the Filipino Muslims' centuries-old struggle for self-determination. The Muslim problem in southern Mindanao is rooted on the Philippine State's failure to craft solutions sensitive to the Filipino Muslims' "common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics."[78] The framers of the 1987 Constitution, for the first time, recognized these causes and devised a solution by mandating the creation of an ***autonomous region*** in Muslim Mindanao, a political accommodation radically vesting State powers to the region, save those withheld by the Constitution and national laws.[79] Lying at the heart of this unprecedented

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[78] Section 15, Article X of the Constitution.

[79] Section 20, Article X of the Constitution enumerates these powers, thus:

Section 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

1. Administrative organization;
2. Creation of sources of revenues;
3. Ancestral domain and natural resources;
4. Personal, family, and property relations;

empowerment is the Constitution's guarantee that the executive and legislative offices of the autonomous region shall be "***be elective and representative of the constituent political units***."[80] The essence of an autonomous region is the untrammeled right of the people in the region to freely choose those who will govern them. A region is not autonomous if its leaders are not elected by the people of the region but appointed by the central government in Manila. It is the solemn duty of this Court to uphold the genuine autonomy of the ARMM as crafted by the framers and enshrined in the Constitution. Otherwise, our Muslim brothers in the South who justifiably seek genuine autonomy for their region would find no peaceful solution under the Constitution.

By disenfranchising voters in the ARMM, even for a single electoral cycle, denying them their fundamental right of electing their leaders and representatives, RA 10153 strikes at the heart of the Constitution's project of creating autonomous regions. In the opinion of the biggest Islamic rebel group in the region, the cancelation of elections under RA 10153 **"speaks loudly why this entity [ARMM] is not autonomous; it is controlled, nay dictated, by Manila**."[81] Contrary to the OSG's view, denial of the right of suffrage is *always* too high a price to pay in exchange for promised reforms to be undertaken by OICs with no mandate from the people. Incidentally, the OICs to be appointed under RA 10153 are not even barred from running in the next ARMM elections, immediately putting at risk the promised

5. Regional urban and rural planning development;

6. Economic, social, and tourism development;

7. Educational policies;

8. Preservation and development of the cultural heritage; and

9. Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

Section 17, Article X provides: "All powers, functions, and responsibilities not granted by *this Constitution* or *by law* to the autonomous regions shall be *vested* in the National Government."

[80] Section 18, Article X of the Constitution.

[81] "*MILF To Fight For Self-Determination*" reported in *http:// mindanaoexaminer.com/news.php? news _id=20110810014922* (last visited on 16 September 2011).

reforms due to obvious conflict of interest.

The ARMM enjoys no monopoly of the evils the government now belatedly claims it wants to eradicate in passing RA 10153. Private armies and political dynasties litter the length and breadth of this archipelago and spurious voters' registration has perennially polluted the national voters' list. The solutions to these problems lie not in tinkering with democratic processes but in addressing their root causes. Notably, the government recently upgraded the country's age-old manual elections into an automated system, ridding the elections of the fraud-prone manual system, without skipping a single electoral cycle. Similarly, the cleansing of the voters' list is on track, with the incumbent head of respondent COMELEC himself admitting that the COMELEC is now 65%-70% done with biometrics registration.[82]

In reviewing legislative measures impinging on core constitutional principles such as democratic republicanism, the Court, as the last bulwark of democracy, must necessarily be deontological. **The Court must determine the constitutionality of a law based on the law's adherence to the Constitution, not on the law's supposed beneficial consequences**. The laudable ends of legislative measures cannot justify the denial, even if temporal, of the sovereign people's constitutional right of suffrage — to choose freely and periodically "those whom they please to govern them."[83] The Court should strike a balance between upholding constitutional imperatives on regional autonomy and republican democratic principles, on the one hand, and the incumbent administration's legislative initiative to synchronize elections, on the other hand. Had it done so here, the Court would have faithfully performed its sworn duty to protect and uphold the Constitution without fear or favor.

ACCORDINGLY**,** I vote to *grant* in part the petitions in G.R. Nos. 196271, 197221, 197280, 197282, 197392 and 197454

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[82] OSG Memorandum, p. 6.

[83] *Borja v. Commission on Elections*, 356 Phil. 467, 475 (1998) citing *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 131 L.Ed.2d 881 (1995).

and declare *UNCONSTITUTIONAL* Sections 3, 4 and 5 of Republic Act No. 10153. Respondent Commission on Elections should be ordered to hold, as soon as possible, special elections in the Autonomous Region in Muslim Mindanao for the positions of Governor, Vice-Governor and members of the Regional Legislative Assembly. The officials elected in the special elections should hold office until 30 June 2013. Pending the holding of special elections and the assumption to office of the elected ARMM Governor, the President may appoint an officer-in-charge in the office of the ARMM Governor.

I further vote to declare *UNCONSTITUTIONAL* the second sentence of Section 7(1), Article VII and Sections 1 and 3, Article XVII of Republic Act No. 9054.

DISSENTING OPINION

VELASCO, JR., *J.*:

I join Justice Carpio's dissent and agree that the "[C]ongress' power to provide for the simultaneous holding of elections for national and local officials x x x does not encompass the power to authorize the President to appoint officers-in-charge in place of elective officials x x x. To hold otherwise is to sanction the perversion of the Philippine State's democratic and republican nature," and so sustain the holdover of the incumbent ARMM officials pending the election and qualification of their successors.

At bar are original actions assailing the validity of statutes and bills on the holding of elections in the Autonomous Region in Muslim Mindanao (ARMM), the latest of which is Republic Act No. (RA) 10153 entitled *An Act Providing for the Synchronization of the Elections in the Autonomous Region In Muslim Mindanao (ARMM) with the National and Local Elections and for Other Purposes*. RA 10153 provides, in part:

SECTION 1. Declaration of Policy.—In accordance with the intent and mandate of the Constitution and Republic Act No. 7166, entitled: "An Act Providing for Synchronized National and Local Elections

and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes", it is hereby declared the policy of the State to synchronize national and local elections. Pursuant thereto, the elections in the Autonomous Region in Muslim Mindanao (ARMM) is hereby synchronized with the national and local elections as hereinafter provided.

SEC. 2. Regular Elections.—The regular elections for the Regional Governor, Regional Vice Governor and Members of the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao (ARMM) shall be held on the second (2nd) Monday of May 2013. Succeeding regular elections shall be held on the same date every three (3) years thereafter.

SEC. 3. Appointment of Officers-in-Charge.—The President shall appoint officers-in-charge for the Office of the Regional Governor, Regional Vice Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office.

The petitions assailing the validity of RA 10153 argue that (1) the postponement of the ARMM elections to the second Monday of May 2013 undermines the republican and autonomous region of the ARMM, in violation of the Constitution and RA 9054,[1] the expanded organic law of ARMM; and (2) granting the President the power to appoint OICs unconstitutionally expands his power over the ARMM to encompass not only general supervision but also control.

The *ponencia* sustains the constitutionality of RA 10153 *in toto*, while Justice Carpio's dissent declares unconstitutional Sections 3, 4, and 5 of RA 10153 authorizing the President to appoint OICs in place of elective ARMM officials, ordering instead the respondent COMELEC "to hold special elections in the ARMM as soon as possible." On this, I am in full agreement with Justice Carpio's dissent.

[1] Entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, amending for the purpose Republic Act No. 6734, entitled 'An Act Providing For The Autonomous Region in Muslim Mindanao, as Amended.'"

But unlike Justice Carpio's curious proposal that in the *interregnum* and pending the holding of special elections, the President has the power to appoint an OIC in the Office of the ARMM Governor, I differ and vote for the holding over of the incumbent pursuant to Sec. 7(1), Article VII of RA 9054, which states:

> Sec. 7. *Terms of Office of Elective Regional Officials.* – (1) Terms of Office. **The terms of office of the Regional Governor, Regional Vice Governor and members of the Regional Assembly** shall be for a period of three (3) years, which shall begin at noon on the 30th day of September next following the day of the election and shall end at noon of the same date three (3) years thereafter. **The incumbent elective officials of the autonomous region shall continue in effect until their successors are elected and qualified.** (Emphasis supplied.)

The *ponencia* holds that the foregoing provision is unconstitutional in accordance with our previous ruling in *Osmeña v. COMELEC*.[2] However, it must be noted that the issue in *Osmeña* on the power of local elective officials to hold on to their respective positions pending the election of their successors was not the very *lis mota* of the case. The main issue in *Osmeña* was the proposed **desynchronization** of the elections. Hence, the statement on the issue of holdover can be considered a mere *obiter dictum* that cannot be held a binding judicial precedent.

To recall, in *Osmeña*, the Congress enacted RA 7056, entitled *An Act Providing for the National and Local Elections in 1992, Paving the Way for Synchronized and Simultaneous Elections beginning 1995, and Authorizing Appropriations Therefor*. Sec. 2 provided for two (2) separate elections in 1992 as follows:

> Section 2. Start of Synchronization. — To start the process of synchronization of elections in accordance with the policy herein before declared, there shall be held.

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[2] G.R. Nos. 100318, 100308, 100417 & 100420, July 30, 1991, 199 SCRA 750.

(a) An election for President and Vice-President of the Philippines, twenty-four (24) Senators, and all elective Members of the House of Representatives on the **second Monday of May 1992**; and

(b) An election of all provincial, city, and municipal elective officials on the **second Monday of November 1992**. (Emphasis supplied.)

Hence, the Court struck down RA 7056 on the principal ground that it occasioned a desynchronized election, *viz*:

With the clear mandate of the 1987 Constitution to hold synchronized (simultaneous) national and local elections in the second Monday of May, 1992, the inevitable conclusion would be **that Republic Act 7056 is clearly violative of the Constitution because it provides for the holding of a desynchronized election.** Stated differently, Republic Act 7056 particularly Sections 1 and 2 thereof contravenes Article XVIII, Sections 2 and 5 of the 1987 Constitution. (Emphasis supplied.)

Clearly, the determination of the validity of RA 7056 in *Osmeña* relied mainly on the resolution of the issue of the postponement of elections, and the judicial opinion on the issue of holdover was not necessary for the disposition of the case. Since an opinion expressed by the Court in the decision upon a cause "by the way"—*i.e.*, incidentally or collaterally, and not directly upon the question before it—is not a binding precedent,[3] **the *obiter dictum* of the Court in Osmeña on the issue of holdover is not a binding judicial doctrine material to the resolution of the issue on desynchronization.**

Nonetheless, even assuming that the pronouncement in *Osmeña v. COMELEC* on the issue of holdover is not an *obiter dictum*, the facts of the present case do not justify a similar conclusion, since the rule of *stare decisis et non quieta movere* states that **a principle of law laid down by the court as applicable to a certain state of facts will only be applied to cases involving the same facts**.[4]

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[3] *Delta Motors Corporation v. Court of Appeals*, G.R. No. 121075, July 24, 1997, 276 SCRA 212, 223; *Auyong Hian v. Court of Tax Appeals*, G.R. No. L-28782, 12 September 1974, 59 SCRA 110, 120.

[4] *Confederation of Sugar Producers Association, Inc. v. DAR*, G.R. No. 169514, March 30, 2007, 519 SCRA 582, 618.

A comparison of the factual milieu in *Osmeña* and the instant petition reveals an ocean of dissimilarities. In *Osmeña*, RA 7065 provided for synchronization of the national and local elections in 1995 but it also prescribed that the national elections will be held in May, 1992 while the local elections will be held in November 1992. There is also no provision for the President to appoint OICs. Meanwhile, in RA 10153, the law provided for synchronization in May 2013 but suspended the elections scheduled in August, 2011 and authorized the President to appoint OICs. In view of the substantial and significant differences in the factual setting of the two cases, then it cannot be gainsaid that the *Osmeña* ruling is not a precedent to the instant petitions.

Further, the Court in *Osmeña* opined that the holdover of elective officials espoused by RA 7065 violated Sec. 2, Art. XVIII and Sec. 8, Art. X of the Constitution by adopting and applying certain selected American jurisprudence. The assailed *obiter dictum* reads:

> [T]here are other provisions of the Constitution violated by RA 7056. For one, there is Section 2, Article XVIII of the Constitution which provides that the local official first elected under the Constitution shall serve until noon of June 30, 1992. But under Sec. 3 of RA 7056, these incumbent local officials shall hold over beyond June 30, 1992 and shall serve until their successors shall have been duly elected and qualified. It has been held that:
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> > It is not competent for the legislature to extend the term of officers *by providing that they shall hold over* until their successors are elected and qualified where the *constitution has in effect or by clear implication prescribed the term*, (citing *State v. Clark* 89 A. 172, 87 Conn537) and when the Constitution fixes the day on which the official term shall begin, there is no legislative authority to continue the office beyond that period, even though the successors fail to qualify with the time. (*See* 67 CJS p.379, Citing Minn.- *State v. McIntosh*, 122 N.W. 462, Emphasis supplied)
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> In American Jurisprudence it has been stated as follows:
>
> > It has been broadly stated that the legislature cannot, by an act postponing the election to fill an office the term of which is limited by the Constitution, extend the term of the incumbent

beyond the period as limited by the Constitution. (43 Am Jur., 152, page 13) citing *Gemmer v. State*, 71 NE 478.

Also, there is Section 8, Article X of the Constitution which provides that:

> The term of office of elective local officials, except barangay officials which shall be determined by law shall be three years and no such official shall serve for more than three consecutive terms x x x.

A closer look of the American cases on which the above quoted *American Jurisprudence (*Am Jur*)* and *Corpus Juris Secundum* (CJS) passages were ultimately based, however, reveals that they do not justify the conclusions reached in *Osmeña* and so, with more reason, they are inapplicable to the present case.

The passage quoted from CJS was based on *State v. Clark*[5] and *State v. McIntosh*.[6] The 1913 case of *State v. Clark*, however, does not have the same factual milieu as *Osmeña* or this case: the office involved in *State v. Clark* was not elective but appointive and a successor has already been appointed.[7] More importantly, the pivotal issue of the case was whether an appointment for a period beyond the term set by the constitution vests the appointed

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[5] 89 A. 172, 87 Conn. 537.

[6] 122 N.W. 462, 109 Minn. 18.

[7] *State v. Clark*, *supra* at 173. The Supreme Court of Errors of Connecticut narrated the facts as: "In January 1911, the respondent was appointed by the General Assembly, judge of said city police court 'for the term of two years from and after the first day of July 1911, and until his successor is duly appointed and qualified.' He qualified and accepted the office and has continued to hold and perform its duties until the present time. The General Assembly in 1913 appointed no successor of the respondent and adjourned sine die on the 4th day of June 1913. On June 24, 1913, and while the General Assembly was not in session, the Governor, acting under a statute providing that he may fill vacancies, appointed and commissioned the relator judge of said city police court 'to fill the vacancy which will occur on the 1st day of July 1913 by the expiration on that day of the term of office of Walter H. Clark.' The relator accepted the appointment, qualified, and demanded possession of the office on July 1, 1913, which the respondent refused. **This action is brought to determine whether, since July 1, 1913 the respondent has had legal title to the office**." (Emphasis supplied.)

official with a *de jure*, as opposed to a *de facto*, title to occupy the office beyond the constitutionally prescribed period.[8] That is not the issue of the present case.

Similarly, *State v. McIntosh* is not squarely in point with either *Osmeña* or this case involving as it does the validity of an act performed by the outgoing members of the board of county commissioners less than two hours before their successors, who were already elected, were qualified to assume office.[9] The principal doctrine laid down in *State v. McIntosh* was the limitation of the acts performed by outgoing officials to the closing up of pending matters and to matters of necessity, and not to matters naturally pertaining to the official year. The case did not preclude the possibility of a holdover when no successor has yet been elected. In fact, the case intimated that the rule is that in the absence of constitutional restrictions, **outgoing officers are entitled to holdover until such time as their successors will qualify**.[10] Thus, the cases of *Clark* and *McIntosh* cited in *Osmeña* are likewise not precedent to the instant petitions.

Indeed, **numerous American cases laid down the rule allowing holdover of officials beyond the term set by the Constitution as long as <u>there is no constitutional proscription against it</u>**. This is obvious in the CJS passages omitted in *Osmeña v. COMELEC.* The annotation quoted from 67 CJS 379 in *Osmeña* on holding over is incomplete and the full and complete text reads:

> *It is not competent for the legislature to extend the term of officers by providing that they shall hold over until their successors are elected and qualified where the constitution has in effect or by clear implication prescribed the term and when the Constitution fixes the day on which the official term shall begin, there is no legislative authority to continue the office beyond that period, even though the successors fail to qualify with the time.* (Quoted in *Osmeña*)

When the legislature has the power to fix the commencement of the

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[8] *Id.* at 175.

[9] *State v. McIntosh, supra* at 463.

[10] *Id.* at 464.

term, **a provision for holding over under such circumstances is not in violation of a constitutional provision that the term of no officer shall be extended to a longer period than that for which he is elected** or appointed, and **such a provision, contained in an act creating an office, is not violative of a constitutional provision that the legislature shall not create any office, the tenure of which shall be longer than a prescribed number of years**, when a like provision is in the constitution.[11] (Emphasis supplied.)

Furthermore, on the specific topic of "holding over," the CJS provides:

The term "holding over" when applied to an officer, implies that the office has a fixed term, and the incumbent is holding over into the succeeding term. Since the public interest ordinarily requires that public offices should be filled at all times without interruption, as a general rule, **in the absence of an express or implied constitutional or statutory provision to the contrary, an officer is entitled to hold his office until his successor is appointed or chosen and has qualified**.[12] (Emphasis supplied.)

As previously explained, the annotation that "it is not competent for the legislature to extend the term of officers by providing that they shall hold over until their successors are elected and qualified where the constitution has in effect or by clear implication prescribed the term"[13] has no application to the instant petitions, because the cases of *Clark* and *McIntosh* upon which it is anchored are factually dissimilar to the herein petitions. I point out, however, that the second sentence in the annotation that a provision for holdover is not unconstitutional when the legislature has the power to fix the commencement of the term applies squarely to RA 9054, particularly its assailed Sec. 7, Art. VII which, to reiterate, reads:

SEC. 7. *Terms of Office of Elective Regional Officials.* – (1) Terms of Office. **The terms of office of the Regional Governor,**

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[11] Sec. 67 C.J.S., p. 379.

[12] *Id.* at 380.

[13] *Id.* at 379.

Regional Vice Governor and members of the Regional Assembly shall be for a period of three (3) years, which shall begin at noon on the 30th day of September next following the day of the election and shall end at noon of the same date three (3) years thereafter. **The incumbent elective officials of the autonomous region shall continue in effect until their successors are elected and qualified.** (Emphasis supplied.)

It cannot be disputed that the Organic Act of Muslim Mindanao (RA 6734) did not provide for the commencement of the term of the Governor, Deputy Governor and the Members of the Regional Legislative Assembly of ARMM. As such, it falls on the shoulders of Congress to fix the date of elections which power is concededly legislative in nature. In the exercise of this power, Congress enacted RA 9054 which set the elections of the ARMM officials on the second Monday of September 2001. In addition, said law, in the aforequoted Sec. 7, Art. VII of said law provided for the holdover of said officials until their successors shall have been duly elected and qualified. Following the jurisprudence cited in CJS, then the provision of holdover in Sec. 7, Art. VII of RA 9054 is valid and does not offend the Constitution. To restate, "when the legislature has the power to fix the commencement of the term, a provision for holding over under such circumstances is not in violation of a constitutional provision that the term of no officer shall be extended to a longer period than that for which he is elected or appointed, and such a provision x x x is not violative of a constitutional provision that the legislature shall not create any office, the tenure of which shall be longer than a prescribed number of years x x x."[14] Ergo, it is clear as day that the holdover provision in RA 9054 is valid and constitutional.

More importantly, **neither Sec. 2, Art. XVIII or Sec. 8, Art. X of the Constitution contain any provision against a holdover by an elective local official of his office pending the election and qualification of his successor.** To recall, Sec. 2, Art. XVIII of the Constitution provides:

[14] *Id.*

Section 2. The Senators, Members of the House of Representatives, and the local officials first elected under this Constitution shall serve until noon of June 30, 1992.

Of the Senators elected in the elections in 1992, the first twelve obtaining the highest number of votes shall serve for six years and the remaining twelve for three years. (Emphasis supplied.)

Similarly, the absence of any prohibition in Sec. 8, Art. X of the Constitution is clear:

Section 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Thus, the Constitution does not bar a holdover situation. Accordingly, Congress may legislate what elective positions can be accorded holdover privilege of the incumbent officials.

Also, besides the absence of a constitutional prohibition against a holdover, the legislature was conferred by the Constitution with (1) the power to create the executive and legislative offices in the ARMM, with the sole limitation that they be elective and representative, and therefore, (2) the authority to determine the commencement of the term of the ARMM local officials. Hence, in conformity with the foregoing American cases, the holdover clause in Sec. 7(1), Art. VII of RA 9054 is constitutional and must be respected as a valid legislative intent.

Even under the passage quoted by *Osmeña* from Am Jur, the same conclusion can be reached considering that it is not disputed in this case that the possibility of holdover by the ARMM officials is but incidental to the synchronization of the ARMM elections with the national elections. Hence, the holdover of the incumbent ARMM officials can be sustained. Read in full, the passages from the Am Jur provide that a holdover occasioned by a legislation postponing an election, which is not passed for the

sole purpose of extending official terms but which merely effects an extension as an incidental result,[15] is valid:

It has been broadly stated that the legislature cannot, by an act postponing the election to fill an office the term of which is limited by the Constitution, extend the term of the incumbent beyond the period as limited by the Constitution. (Quoted in Osmeña). It has been declared, however, that **legislation postponing an election which is not passed for the sole purpose of extending official terms, but which merely effects an extension as an incidental result, does not affect a legislative appointment of his successor.** In this respect, however, a distinction is sometimes drawn between constitutional and statutory offices. **Postponement of an election by the legislature does not fly in the face of the Constitution so long as such postponement is reasonable and does not destroy the elective character of the office affected**.[16] (Emphasis supplied.)

The part quoted by *Osmeña v. COMELEC* does not apply to the case at bar, since the facts of the cases from which the quoted sentence was culled—*Gemmer v. State*,[17] *State ex rel. Hensley v. Plasters*,[18] and *Commonwealth v. Gamble*[19]—are not the same as either the facts of *Osmeña v. COMELEC* or the present case: in *Gemmer v. State* the holdover of the officials per se was not declared invalid, rather, since the date of election was specifically provided in the state's constitution, the court found the postponement of the elections invalid and unconstitutional and so declared the holdover incidental to the postponement unnecessary and equally invalid; similarly, *State ex rel. Hensley v. Plasters* involved a nullification of the

[15] 43 Am. Jur. 152, p. 13.

[16] *Id.* at 13-14. It is further held, "The use of the phrase 'legislative appointment' covers holdover of offices since a legislative extension of the term of an incumbent is virtually an appointment of the office for the extended time x x x. The rule has been applied to statutes x x x authorizing an incumbent to hold over until qualification of his successor, as well as statutes specifically extending the tenure of office."

[17] 71 NE 478.

[18] 74 Neb. 652, 105 N.W. 1092, 3 L.R.A.n.S. 887, 13 Am.Ann.Cas. 154.

postponement of an election and, hence, the nullification of the incidental holdover; and *Commonwealth v. Gamble* principally involved the declaration of the abolition of a judicial office created by the constitution as an unwarranted intrusion by the legislature into judicial independence. Clearly, the passage from the Am Jur quoted by *Osmeña v. COMELEC* and the cases of *Gemmer*, *Hensley*, and *Gamble* cited in Am Jur cannot be considered applicable to the present case.

Furthermore, it should be considered that **a holdover is not technically an extension of the term** of the officer but a recognition of the incumbent as a *de facto* officer, which is made imperative by the necessity for a continuous performance of public functions. In *State v. Clark*, the **Supreme Court of Errors of Connecticut** held:

> The claim of the respondent that it was his right and his duty to hold over and exercise the duties and functions of the office after the expiration of his term until his successor should be appointed may be conceded. **The public interest requires that such officers shall hold over when no successor is ready and qualified to fill the office** x x x. **The rule has grown out of the necessities of the case, so that there may be no time when such offices shall be without an incumbent. But such hold-over incumbent is not a *de jure* officer. He is in for no term, but holds the office only temporarily until the vacancy can be filled by competent authority** x x x.[20] (Emphasis supplied.)

Thus, considering the weight of authority and the circumstances of the present case, the incumbent ARMM officials have the right, as well as the duty, to continue in office under the principle of holdover pending the holding of the special elections and the election and qualification of their successors. This is to prevent a vacuum in the government services. It is imperative that there shall be continuity in the vital services so as not to prejudice the public in general. In *Adap v. COMELEC*,[21] it was held that "the application of the holdover principle preserves continuity in the transaction of official business and prevents hiatus in

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[19] 62 Pa. 343, 1 Am Rep. 442.

[20] 89 A. 172, p. 175, 87 Conn. 537, 52 L.R.A., N.S., 912

government pending the assumption of a successor into office." In *Topacio Nuevo v. Angeles*,[22] the Court explained that cases of extreme necessity justify the application of the holdover principle.

The majority is of the view that if a public office is created by the Constitution with a fixed term or if the term of a public office created by Congress is fixed by the Constitution, Congress is devoid of any power to change the term of that office. Hence, the holdover of the incumbent officials which amounts to an appointment by Congress is unconstitutional. I beg to disagree. RA 9054, by providing a holdover of the incumbent officials did NOT extend the term of said officials. RA 9054 is clear and devoid of any equivocation. The law merely provided for a procedure in case the scheduled elections for one reason or another do not push through and COMELEC resets the elections pursuant to its power under Sec. 5 of the Omnibus Election Code (*Batas Pambansa Blg*. 881). The possibility of a vacuum in the performance of essential government services is addressed by the holdover provision to avoid any uncertainty, as in this case, as to the procedure on how the gap is resolved in determining the interim official who will perform the functions of the incumbent. As aptly pointed out by Justice Carpio in his dissent, the necessity of providing for a successor in the office contested in the last elections in case of failure of elections is "absolutely necessary and unavoidable to keep functioning essential government services."

And to reiterate a previous point, **a holdover is not technically an extension of the term of a sitting officer but a recognition of the incumbent as a *de facto* officer** made necessary to obviate a detrimental hiatus in public service.

A scenario where Congress passes a law that provides holdover for all the elective officials (except *barangay* officials) from President down to the local officials is flawed in the sense that if the President does not qualify, Sec. 7, Art. VII of the Constitution kicks in. However, we can concede that Congress

[21] G.R. No. 161984, February 21, 2007, 516 SCRA 403, 412.

may so provide if the President is not elected. In this factual setting, it is claimed that the Congress has arrogated to itself the power to lengthen the terms of office of said officials in contravention of the Constitution. Again, I submit that the power of holdover in the imagined statute does NOT lengthen the prescribed terms of offices of said officials under the Constitution, unless said law also postpones the elections as in RA 10153. In such a case, I agree that the postponement of the elections and the attendant holdover provision are clear contraventions of the basic law. In RA 9054, however, the elections are fixed but with the corollary holdover provision in case elections are not held. To me, this is perfectly valid and constitutional. To reiterate, the holdover provision has no relevance to the prescribed terms of offices in the Constitution and is simply a temporary measure to avoid a vacuum in the office.

Further, while the Local Government Code does not authorize the holdover of elective officials, there is nothing to prevent Congress from subsequently enacting a law that effectively amends the general law for local governments and empowers, pursuant to its law making power under the Constitution, local officials to hold over in case of failure of elections or in case all the elective officials failed to qualify. RA 9054 did not trench on the Constitution, because there is no prohibition in the Constitution against the holdover of elective officials. Consequently, Congress by law may provide for holdover as it did in RA 9054 and other laws postponing elections in the ARMM, namely, RA 7647, RA 8746, RA 8753, RA 8953 and RA 9140. Over the passage of time, these laws were not assailed as unconstitutional. Even up to the present time, these laws have not been challenged as void. As a matter of fact, it appears that not one of the petitioners sought the nullification of RA 9054 as unconstitutional. The Court, without such an issue being presented in any of these fused petitions, should not declare the assailed portion of RA 9054 unconstitutional. However, even if the Court feels it proper to take the bull by the horns on that issue, the outcome will be in favor of the validity and constitutionality of Sec. 7, Art. VII of RA 9054.

The alternative choice to allow the President to appoint the ARMM Governor pending the holding of the special elections is not only intrinsically infirm but also constitutionally invalid for violating the only limitation provided by the Constitution when it conferred on Congress the power to create the local offices of the ARMM.

Sec. 18(1), Art. X of the Constitution provides:

> The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multi-sectoral bodies. **The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units.** The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws. (Emphasis supplied.)

Considering the express requirement that the executive and legislative offices in the ARMM be both "elective and representative," it should not have even been contemplated to allow the President to substitute his discretion for the will of the electorate by allowing him to appoint, no matter how briefly, the ARMM Governor pending the holding of the special elections.

As can be clearly gleaned from Sec: 16, Art. VII of the Constitution, the appointing power of the President is limited only to appointive offices. Consider:

> Section 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. **He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint**. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the

heads of departments, agencies, commissions, or boards. (Emphasis supplied.)

Hence, this Court cannot expand the appointing power of the President to encompass offices expressly required by the Constitution to be "elective and representative." The republican form of government can only be preserved by ensuring that elective offices can only be filled by persons voted by the electors.

Even the *ponencia* recognizes that the grant of the power to appoint the ARMM officials to the President would trample on the democratic and republican nature of our government as "the people's right to choose the leaders to govern them may be said to be systematically withdrawn to the point of fostering an undemocratic regime x x x. [It] would likewise frontally breach the 'elective and representative' governance requirement of Section 18 Article X of the Constitution." However, the *ponencia* evades the application of its own observation to the present case on the ground that "this conclusion would not be true under the very limited circumstances contemplated under RA 10153 where the period is fixed and, more importantly, the terms of governance x x x will not systematically be touched or affected at all."

Clearly, the *ponencia* has discounted the consequences of this supposedly "limited" enroachment of the President into the very core of the "elective" and "representative" nature of the offices subject of the present petitions, which cannot be remedied by provisions setting the manner and procedure for the appointment of the OICs or their qualifications. **The fact still remains that Secs. 3, 4, and 5 of RA 10153 deprive the ARMM electorate of their choice of governors and legislators.**

Meanwhile, the holdover provision will not affect the elective and representative nature of the contested offices. For one, the periodic elections are prescribed by law and must be implemented. Even if there is failure of elections on the scheduled dates, COMELEC can set another day when it will be held. With this power of the COMELEC, the elections will, as sure as day, be held. Thus, the assurance of having an election has no relevance or connection to the holdover provision. The mode of holdover

is merely a stopgap solution whenever elections are not held and only for the period from the date of failed elections up to the eventual holding of the elections. **If we are to ensure democratic values, then the holding over of a duly elected official is undeniably the proper remedial action than the appointment of OICs who were not elected by the people** and were merely chosen by the President whose choices may be viewed, rightly or wrongly, as biased, he being the titular head of the administration political party.

Indeed, the appointment of a person by the President thwarts the popular will by replacing the person who has been previously elected by the ARMM electorate to govern them. On the other hand, an approval of the holdover of the incumbents pending the **election** and qualification of their successsors is a ratification of the constitutional right of the people of the ARMM to select the their own officials.

With more reason, **the authority granted the President to appoint the ARMM Governor cannot be excused by an expanded interpretation of the President's power of "general supervision" over local governments** in Sec. 4, Art. X of the Constitution, as it is basic that "general supervision" does NOT authorize the President or any of his alter egos to interfere with local affairs. In *Pimentel v. Aguirre*,[23] We explained the scope of the power of the general supervision, thus:

> Section 4 of Article X of the Constitution confines the President's power over local governments to one of general supervision. It reads as follows:
>
> "Sec. 4. The President of the Philippines shall exercise general supervision over local governments. x x x"
>
> This provision has been interpreted to exclude the power of control. In *Mondano v. Silvosa*, the Court contrasted the President's power of supervision over local government officials with that of his power of control over executive officials of the national government. It was emphasized that the two terms — supervision and control —

[22] G.R. No. 160427, September 15, 2004, 438 SCRA 312, 332-333.

[23] G.R. No. 132988. July 19, 2000, 336 SCRA 201, 214-215.

differed in meaning and extent. The Court distinguished them as follows:

> "x x x In administrative law, **supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties**. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter."

In *Taule v. Santos*, we further stated that **the Chief Executive wielded no more authority than that of checking whether local governments or their officials were performing their duties as provided by the fundamental law and by statutes**. **He cannot interfere with local governments, so long as they act within the scope of their authority.** "Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body," we said.

In a more recent case, *Drilon v. Lim*, the difference between control and supervision was further delineated. Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. **Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them**. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.

Under our present system of government, executive power is vested in the President. The members of the Cabinet and other executive officials are merely alter egos. As such, they are subject to the power of control of the President, at whose will and behest they can be removed from office; or their actions and decisions changed, suspended or reversed. In contrast, **the heads of political subdivisions are elected by the people. Their sovereign powers emanate from the**

electorate, to whom they are directly accountable. By constitutional fiat, they are subject to the President's supervision only, not control, so long as their acts are exercised within the sphere of their legitimate powers. By the same token, the President may not withhold or alter any authority or power given them by the Constitution and the law. (Emphasis supplied.)

Clearly, the President cannot fill the executive and legislative ARMM Offices by appointment, even temporarily and pending the holding of the special elections. Such action will not only be outside the scope of his constitutional authority to do so, but also further **violates the principle of local autonomy, nullifies the will of the electorate, and contravenes the only limitation set by the Constitution**—that the offices of the executive and legislative ARMM officials be "**elective**" and "**representative**."

Thus, as between the holdover provision per Sec. 7(1), Art. VII of RA 9054 and the nebulous unconstitutional exercise of the general supervision of the President to appoint the officers of ARMM, I submit that the holdover provision is undeniably superior, valid, constitutional, and anchored on relevant constitutional provision, pertinent laws, and foreign and local jurisprudence.

I, therefore, vote to allow the holdover of the ARMM officials pending the holding of the special elections and the election and qualification of their successors, and for the holding of the special elections within three (3) months from the finality of the decision. Consequently, Sec. 7(1), Art. VII of RA 9054 is valid and constitutional. In other respects, I join the dissent of Justice Carpio.

SECOND DIVISION

[A.C. No. 5325. October 19, 2011]

NEMESIO FLORAN and CARIDAD FLORAN, *complainants, vs.* **ATTY. ROY PRULE EDIZA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER IS EXPECTED TO BE TRUTHFUL, FAIR, AND HONEST IN PROTECTING HIS CLIENT'S RIGHT.— It is clear from the records that Atty. Ediza deceived the Spouses Floran when he asked them to unknowingly sign a deed of sale transferring a portion of their land to Atty. Ediza. Atty. Ediza also did the same to Epal when he gave Caridad several documents for Epal to sign. Atty. Ediza made it appear that Epal conveyed her rights to the land to him and not to the Spouses Floran. Moreover, when the sale of the Spouses Floran's land pushed through, Atty. Ediza received half of the amount from the proceeds given by the buyer and falsely misled the Spouses Floran into thinking that he will register the remaining portion of the land. Lamentably, Atty. Ediza played on the naïveté of the Spouses Floran to deprive them of their valued property. This is an unsavory behavior from a member of the legal profession. Aside from giving adequate attention, care and time to his client's case, a lawyer is also expected to be truthful, fair and honest in protecting his client's rights. Once a lawyer fails in this duty, he is not true to his oath as a lawyer.

2. ID.; ID.; ID.; DELIBERATE AND MALICIOUS ACT OF NOT PROTECTING THE CLIENT'S INTEREST, PENALTY THEREFOR.— The Court will not tolerate such action from a member of the legal profession who deliberately and maliciously did not protect his client's interests. x x x [W]e find that suspension from the practice of law for six months is warranted. Atty. Ediza is directed to return to the Spouses Floran the two (2) sets of documents that he misled the spouses and Epal to sign. Atty. Ediza is also directed to return the amount of ₱125,463.38, representing the amount he received from the proceeds of the sale of the land belonging to the Spouses Floran, with legal interest from the time of the filing of the administrative complaint until fully paid.

APPEARANCES OF COUNSEL

Basilio B. Pooten for complainants.
Villaroya Fortea & Apepe for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative case arose from an Affidavit/Complaint filed by spouses Nemesio (Nemesio) and Caridad (Caridad) Floran against Atty. Roy Prule Ediza (Atty. Ediza) for unethical conduct.

The Facts

Spouses Floran own an unregistered 3.5525 hectare parcel of land, particularly described as Cad. Lot No. 422-A, Pls-923 and situated in San Martin, Villanueva, Misamis Oriental. The land is covered by a tax declaration in the name of Sartiga Epal (Epal), a relative, who gave the property to the Spouses Floran.

On 9 August 1996, a certain Esteban Valera filed an action[1] for judicial foreclosure of mortgage on the house situated on the land owned by the Spouses Floran with the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 41. The action for foreclosure involved an amount of ₱7,500.

Spouses Floran sought the assistance of Atty. Ediza. On 24 September 1996, Atty. Ediza filed a Motion to Dismiss on the grounds of lack of jurisdiction and cause of action. On 23 October 1996, the RTC granted the motion to dismiss the case without prejudice based on non-compliance with *barangay* conciliation procedures under the Revised *Katarungang Pambarangay* Law.

Sometime in 1997, the Spouses Floran sold a hectare or 10,910 square meters of their 3.5525 hectare land to Phividec Industrial Authority (Phividec) for ₱25 per square meter totaling to the

[1] Docketed as Civil Case No. 96-516.

amount of ₱272,750, payable in three installments – (1) ₱55,132; (2) ₱120,000, and (3) ₱97,618. The installments were paid and released within the months of June to July 1997. The sale was evidenced by a Deed of Undertaking of Lot Owner executed by Nemesio and Phividec's representative and notarized by Atty. Ediza on 31 March 1997.

Phividec then required the couple to execute a waiver in Phividec's favor. The Spouses Floran again sought the help of Atty. Ediza for the preparation and notarization of the waiver. Atty. Ediza informed the Spouses Floran to have the original owner of the land, Epal, sign a Deed of Absolute Sale in their favor. Atty. Ediza gave the Spouses Floran several documents for Epal to sign. Caridad visited Epal in Bunawan, Agusan del Sur and acquired her approval and expressed assent to the conveyance, as evidenced by a Deed of Absolute Sale made by Epal in favor of Nemesio for ₱2,000.

On 11 June 1998, Nemesio and Phividec executed the Deed of Absolute Sale of Unregistered Land. Out of the total amount of ₱272,750, which Phividec paid and released to the Spouses Floran, Atty. Ediza received the amount of ₱125,463.38 for the titling of the remaining portion of the land, other expenses and attorney's fees.

Spouses Floran went back to Atty. Ediza several times to follow-up on the title. However, Atty. Ediza failed to fulfill his promises. After the lapse of two years, with the land still unregistered, the Spouses Floran asked Atty. Ediza for the return of their money. Atty. Ediza refused. Thus, Spouses Floran presented their complaint before the chapter president of the Integrated Bar of the Philippines (IBP) Misamis Oriental.

The IBP called the Spouses Floran and Atty. Ediza to a conference. During the dialogue, Atty. Ediza refused to return the money but promised to tear a document evidencing sale by the Spouses Floran to him of one hectare land of their property for ₱50,000. The Spouses Floran claimed that they had no knowledge that they executed such document in favor of Atty. Ediza and suspected that they might have signed a document

earlier which Atty. Ediza told them not to read. Afterwards, the Spouses Floran filed their formal complaint before the Supreme Court.

In the Complaint/Affidavit dated 8 September 2000, Caridad alleged that Atty. Ediza gave them certain documents, including a Deed of Absolute Sale, for Epal to sign in order to transfer the land in their name. However, the Spouses Floran later discovered that one of the documents given by Atty. Ediza is a deed of sale for a one hectare land in the same property executed by Epal in favor of Atty. Ediza for a consideration of ₱2,000. When the Spouses Floran confronted Atty. Ediza, he initially denied the document but then later promised to tear and destroy it.

In his Comment dated 23 January 2001, Atty. Ediza claimed that the Spouses Floran voluntarily gave him one hectare of the 3.5525 hectare land as payment for handling and winning the civil case for foreclosure of mortgage. Atty. Ediza explained that the Spouses Floran did not find the lot interesting, lacking in good topography. He also stated that the property only had an assessed value of ₱23,700 at the time it was presented to him.

Thereafter, towards the end of 1996, when Atty. Ediza learned that Phividec was interested to buy a hectare of the Spouses Floran's land, and considering that he has a hectare of undivided portion in the property, he suggested to the Spouses Floran that both of them sell half a hectare each and equally share in the proceeds of the sale. After Phividec made its full payment, Atty. Ediza gave fifty percent of the proceeds to the Spouses Floran and he kept the other half. Thereafter, Atty. Ediza wanted his remaining share in the land consisting of 4,545 square meters be titled in his name. Atty. Ediza conveyed this to the Spouses Floran and volunteered to take care of titling the land, including the Spouses Floran's remaining share, with no cost to them.

Atty. Ediza stated that since Phividec had not yet applied for a separate tax declaration which would segregate its portion from the remainder of the property, he thought of holding in

abeyance the separate survey on the remainder of the land. Also, Atty. Ediza was in a hurry to have the land titled with the intention of selling it so he informed the Spouses Floran to just follow up with Phividec.

At the IBP conference, Atty. Ediza stated that he only agreed to return the 4,545 square meter portion of the land to amicably settle the case with the Spouses Floran. He asserted that the Deed of Sale signed by the Spouses Floran in his favor served as payment for the dismissal of the case he handled for the Spouses Floran. Atty. Ediza denied that the money he received was intended for the titling of the remaining portion of the land. Atty. Ediza claimed that the complaint against him stemmed from a case where he represented a certain Robert Sabuclalao for recovery of land. The land was being occupied by the Church of the Assembly of God where Nemesio Floran serves as pastor.

In a Resolution dated 7 March 2001, the Court resolved to refer the case to the IBP for investigation, report and recommendation.

The IBP's Report and Recommendation

On 14 August 2008, the investigating commissioner of the Commission on Bar Discipline of the IBP submitted his Report and found that Atty. Ediza (1) failed to meet the standards prescribed by Rule 1.01 of Canon 1 and Canon 15, and (2) violated Rule 18.03 of Canon 18 of the Code of Professional Responsibility. The IBP recommended that Atty. Ediza be imposed the penalty of six months suspension from the practice of law.

In finding Atty. Ediza guilty of violating the Code of Professional Responsibility, the Investigating Commissioner opined:

> After careful evaluation of the claims of the parties *vis-a-vis* the documents available, the version of the complainants appear to be credible while that of the respondent is shot through with inconsistencies.
>
> xxx xxx xxx

b. The foreclosure case of complainants involved only ₱7,500.00 and respondent Ediza filed only a single motion and attended only two hearings. Thus, it is highly incredible [that] complainants whom respondent Ediza claims were destitute will voluntarily and generously donate to him 1 hectare of their land valued at ₱50,000.00. As it turned out, the 1 hectare portion is worth not only ₱50,000.00 [but] more than ₱200,000.00.

c. The deed of sale of a portion of complainants' land to respondent Ediza is admittedly simulated because while it states that the consideration for the sale is ₱50,000.00, neither party claims that any money was paid by respondent Ediza to complainants.

d. As a lawyer, Atty. Ediza must be aware that a deed of sale involving real property must be notarized to be enforceable. The document was unexplainably never notarized.

Thus, this Commission finds that respondent Ediza must have caused the complainants to unknowingly sign the deed of sale of a portion of their property in his favor. It may further be noted that in their complaint, complainants allege that they saw in the files of respondent Ediza a copy of deed of sale of a property executed by Sartiga Epal in favor of Atty. Ediza which he promised to destroy when confronted about it by complainants. This was never denied by Atty. Ediza.

Such conduct fails to come up to the standard prescribed by Canon 1.01 that "A lawyer shall not engage in unlawful, dishonest, immoral and deceitful conduct" and Canon 15 that "A lawyer shall observe candor, fairness and loyalty in all his dealings and transaction with his client."

On the second issue, x x x the claim of the complainants that they agreed to give ₱125,000.00 of the proceeds of the sale of their property to respondent Ediza to register the remaining portion also appears to be more credible for the following reasons:

1. There is no credible reason for complainants to expect and demand that respondent Ediza undertake the registration of their property except that they have paid for it. If they were aware that they gave 1 hectare of their property to respondent Ediza for handling their civil case and that they are not paying respondent Ediza to register their property, it is not likely that simple folks like them would be so bold to demand for such valuable service from him for

free.

2. There is no credible reason for respondent to willingly undertake for free for complainants the not so simple task of registering an untitled property.

3. As previously stated, the ₱125,000.00 given to respondent Ediza by complainants is obviously too generous for simply having handled the civil case involving only ₱7,500.00. There must have been another reason for complainants to willingly pay the said amount to respondent and the registration for their remaining property appears to be a credible reason.

It should also be noted that respondent Atty. Ediza does not even allege that he has taken any step towards accomplishing the registration of the property of the complainants prior to the filing of this complaint. Whether or not he agreed to do it for free or for a fee, respondent Ediza should have complied with his promise to register the property of complainants unless he has valid reasons not to do so. He has not also given any credible explanation why he failed to do so.

Such conduct of respondent Ediza violates Canon 18.03 that "A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

Atty. Ediza filed a Motion for Reconsideration. On 26 June 2011, in Resolution No. XIX-2011-433, the Board of Governors of the IBP affirmed the findings of the investigating commissioner. The resolution states:

RESOLVED to unanimously DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Board and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, for lack of substantial ground or reason to disturb it, the Board of Governors' Resolution No. XVIII-2008-401 dated August 14, 2008 is hereby AFFIRMED.

The Court's Ruling

After a careful review of the records of the case, we agree with the findings of the IBP and find reasonable grounds to hold respondent Atty. Ediza administratively liable.

The practice of law is a privilege bestowed by the State on those who show that they possess the legal qualifications for it. Lawyers are expected to maintain at all times a high standard of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their fourfold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility.[2]

Rule 1.01 of Canon 1, Canon 15, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility provide:

CANON 1

A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. x x x

CANON 15

A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

CANON 18

A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In the present case, the Spouses Floran assert that they had no knowledge that they signed a deed of sale to transfer a portion of their land in favor of Atty. Ediza. They also insist that Atty. Ediza failed to comply with his promise to register their property despite receiving the amount of ₱125,463.38. On the other hand, Atty. Ediza maintains that he acquired the land from the Spouses Floran because of their "deep gratitude" to him in the dismissal

[2] *Spouses Garcia v. Atty. Bala*, 512 Phil. 486 (2005).

of the civil case for foreclosure of mortgage. Atty. Ediza further claims that the amount of ₱125,463.38 which he received was his rightful share from the sale of the land.

It is clear from the records that Atty. Ediza deceived the Spouses Floran when he asked them to unknowingly sign a deed of sale transferring a portion of their land to Atty. Ediza. Atty. Ediza also did the same to Epal when he gave Caridad several documents for Epal to sign. Atty. Ediza made it appear that Epal conveyed her rights to the land to him and not to the Spouses Floran. Moreover, when the sale of the Spouses Floran's land pushed through, Atty. Ediza received half of the amount from the proceeds given by the buyer and falsely misled the Spouses Floran into thinking that he will register the remaining portion of the land.

Lamentably, Atty. Ediza played on the naïveté of the Spouses Floran to deprive them of their valued property. This is an unsavory behavior from a member of the legal profession. Aside from giving adequate attention, care and time to his client's case, a lawyer is also expected to be truthful, fair and honest in protecting his client's rights. Once a lawyer fails in this duty, he is not true to his oath as a lawyer.

In *Santos v. Lazaro*[3] and *Dalisay v. Mauricio*,[4] we held that Rule 18.03 of the Code of Professional Responsibility is a basic postulate in legal ethics. Indeed, when a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed in him by his client and makes him answerable not just to his client but also to the legal profession, the courts and society.

The Supreme Court, as guardian of the legal profession, has ultimate disciplinary power over attorneys. This authority to discipline its members is not only a right, but a moral and legal

[3] 445 Phil. 1 (2003).

[4] 496 Phil. 393 (2005).

obligation as well. The Court will not tolerate such action from a member of the legal profession who deliberately and maliciously did not protect his client's interests.

In view of the foregoing, we find that suspension from the practice of law for six months is warranted. Atty. Ediza is directed to return to the Spouses Floran the two (2) sets of documents that he misled the spouses and Epal to sign. Atty. Ediza is also directed to return the amount of ₱125,463.38, representing the amount he received from the proceeds of the sale of the land belonging to the Spouses Floran, with legal interest from the time of the filing of the administrative complaint until fully paid.

WHEREFORE, we find respondent Atty. Roy Prule Ediza administratively liable for violating Rule 1.01 of Canon 1, Canon 15, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. He is hereby *SUSPENDED* from the practice of law for six months, effective upon receipt of this Decision. He is *DIRECTED* to return to the Spouses Nemesio and Caridad Floran the two (2) sets of documents that he misled the spouses and Sartiga Epal to sign. He is further *ORDERED* to pay Spouses Nemesio and Caridad Floran, within 30 days from receipt of this Decision, the amount of ₱125,463.38, with legal interest from 8 September 2000 until fully paid. He is warned that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let a copy of this Decision be entered in the record of respondent as attorney. Further, let other copies be served on the IBP and the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

SO ORDERED.

Brion, Sereno, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[*] Designated Acting Member per Special Order No. 1114 dated 3 October 2011.

THIRD DIVISION

[A.M. No. MTJ-11-1793. October 19, 2011]
(Formerly A.M. OCA IPI No. 10-2238-MTJ)

ANTONIO Y. CABASARES, *complainant, vs.* **JUDGE FILEMON A. TANDINCO, JR., Municipal Trial Court in Cities, 8th Judicial Region, Calbayog City, Western Samar,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION, COMMITTED.— In this case, respondent Judge failed to render a decision within the reglementary period or to even ask for an extension of time. "The Court, in its aim to dispense speedy justice, is not unmindful of circumstances that justify the delay in the disposition of the cases assigned to judges. It is precisely for this reason why the Court has been sympathetic to requests for extensions of time within which to decide cases and resolve matters and incidents related thereto. When a judge sees such circumstances before the reglementary period ends, all that is needed is to simply ask the Court, with the appropriate justification, for an extension of time within which to decide the case. Thus, a request for extension within which to render a decision filed beyond the 90-day reglementary period is obviously a subterfuge to both the constitutional edict and the Code of Judicial Conduct." Evidently, respondent Judge failed to do any of these options.

2. ID.; ID.; ID.; PENALTY; ONLY FINE IS IMPOSED IN VIEW OF THE JUDGE'S RETIREMENT.— Sections 9 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision or order as a less serious charge with the following administrative sanctions: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In this case, since respondent Judge has already retired from the service, the only alternative left is to impose a fine. Accordingly, the Court sets the fine to ₱11,000.00 taking

into account the extent of delay it caused to the parties in said case. This fine shall be deducted from his retirement benefits.

D E C I S I O N

MENDOZA, *J.*:

This is an administrative complaint filed by complainant Antonio Y. Cabasares *(Cabasares)* against respondent, Judge Filemon A. Tandinco, Jr. *(respondent Judge)* of the Municipal Trial Court in Cities *(MTCC)*, 8th Judicial Region, Calbayog City, Western Samar, for undue delay in rendering a decision.[1]

The records disclose that on February 21, 1994, Cabasares filed a Complaint for Malicious Mischief against a certain Rodolfo Hebaya. The case was docketed as Criminal Case No. 8864 and subsequently assigned to the branch of respondent Judge. As early as February 27, 2002, the case had been submitted for decision, but respondent judge had yet to render a decision by the time the complaint was filed on November 6, 2009, which was a clear violation of Section 15 (1), Article VIII of the Constitution and Canon 3, Rule 3.05 of the Code of Judicial Conduct.[2]

In his Comment,[3] respondent Judge claimed that he only came to know of the present administrative complaint against him on December 7, 2009, thru Atty. Elizabeth Tanchoco, head of the Performance Audit Team at MTCC, Calbayog City. On the second day of the audit, he left for Tacloban City upon advice of his doctor and was confined at Divine Word Hospital because of high blood pressure from December 10-13, 2009. Thereafter, he was on leave from December 14-17, 2009 and returned to work only on December 18, 2009. Since it was Christmas time and due to his heavy workload, the case slipped his mind. Later, however, a decision on the case was prepared and promulgated

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

[2] *Id.* at 3.

[3] *Id.* at 11.

on January 14, 2010.[4] Thus, respondent Judge prayed that his explanation be deemed sufficient considering that he had already retired on January 15, 2010.

The Office of the Court Administrator *(OCA)*, in its Report dated June 1, 2010,[5] found the explanation of respondent judge inexcusable. Accordingly, the OCA made the following recommendations:

> RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court are our recommendations that:
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> 1. the instant complaint be RE-DOCKETED as a regular administrative matter;
>
> 2. respondent former Judge Filemon A. Tandinco, Jr. be found GUILTY of Undue Delay in rendering a Decision and violating Canon 3, Rule 3.05 of the Code of Judicial Conduct, and be FINED in the amount of ₱20,000.00 which shall be taken from his compulsory retirement benefits.[6]

In its Resolution dated August 25, 2010,[7] the Court required the parties to manifest whether they were amenable to submit the matter for resolution on the basis of the pleadings and available records. Only Cabasares manifested his willingness to submit the case based on the pleadings already filed.[8]

After a careful examination of the records of this case, the Court agrees with the recommendation of the OCA.

Section 15, Article VIII of the 1987 Constitution requires lower courts to decide or resolve cases or matters for decision or final resolution within three (3) months from date of submission. Complementary to this constitutional provision is Canon 1, Rule 1.02, of the Code of Judicial Conduct which instructs that

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[4] *Id.* at 13-16.

[5] *Id.* at 27-29.

[6] *Id.* at 29.

[7] *Id.* at 31.

[8] *Id.* at 32.

a judge should administer justice impartially and *without delay*.

Similarly, Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and to decide cases within the required period. All cases or matters must be decided or resolved by all lower courts within a period of three (3) months from submission.

In fact, the Court, in Administrative Circular No. 3-99 dated January 15, 1999, reminded all judges to meticulously observe the periods prescribed by the Constitution for deciding cases because failure to comply with the said period transgresses the parties' constitutional right to speedy disposition of their cases.[9] Thus, failure to decide cases within the ninety (90)-day reglementary period may warrant imposition of administrative sanctions on the erring judge.[10]

In this case, respondent Judge failed to render a decision within the reglementary period or to even ask for an extension of time.[11] "The Court, in its aim to dispense speedy justice, is not unmindful of circumstances that justify the delay in the disposition of the cases assigned to judges. It is precisely for this reason why the Court has been sympathetic to requests for extensions of time within which to decide cases and resolve matters and incidents related thereto. When a judge sees such circumstances before the reglementary period ends, all that is needed is to simply ask the Court, with the appropriate justification, for an extension of time within which to decide the case. Thus, a request for extension within which to render a decision filed beyond the 90-day reglementary period is obviously a subterfuge to both the constitutional edict and the

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[9] *Re: Cases submitted for Decision before Hon. Meliton G. Emuslan, Former Judge, Regional Trial Court, Branch 147, Urdaneta City, Pangasinan,* A.M. No. RTJ-10-2226, March 22, 2010, 616 SCRA 280, 282.

[10] *Office of the Court Administrator v. Garcia-Blanco*, 522 Phil. 87, 99 (2006).

[11] *Re: Report on the Judicial Audit Conducted in the RTC-Br. 220, Quezon City*, 412 Phil. 680, 684-685 (2001).

Code of Judicial Conduct."[12] Evidently, respondent Judge failed to do any of these options.

The Court cannot accept respondent Judge's explanation either that he failed to render the decision because he required medical attention. The case had long been due for decision before he was even hospitalized in 2009. His admission that the case "may have escaped his mind"[13] only shows that respondent Judge failed to adopt an effective court management system to carefully track the cases for decision or resolution. "A judge is expected to keep his own record of cases and to note therein the status of each case so that they may be acted upon accordingly and promptly. He must adopt a system of record management and organize his docket in order to bolster the prompt and effective dispatch of business."[14]

Sections 9 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC,[15] classifies undue delay in rendering a decision or order as a less serious charge with the following administrative sanctions: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

In this case, since respondent Judge has already retired from the service, the only alternative left is to impose a fine. Accordingly, the Court sets the fine to ₱11,000.00 taking into account the extent of delay it caused to the parties in said case. This fine shall be deducted from his retirement benefits.

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[12] *Re: Request of Judge Roberto S. Javellana, RTC-Br. 59, San Carlos City (Negros Occidental) for Extension of Time to decide Civil Cases Nos. X-98 & RTC 363,* 452 Phil. 463, 467 (2003).

[13] *Rollo,* p. 11.

[14] *Request of Judge Fatima Gonzales-Asdala, RTC-Br. 87, Quezon City for Extension Period to Decide CC No. Q-02-46950 & 14 others*, A.M. No. 05-10-618-RTC, July 11, 2006, 494 SCRA 442, 445-446.

[15] Promulgated on September 11, 2001 and took effect on October 1, 2001.

Once again, the Court cautions judges to be prompt in the performance of their solemn duty as dispenser of justice, for any undue delay corrodes the people's confidence in the judicial system.[16] Delay not only fortifies the belief of the people that the wheels of justice grind ever so slowly, but provokes suspicion, however unfair, of ulterior motives on the part of the judge.[17]

WHEREFORE, retired Judge Filemon A. Tandinco, Jr. of the Municipal Trial Court in Cities, 8th Judicial Region, Calbayog City, Western Samar is found *GUILTY* of undue delay in rendering a decision. Accordingly, he is ordered to pay a *FINE* in the amount of *ELEVEN THOUSAND PESOS* (₱11,000.00) to be deducted from the retirement benefits due and payable to him.

Let a copy of this decision be forwarded to the Office of the Court Administrator so that the remaining benefits due respondent are promptly released, unless there exists another lawful cause for withholding the same.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.,* concur.

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[16] *Atty. Montes v. Judge Bugtas*, 408 Phil. 662, 667 (2001).

[17] *Concillo v. Gil*, 438 Phil. 245, 250 (2002).

FIRST DIVISION

[A.M. No. P-10-2784. October 19, 2011]
(Formerly A.M. No. 05-3-138-RTC)

FALSIFICATION OF DAILY TIME RECORDS OF MA. EMCISA A. BENEDICTOS, ADMINISTRATIVE OFFICER I, REGIONAL TRIAL COURT, MALOLOS CITY, BULACAN

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; FALSIFICATION OF BUNDY CARDS IS TANTAMOUNT TO DISHONESTY; PENALTY.— In determining the appropriate penalty, the Court deems Benedictos's falsification of her bundy cards tantamount to dishonesty. This Court has defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.

2. ID.; ID.; ID.; ID.; THE COURT REFRAINED FROM IMPOSING ACTUAL PENALTY IN VIEW OF MITIGATING FACTORS.— [I]n several administrative cases, the Court refrained from imposing the actual penalties in the presence of mitigating factors. There were several cases, particularly involving dishonesty, in which the Court meted a penalty lower than dismissal because of the existence of mitigating circumstances. x x x Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. In the case at bar, this is Benedictos's first administrative case in her 19 years in government service, for which six months suspension is already sufficient penalty.

3. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE COURT'S ORDER AND DIRECTIVE CONSTITUTES WILLFUL DISRESPECT; FINE, IMPOSED.— [T]he Court bears in mind Benedictos's failure to submit her comment, which constitutes clear and willful disrespect, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the former. In fact, it can be said that Benedictos's non-compliance with the OCA directives is tantamount to insubordination to the Court itself. Benedictos also directly demonstrated her disrespect to the Court by ignoring its Resolutions dated June 25, 2007 (ordering her to show cause for her failure to comply with the OCA directives and to file her comment) and March 26, 2008 (ordering her to pay a fine of ₱1,000.00 for her continuous failure to file a comment). A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive. This contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system. Benedictos's insolence is further aggravated by the fact that she is an employee of the Judiciary, who, more than an ordinary citizen, should be aware of her duty to obey the orders and processes of the Supreme Court without delay. For her non-compliance with the show cause order and nonpayment of the fine imposed upon her in the Supreme Court Resolutions dated June 25, 2007 and March 26, 2008, respectively, Benedictos is ordered to pay an additional fine of ₱2,000.00, in addition to the original fine of ₱1,000.00.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is an administrative complaint charging Ma. Emcisa A. Benedictos (Benedictos), Administrative Officer I, Regional Trial Court (RTC), Office of the Clerk of Court (OCC), Malolos City, Bulacan, with dishonesty for falsifying her Daily Time Records (DTRs)/bundy cards.

The Office of the Court Administrator (OCA) sent a telegram[1] dated November 5, 2004 requesting Executive Judge Guillermo Agloro of the RTC, OCC, Malolos City, Bulacan, to instruct Benedictos to submit her DTRs/bundy cards for September and October 2004 within five days, otherwise, the OCA would recommend the withholding of Benedictos's salaries.

Benedictos submitted her bundy cards for August, October, and November 2004, which the OCA referred to Atty. Emmanuel L. Ortega (Atty. Ortega), Clerk of Court VII, RTC, Malolos City, Bulacan, for verification of his signatures appearing thereon. In a letter[2] dated January 13, 2005 to the OCA, Atty. Ortega reported that only his signature on Benedictos's bundy card for November 2004 was true and genuine; and he disowned his purported signatures on Benedictos's bundy cards for August and October 2004.

On March 8, 2005, the OCA required Benedictos to file her comment on Atty. Ortega's letter within 10 days from notice,[3] however, Benedictos failed to comply.

In a Resolution dated June 29, 2005, the Court withheld Benedictos's salaries and benefits until she submitted her DTRs/bundy cards for September 2004.

On February 6, 2006, the OCA again instructed Benedictos to file her comment on Atty. Ortega's letter within 10 days from notice,[4] but Benedictos still failed to do so.

Consequently, in a Resolution[5] dated June 25, 2007, the Court directed Benedictos (1) to show cause why she should not be administratively dealt with for refusing to submit her comment despite the two directives from the OCA; and (2) to submit the required comment within five days from notice, otherwise the

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[1] *Rollo*, p. 15.

[2] *Id.* at 3.

[3] *Id.* at 8.

[4] *Id.* at 9.

[5] *Id.* at 19.

Court shall take the necessary action against her and decide the administrative complaint on the basis of the record on hand.

When Benedictos failed once more to file a comment, the Court issued a Resolution[6] on March 26, 2008 ordering Benedictos to pay a fine of ₱1,000.00. Yet, Benedictos did not pay the fine nor submitted her comment on Atty. Ortega's letter.

Finally, in a Resolution[7] dated August 17, 2009, the Court deemed Benedictos to have waived her right to file a comment on Atty. Ortega's letter. The Court already referred the case against Benedictos to the OCA for evaluation, report, and recommendation.

The OCA submitted its Report[8] on October 15, 2009 with the following recommendations:

> Foregoing considered, we respectfully recommend for the consideration of the Honorable Court:
>
> 1. that the instant case be RE-DOCKETED as a regular administrative matter;
>
> 2. that respondent Ma. E[m]cisa A. Benedictos, Administrative Officer I, Regional Trial Court, Office of the Clerk of Court, Malolos City, Bulacan be found GUILTY of Dishonesty; and
>
> 3. that considering that this is respondent's first administrative offense, the minimum penalty of SUSPENSION for six (6) months and one (1) day, effective immediately, be meted upon her.[9]

On March 1, 2010, the Court re-docketed the case as a regular administrative matter and required the parties to manifest[10] within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Since both parties failed to submit such manifestations, they were considered to

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[6] *Id.* at 23.

[7] *Id.* at 30.

[8] *Id.* at 32-35.

[9] *Id.* at 35.

[10] *Id.* at 37.

have waived their rights to file the same and the case was submitted for deliberation based on the pleadings filed.

As found by the OCA, Benedictos is guilty of dishonesty for falsifying her DTRs/bundy cards.

In his letter dated January 13, 2005, Atty. Ortega categorically stated that his purported signatures appearing on Benedictos's bundy cards for August and October 2004 were not his. Conspicuously, despite the seriousness of the charge against her, Benedictos failed to comply with the repeated directives of the OCA and this Court for her to file a comment.

Benedictos's silence on a principal charge against her is admission, especially considering that she was given ample opportunity to deny the same.[11] Benedictos's refusal to face the charges against her head-on is contrary to the principle in criminal law that the first impulse of an innocent person, when accused of wrongdoing, is to express his or her innocence at the first opportune time.[12]

Moreover, as a result of its own analytical study of the evidence on record, the Court is convinced that Atty. Ortega's signatures appearing on Benedictos's bundy cards for August and October 2004 were indeed forged. The marked differences between Atty. Ortega's purported signatures on Benedictos's bundy cards for August and October 2004, on one hand, and Atty. Ortega's admitted genuine signatures on Benedictos's bundy cards for September and November 2004, on the other, are easily discernible even to the naked eye.

In determining the appropriate penalty, the Court deems Benedictos's falsification of her bundy cards tantamount to dishonesty. This Court has defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud,

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[11] *Donton v. Loria*. 519 Phil. 212, 217 (2006).

[12] *Report on the Financial Audit Conducted at the Municipal Trial Courts of Bani, Alaminos and Lingayen in Pangasinan*, 462 Phil. 535, 543 (2003).

deceive or betray."[13] Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.[14]

However, in several administrative cases, the Court refrained from imposing the actual penalties in the presence of mitigating factors.There were several cases,[15] particularly involving dishonesty, in which the Court meted a penalty lower than dismissal because of the existence of mitigating circumstances.

In *Re: Ting and Esmerio*,[16] the Court did not impose the severe penalty of dismissal because the respondents acknowledged their infractions, demonstrated remorse, and had dedicated long years of service to the judiciary. Instead, the Court imposed the penalty of suspension for six months on Ting, and the forfeiture of Esmerio's salary equivalent to six months on account of the latter's retirement.

The Court similarly imposed in *Re: Failure of Jose Dante E. Guerrero to Register his Time In and Out in the Chronolog Time Recorder Machine on Several Dates*[17] the penalty of six

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[13] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I & Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*, 502 Phil. 264, 277 (2005).

[14] *Office of the Court Administrator v. Magno*, 419 Phil. 593, 602 (2001); Sec. 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999.

[15] *Concerned Employee v. Valentin*, 498 Phil. 347, 352 (2005); *Dipolog v. Montealto*, A.M. No. P-04-190, November 23, 2004, 443 SCRA 465, 478; *Re: Alleged Tampering of the Daily Time Records (DTR) of Sherry B. Cervantes, Court Stenographer III, Branch 18, Regional Trial Court, Manila*, A.M. No. 03-8-463-RTC, May 20, 2004, 428 SCRA 572, 576; *Office of the Court Administrator v. Sirios*, 457 Phil. 42, 48-49 (2003); *Reyes-Domingo v. Morales*, 396 Phil. 150, 164-165 (2000).

[16] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I & Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*, *supra* note 13 at 280-281.

[17] 521 Phil. 482, 497-499 (2006).

months suspension on an employee found guilty of dishonesty for falsifying his time record. The Court took into account as mitigating circumstances Guererro's good performance rating, 13 years of satisfactory service in the judiciary, and his acknowledgment of and remorse for his infractions.

The compassion extended by the Court in the aforementioned cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[18] grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

In the case at bar, this is Benedictos's first administrative case in her 19 years in government service, for which six months suspension is already sufficient penalty.

Additionally, the Court bears in mind Benedictos's failure to submit her comment, which constitutes clear and willful disrespect, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the former. In fact, it can be said that Benedictos's non-compliance with the OCA directives is tantamount to insubordination to the Court itself.[19] Benedictos also directly demonstrated her disrespect to the Court by ignoring its Resolutions dated June 25, 2007 (ordering her to show cause for her failure to comply with the OCA directives and to file her comment) and March 26, 2008 (ordering her to pay a fine of ₱1,000.00 for her continuous failure to file a comment).

A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive.[20] This contumacious

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[18] CSC Memorandum Circular No. 19, s. 1999.

[19] *Tan v. Sermonia*, A.M. No. P-08-2436, August 4, 2009, 595 SCRA 1, 13.

[20] *Tugot v. Judge Coliflores*, 467 Phil. 391, 402-403 (2004).

conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system.[21] Benedictos's insolence is further aggravated by the fact that she is an employee of the Judiciary, who, more than an ordinary citizen, should be aware of her duty to obey the orders and processes of the Supreme Court without delay.[22]

For her non-compliance with the show cause order and nonpayment of the fine imposed upon her in the Supreme Court Resolutions dated June 25, 2007 and March 26, 2008, respectively, Benedictos is ordered to pay an additional fine of ₱2,000.00, in addition to the original fine of ₱1,000.00.

WHEREFORE, the Court finds Ma. Emcisa Benedictos *GUILTY* of dishonesty and imposes upon her the penalty of *SUSPENSION* for six (6) months, effective immediately. The Court further orders Benedictos to pay a *FINE* in the total amount of ₱3,000.00 for her failure to comply with the Resolutions dated June 25, 2007 and March 26, 2008. Finally, the Court issues a stern warning to Benedictos that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Villarama, Jr., JJ.,* concur.

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[21] *Parane v. Reloza,* A.M. No. MTJ-92-718, November 7, 1994, 238 SCRA 1, 4.

[22] *Tan v. Sermonia, supra* note 19 at 14.

THIRD DIVISION

[A.M. No. SCC-08-12. October 19, 2011]
(Formerly OCA I.P.I. No. 08-29-SCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE UYAG P. USMAN, Presiding Judge, Shari'a Circuit Court, Pagadian City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MUST MAKE AND SUBMIT A COMPLETE DISCLOSURE OF THEIR ASSETS, LIABILITIES AND NET WORTH IN ORDER TO SUPRESS ANY QUESTIONABLE ACCUMULATION OF WEALTH.— [I]t is imperative that every public official or government employee must make and submit a complete disclosure of his assets, liabilities and net worth in order to suppress any questionable accumulation of wealth. This serves as the basis of the government and the people in monitoring the income and lifestyle of public officials and employees in compliance with the constitutional policy to eradicate corruption, to promote transparency in government, and to ensure that all government employees and officials lead just and modest lives, with the end in view of curtailing and minimizing the opportunities for official corruption and maintaining a standard of honesty in the public service.

2. JUDICIAL ETHICS; JUDGES; MANDATED TO ABIDE WITH THE LAW, THE CODE OF JUDICIAL CONDUCT AND WITH EXISTING ADMINISTRATIVE POLICIES IN ORDER TO MAINTAIN THE FAITH OF THE PEOPLE IN THE ADMINISTRATION OF JUSTICE.— In the present case, respondent clearly violated x x x [Section 7 of R.A. No. 3019 and Section 8 of R.A. No. 6713] when he failed to file his SALN for the years 2004-2008. He gave no explanation either why he failed to file his SALN for five (5) consecutive years. While every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the Judiciary.

> Hence, judges are strictly mandated to abide with the law, the Code of Judicial Conduct and with existing administrative policies in order to maintain the faith of our people in the administration of justice. Considering that this is the first offense of the respondent, albeit for five years, the Court shall impose a fine of only Five Thousand Pesos (₱5,000.00) with warning.

D E C I S I O N

MENDOZA, *J.*:

This administrative proceeding stemmed from a letter-complaint dated April 23, 2008 filed before the Office of the Ombudsman, Mindanao, requesting for a lifestyle check on respondent Judge Uyag P. Usman *(respondent)*, Presiding Judge, Shari'a Circuit Court, Pagadian City, in connection with his acquisition of a Sports Utility Vehicle *(SUV)* amounting to ₱1,526,000.00.

In his letter,[1] complainant alleged that respondent acquired a brand new SUV, specifically a Kia Sorento EX, Automatic Transmission and 2.57 CRDI Diesel for ₱1,526,000.00; that he paid in cash the total down payment of ₱344,200.00; and that the remaining balance was payable in 48 months with a monthly amortization of ₱34,844.00 to the Philippine Savings Bank *(PS Bank)*, Ozamis City Branch.

Complainant further averred that respondent had just been recently appointed as a judge and since he assumed his post, he seldom reported for work and could not be located within the court's premises during office hours. Moreover, he was only receiving a very small take home pay because of his salary and policy loans with the Supreme Court Savings and Loan Association *(SCSLA)* and the Government Service Insurance System *(GSIS)*, many of which he incurred when he was still a Clerk of Court of the Shari'a Circuit Court in Isabela City, Basilan. Complainant attached photocopies of his pay slips to prove his allegation.

[1] *Rollo*, pp. 4-6.

Respondent's financial capability to acquire said vehicle has been questioned because he is the sole bread winner in his family and he has seven (7) children, two (2) of whom were college students at the Medina College School of Nursing, a private school.

On May 26, 2008, the Office of the Ombudsman forwarded the complaint to the Office of the Court Administrator *(OCA)*. In turn, the OCA, in its Letter dated April 22, 2009, directed respondent to comment on the letter[2] within 10 days from receipt thereof.

In his Comment,[3] respondent explained that he acquired the Kia Sorento vehicle in 2008 but it was a second-hand, and not a brand new, vehicle; that he had no intention of buying the said vehicle but his friend, who was a manager of KIA Motors, Pagadian City, convinced him to avail of their lowest down payment promo of ₱90,000.00 to own a second-hand demo unit vehicle; that he was hesitant to avail of the promo but his mother, a U.S. Veteran Pensioner receiving a monthly pension of US$1,056.00, persuaded him to avail of it; that it was his mother who paid the down payment of ₱90,000.00 and the monthly installment of more than ₱30,000.00; that when his mother got sick, her pensions and savings were used to buy medicines, thus, he defaulted in the payment of the said vehicle for four (4) months; and that PS Bank foreclosed the mortgage on the said vehicle.

Respondent denied the allegation that all his seven (7) children depended on him for support. He claimed that only three of his children, all in the elementary level and studying in public schools, were under his care; that his mother financially helped him in the education of his two daughters who were in college; and that his other two children were already married and gainfully employed.

Respondent also refuted the charges that he seldom reported for work and could not be located within the court's premises.

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[2] *Id.* at 15-16.

[3] *Id.* at 17-20.

He, instead, asserted that there was never a single day that he failed to report for work; that he often arrived ahead of his staff considering that he lived near the court; and that his conduct as a judge was beyond reproach and this could be attested to by his staff and employees at the *Sangguniang Panlunsod* of Pagadian City. To support his claim, respondent submitted the Joint Affidavit of his staff and the affidavit of Mohammad Basher Cader, a member of a religious group in Pagadian City, attesting to his diligence and dedication in the performance of his function as a judge.

Respondent bared that, at present, he is receiving a monthly take home pay of more than ₱40,000.00 including his salary and allowances plus honorarium from the local government.

In its Report[4] dated March 16, 2011, the OCA found the explanation of respondent meritorious.

The OCA, however, held respondent liable for violation of Section 8 of Republic Act *(R.A.)* No. 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees and of Section 7 of R.A. No. 3019, known as the Anti-Graft and Corrupt Practices Act, for failing to file his Statement of Assets, Liabilities and Net Worth *(SALN)* for the years 2004-2008. Thus, the OCA recommended that respondent be fined in the amount of ₱10,000.00

The Court agrees with the finding of the OCA that the charges against respondent were not fully substantiated. The evidence adduced in the case, consisting of documents submitted by respondent are sufficient to prove that it was, indeed, his mother who paid the down payment and the monthly amortizations for the subject vehicle.

The Court also agrees with the OCA that respondent is guilty of violating Section 7 of R.A. No. 3019 and Section 8 of R.A. No. 6713.

Section 7 of R.A. No. 3019 provides:

[4] *Id.* at 57-62.

Sec. 7. Statement of Assets and Liabilities. – Every public officer, within thirty days after assuming office and, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or Chief of an independent office, with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.

In the same manner, Section 8, R.A. No. 6713 states:

SEC. 8. Statements and Disclosure. – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. – All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statements of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;

(b) personal property and acquisition cost;

(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;

(d) liabilities, and;

(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;

(b) on or before April 30, of every year thereafter; and

(c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforestated documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

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From the foregoing, it is imperative that every public official or government employee must make and submit a complete disclosure of his assets, liabilities and net worth in order to suppress any questionable accumulation of wealth.[5] This serves as the basis of the government and the people in monitoring the income and lifestyle of public officials and employees in compliance with the constitutional policy to eradicate corruption, to promote transparency in government, and to ensure that all government employees and officials lead just and modest lives,[6] with the end in view of curtailing and minimizing the opportunities for official corruption and maintaining a standard of honesty in the public service.[7]

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[5] *Ombudsman v. Racho*, G.R. No. 185685, January 31, 2011.

[6] *Flores v. Montemayor*, G.R. No. 170146, August 25, 2010, 629 SCRA 178, 199.

[7] *Cavite Crusade for Good Government v. Cajigal*, 422 Phil. 1, 9 (2001).

In the present case, respondent clearly violated the above-quoted laws when he failed to file his SALN for the years 2004-2008. He gave no explanation either why he failed to file his SALN for five (5) consecutive years. While every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the Judiciary. Hence, judges are strictly mandated to abide with the law, the Code of Judicial Conduct and with existing administrative policies in order to maintain the faith of our people in the administration of justice.[8]

Considering that this is the first offense of the respondent, albeit for five years, the Court shall impose a fine of only Five Thousand Pesos (₱5,000.00) with warning.

WHEREFORE, the Court finds respondent Uyag P. Usman, Presiding Judge, Shari'a Circuit Court, Pagadian City, *GUILTY* of violation of Section 7, R.A. No. 3019 and Section 8, R.A. No. 6713 and orders him to pay a *FINE* of Five Thousand Pesos (₱5,000.00) with a *STERN WARNING* that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.,* concur.

[8] *Magarang v. Jardin, Sr.,* 386 Phil. 273, 284 (2000).

SECOND DIVISION

[G.R. No. 145817. October 19, 2011]

URBAN BANK, INC., *petitioner, vs.* **MAGDALENO M. PEÑA,** *respondent.*

[G.R. No. 145822. October 19, 2011]

DELFIN C. GONZALEZ, JR., BENJAMIN L. DE LEON, and ERIC L. LEE, *petitioners, vs.* **MAGDALENO M. PEÑA,** *respondent.*

[G.R. No. 162562. October 19, 2011]

MAGDALENO M. PEÑA, *petitioner, vs.* **URBAN BANK, INC., TEODORO BORLONGAN, DELFIN C. GONZALEZ, JR., BENJAMIN L. DE LEON, P. SIERVO H. DIZON, ERIC L. LEE, BEN T. LIM, JR., CORAZON BEJASA, and ARTURO MANUEL, JR.,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; ELEMENTS.— In a contract of agency, agents bind themselves to render some service or to do something in representation or on behalf of the principal, with the consent or authority of the latter. The basis of the civil law relationship of agency is representation, the elements of which include the following: (a) the relationship is established by the parties' consent, express or implied; (b) the object is the execution of a juridical act in relation to a third person; (c) agents act as representatives and not for themselves; and (d) agents act within the scope of their authority.

2. ID.; ID.; ID.; THE LAW MAKES NO PRESUMPTION OF AGENCY.— Whether or not an agency has been created is determined by the fact that one is representing and acting for another. The law makes no presumption of agency; proving its existence, nature and extent is incumbent upon the person alleging it.

3. ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR.— Urban Bank's letter dated 19 December 1994 confirmed in no uncertain terms Peña's designation as its authorized representative to secure and maintain possession of the Pasay property against the tenants. Under the terms of the letter, petitioner-respondent bank confirmed his engagement (a) "**to hold and maintain possession**" of the Pasay property; (b) "**to protect the same** from former tenants, occupants or any other person who are threatening to return to the said property and/or interfere with your possession of the said property for and in our behalf"; and (c) **to represent the bank in any instituted court action** intended to prevent any intruder from entering or staying in the premises. These three express directives of petitioner-respondent bank's letter admits of no other construction than that a specific and special authority was given to Peña to act on behalf of the bank with respect to the latter's claims of ownership over the property against the tenants. Having stipulated on the due execution and genuineness of the letter during pretrial, the bank is bound by the terms thereof and is subject to the necessary consequences of Peña's reliance thereon. No amount of denial can overcome the presumption that we give this letter – that it means what it says.

4. ID.; ID.; ID.; AN UNAUTHORIZED ACT OF AN AGENT BECOMES AN AUTHORIZED ACT OF THE PRINCIPAL BY RATIFICATION.— [T]he subsequent actions of Urban Bank resulted in the ratification of Peña's authority as an agent acting on its behalf with respect to the Pasay property. By ratification, even an unauthorized act of an agent becomes an authorized act of the principal. Both sides readily admit that it was Peña who was responsible for clearing the property of the tenants and other occupants, and who turned over possession of the Pasay property to petitioner-respondent bank. When the latter received full and actual possession of the property from him, it did not protest or refute his authority as an agent to do so. Neither did Urban Bank contest Pena's occupation of the premises, or his installation of security guards at the site, starting from the expiry of the lease until the property was turned over to the bank, by which time it had already been vested with ownership thereof. Furthermore, when Peña filed the Second Injunction Complaint in the RTC-Makati City under the name of petitioner-respondent bank, the latter did not interpose any

objection or move to dismiss the complaint on the basis of his lack of authority to represent its interest as the owner of the property. When he successfully negotiated with the tenants regarding their departure from its Pasay property, still no protest was heard from it. After possession was turned over to the bank, the tenants accepted PhP1,500,000 from Peña, in "full and final settlement" of their claims against Urban Bank, and not against ISCI. In all these instances, petitioner-respondent bank did not repudiate the actions of Peña, even if it was fully aware of his representations to third parties on its behalf as owner of the Pasay property. Its tacit acquiescence to his dealings with respect to the Pasay property and the tenants spoke of its intent to ratify his actions, as if these were its own. Even assuming *arguendo* that it issued no written authority, and that the oral contract was not substantially established, the bank duly ratified his acts as its agent by its acquiescence and acceptance of the benefits, namely, the peaceful turnover of possession of the property free from sub-tenants.

5. **ID.; ID.; ID.; PRESENT IN INSTANCES WHEN TWO OR MORE PRINCIPALS HAVE GRANTED A POWER OF ATTORNEY TO AN AGENT FOR A COMMON TRANSACTION.—** [T]he Civil Code expressly acknowledged instances when two or more principals have granted a power of attorney to an agent for a **common transaction**. The agency relationship between an agent and two principals may even be considered extinguished if the object or the purpose of the agency is accomplished. In this case, Peña's services as an agent of both ISCI and Urban Bank were engaged for one shared purpose or transaction, which was to deliver the property free from unauthorized sub-tenants to the new owner – a task Peña was able to achieve and is entitled to receive payment for.

6. **ID.; ID.; ID.; A PREVIOUS AGENCY MAY BE REVOKED BY THE APPOINTMENT OF A NEW AGENT FOR THE SAME BUSINESS OR TRANSACTION UPON NOTICE TO THE FORMER AGENT.—** It is axiomatic that the appointment of a new agent for the same business or transaction revokes the previous agency from the day on which notice thereof was given to the former agent.

7. **ID.; ID.; ID.; PRESUMED TO BE FOR COMPENSATION.—** Agency is presumed to be for compensation. But because in

this case we find no evidence that Urban Bank agreed to pay Peña a specific amount or percentage of amount for his services, we turn to the principle against unjust enrichment and on the basis of *quantum meruit.* Since there was no written agreement with respect to the compensation due and owed to Atty. Peña under the letter dated 19 December 1994, the Court will resort to determining the amount based on the well-established rules on *quantum meruit.* Agency is presumed to be for compensation. Unless the contrary intent is shown, a person who acts as an agent does so with the expectation of payment according to the agreement and to the services rendered or results effected. We find that the agency of Peña comprised of services ordinarily performed by a lawyer who is tasked with the job of ensuring clean possession by the owner of a property. We thus measure what he is entitled to for the legal services rendered.

8. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; PRINCIPLE OF *QUANTUM MERUIT;* APPLIED IN THE ABSENCE OF A WRITTEN CONTRACT FOR THE PROFESSIONAL SERVICES OF A LAWYER.— A stipulation on a lawyer's compensation in a written contract for professional services ordinarily controls the amount of fees that the contracting lawyer may be allowed to collect, unless the court finds the amount to be unconscionable. In the absence of a written contract for professional services, the attorney's fees are fixed on the basis of *quantum meruit, i.e.,* the reasonable worth of the attorney's services. When an agent performs services for a principal at the latter's request, the law will normally imply a promise on the part of the principal to pay for the reasonable worth of those services. The intent of a principal to compensate the agent for services performed on behalf of the former will be inferred from the principal's request for the agents.

9. ID.; ID.; ID.; ID.; FACTORS TO BE CONSIDERED IN FIXING A REASONABLE COMPENSATION FOR THE SERVICES RENDERED BY A LAWYER ON THE BASIS THEREOF.— Lawyering is not a business; it is a profession in which duty to public service, not money, is the primary consideration. The principle of *quantum meruit* if lawyers are employed **without a price agreed upon for their services**, in which case they would be entitled to receive what they merit

for their services, or as much as they have earned. In fixing a reasonable compensation for the services rendered by a lawyer on the basis of *quantum meruit*, one may consider factors such as the time spent and extent of services rendered; novelty and difficulty of the questions involved; importance of the subject matter; skill demanded; probability of losing other employment as a result of acceptance of the proffered case; customary charges for similar services; amount involved in the controversy and the resulting benefits for the client; certainty of compensation; character of employment; and professional standing of the lawyer.

10. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; DIRECTORS OR OFFICERS; WHEN CONSIDERED LIABLE FOR CORPORATE OBLIGATIONS.— A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the acts of the directors and officers as corporate agents are not their personal liabilities but those of the corporation they represent. To hold a director or an officer personally liable for corporate obligations, two requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith. "To hold a director, a trustee or an officer personally liable for the debts of the corporation and, thus, pierce the veil of corporate fiction, bad faith or gross negligence by the director, trustee or officer in directing the corporate affairs must be established clearly and convincingly."

11. ID.; ID.; ID.; SUFFICIENT PROOF IS REQUIRED BEFORE THE COURT CAN DISREGARD THE SEPARATE LEGAL PERSONALITY OF THE CORPORATION FROM ITS OFFICERS.— As the complainant on the trial court level, Peña carried the burden of proving that the eight individual defendants performed specific acts that would make them personally liable for the obligations of the corporation. This he failed to do. He cannot capitalize on their alleged failure to offer a defense, when he had not discharged his responsibility of establishing their personal liabilities in the first place. This

Court cannot sustain the individual liabilities of the bank officers when Peña, at the onset, has not persuasively demonstrated their assent to patently unlawful acts of the bank, or that they were guilty of gross negligence or bad faith, regardless of the weaknesses of the defenses raised. This is too basic a requirement that this Court must demand sufficient proof before we can disregard the separate legal personality of the corporation from its officers. Hence, only Urban Bank, not individual defendants, is liable to pay Peña's compensation for services he rendered in securing possession of the Pasay property. Its liability in this case is, however, without prejudice to its possible claim against ISCI for reimbursement under their separate agreements.

12. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXECUTION PENDING APPEAL; IF THE DECISION ON THE MERITS IS COMPLETELY NULLIFIED, THE CONCOMITANT EXECUTION PENDING APPEAL IS LIKEWISE WITHOUT ANY EFFECT.— A void judgment never acquires finality. In contemplation of law, that void decision is deemed non-existent. *Quod nullum est, nullum producit effectum.* Hence, the validity of the execution pending appeal will ultimately hinge on the court's findings with respect to the decision in which the execution is based. Although discretionary execution can proceed independently while the appeal on the merits is pending, the outcome of the main case will greatly impact the execution pending appeal, especially in instances where as in this case, there is a complete reversal of the trial court's decision. Thus, if the decision on the merits is completely nullified, then the concomitant execution pending appeal is likewise without any effect. In fact, the Rules of Court expressly provide for the possibility of reversal, complete or partial, of a final judgment which has been executed on appeal. Precisely, the execution pending appeal does not bar the continuance of the appeal on the merits, for the Rules of Court explicitly provide for restitution according to equity and justice in case the executed judgment is reversed on appeal.

13. ID.; ID.; ID.; ID.; ALLOWED ONLY WHEN THERE ARE REASONS TO BELIEVE THAT THE JUDGMENT DEBTOR WILL NOT BE ABLE TO SATISFY THE JUDGMENT DEBT IF THE APPEALS PROCESS WILL

STILL HAVE TO BE AWAITED.— We rule that the pendency of a collection suit by a third party creditor which credit was obtained by the winning judgment creditor in another case, is not a sufficiently good reason to allow execution pending appeal as the Rules of Court provides. Execution pending appeal is an extraordinary remedy allowed only when there are reasons to believe that the judgment debtor will not be able to satisfy the judgment debt if the appeals process will still have to be awaited. It requires proof of circumstances such as insolvency or attempts to escape, abscond or evade a just debt.

14. ID.; ID.; ID.; ID.; THE PRESENCE OR THE ABSENCE OF GOOD REASONS REMAINS THE YARDSTICK IN ALLOWING THE REMEDY OF EXECUTION PENDING APPEAL.— In *Florendo v. Paramount Insurance, Corp.*, the Court explained that the execution pending appeal is an exception to the general rule that execution issues as a matter of right, when a judgment has become final and executory xxx. Indeed, the presence or the absence of good reasons remains the yardstick in allowing the remedy of execution pending appeal, which should consist of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later. Thus, the Court held that even the financial distress of the prevailing company is not sufficient reason to call for execution pending appeal xxx. In *Philippine Bank of Communications v. Court of Appeals*, the Court denied execution pending appeal to a juridical entity which allegedly was in financial distress and was facing civil and criminal suits with respect to the collection of a sum of money. It ruled that the financial distress of the prevailing party in a final judgment which was still pending appeal may not be likened to the situation of a natural person who is ill, of advanced age or dying as to justify execution pending appeal x x x.

15. ID.; ID.; ID.; ID.; CAN BE ALLOWED IN CASES WHERE TWO OR MORE DEFENDANTS ARE MADE SUBSIDIARILY OR SOLIDARILY LIABLE BY FINAL JUDGMENT OF THE TRIAL COURT AND ALL THE DEFENDANTS ARE FOUND TO BE INSOLVENT.— In cases where two or more defendants are made subsidiarily or solidarily liable by the final judgment of the trial court, discretionary execution can be allowed if **all the defendants**

have been found to be insolvent. That only Urban Bank, and not the other eight individual defendants, was later on considered by the Court of Appeals to have been "in danger of insolvency," is not sufficient reason to allow execution pending appeal, since the liability for the award to Peña was made (albeit, mistakenly) solidarily liable together with the bank officers. In *Flexo Manufacturing Corp v. Columbus Food, Inc., and Pacific Meat Company, Inc.*, both Columbus Food, Inc., (Columbus Food) and Pacific Meat Company, Inc., (Pacific Meat) were found by the trial court therein to be solidarily liable to Flexo Manufacturing, Inc., (Flexo Manufacturing) for the principal obligation of PhP2,957,270.00. The lower court also granted execution pending appeal on the basis of the insolvency of Columbus Food, **even if Pacific Meat was not found to be insolvent.** Affirming the reversal ordered by the Court of Appeals, this Court ruled that since there was another party who was solidarily liable to pay for the judgment debt, aside from the insolvent Columbus Food, there was no good reason to allow the execution pending appeal x x x. Similarly, the trial court in this case found Urban Bank and all eight individual bank officers liable to Atty. Peña for the payment of the PhP28,500,000 award. Hence, had the judgment been upheld on appeal, Atty. Peña could have demanded payment from any of the nine defendants. Thus, it was a mistake for the Court of Appeals to have affirmed execution pending appeal based solely on the receivership of Urban Bank, when there were eight other individual defendants, who were solidarily liable but were not shown to have been insolvent. Since Urban Bank's co-defendants were not found to have been insolvent, there was no good reason for the Court of Appeals to immediately order execution pending appeal, since Atty. Peña's award could have been satisfied by the eight other defendants, especially when the de Leon Group filed its supersedeas bond.

16. MERCANTILE LAW; REPUBLIC ACT NO. 7653 (THE NEW CENTRAL BANK ACT); BANKS; ALL CREDITORS OF THE BANK UNDER RECEIVERSHIP SHALL STAND ON EQUAL FOOTING WITH RESPECT TO DEMANDING SATISFACTION OF THEIR DEBTS, AND CANNOT BE EXTENDED PREFERRED STATUS BY AN EXECUTION PENDING APPEAL WITH RESPECT TO THE BANK'S ASSETS.— [A] judgment creditor of a bank, which has been

ordered by the BSP to be subject of receivership, has to fall in line like every other creditor of the bank and file its claim under the proper procedures for banks that have been taken over by the PDIC. Under Section 30 of Republic Act No. 7653, otherwise known as the New Central Bank Act, which prevailed at that time, once a bank is under receivership, the receiver shall immediately gather and take charge of all the assets and liabilities of the bank and administer for the benefit of its creditors and all of the bank's assets shall be considered as under *custodia legis* and exempt from any order of garnishment, levy, attachment or execution. x x x Until the approval of the rehabilitation or the initiation of the liquidation proceedings, all creditors of the bank under receivership shall stand on equal footing with respect to demanding satisfaction of their debts, and cannot be extended preferred status by an execution pending appeal with respect to the bank's assets x x x .

17. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; WHERE THE EXECUTED JUDGMENT IS REVERSED ON APPEAL, RESTITUTION OR REPARATION OF DAMAGES ACCORDING TO EQUITY MAY BE ORDERED BY THE COURT.— [W]here the executed judgment is reversed totally or partially, or annulled – on appeal or otherwise – the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances. The Rules of Court precisely provide for restitution according to equity, in case the executed judgment is reversed on appeal. "In an execution pending appeal, funds are advanced by the losing party to the prevailing party with **the implied obligation of the latter to repay the former, in case the appellate court cancels or reduces the monetary award**." x x x Although execution pending appeal is sanctioned under the rules and jurisprudence, when the executed decision is reversed, the premature execution is considered to have lost its legal bases. The situation necessarily requires equitable restitution to the party prejudiced thereby. As a matter of principle, courts are authorized at any time to order the return of property erroneously ordered to be delivered to one party, if the order is found to have been issued without jurisdiction.

18. ID.; ID.; ID.; ID.; WHERE SPECIFIC RESTITUTION BECOMES IMPRACTICABLE, THE LOSING PARTY IN

THE EXECUTION BECOMES LIABLE FOR THE FULL VALUE OF THE PROPERTY AT THE TIME OF ITS SEIZURE WITH INTEREST.— As a purchaser of properties under an execution sale, with an appeal on the main case still pending, intervenor Unimega knew or was bound to know that its title to the properties, purchased in the premature public auction sale, was contingent on the outcome of the appeal and could possibly be reversed. Until the judgment on the main case on which the execution pending appeal hinges is rendered final and executory in favor of the prevailing judgment creditor, it is incumbent on the purchasers in the execution sale to preserve the levied properties. They shall be personally liable for their failure to do so, especially if the judgment is reversed, as in this case. In fact, if specific restitution becomes impracticable – such as when the properties pass on to innocent third parties – the losing party in the execution even becomes liable for the full value of the property at the time of its seizure, with interest. x x x Unlike in auction sales arising from final and executory judgments, both the judgment creditor and the third parties who participate in auction sales pending appeal are deemed to knowingly assume and voluntarily accept the risks of a possible reversal of the decision in the main case by the appellate court.

19. ID.; ID.; ID.; ID.; THE OBLIGATION TO RETURN THE LEVIED PROPERTY IS LIKEWISE IMPOSED ON A THIRD-PARTY PURCHASER.— Upon the reversal of the main Decision, the levied properties itself, subject of execution pending appeal must be returned to the judgment debtor, if those properties are still in the possession of the judgment creditor, plus compensation to the former for the deprivation and the use thereof. The obligation to return the property itself is likewise imposed on a third-party purchaser, like intervenor Unimega, in cases wherein it **directly participated in the public auction sale**, and the **title to the executed property has not yet been transferred**. The third-party purchaser shall, however, be entitled to reimbursement from the judgment creditor, with interest.

20. ID.; ID.; ID.; ID.; IN CASES WHERE RESTITUTION OF THE PREMATURELY EXECUTED PROPERTY IS NO LONGER POSSIBLE, COMPENSATION SHALL BE MADE IN FAVOR OF THE JUDGMENT DEBTOR.— In cases in which restitution of the prematurely executed property

is no longer possible, compensation shall be made in favor of the judgment debtor in the following manner: a. If the purchaser at the public auction is the judgment creditor, he must pay the full value of the property at the time of its seizure, with interest. b. If the purchaser at the public auction is a third party, and **title to the property has already been validly and timely transferred to the name of that party**, the judgment creditor must pay the amount realized from the sheriff's sale of that property, with interest. c. If the judgment award is reduced on appeal, the judgment creditor must return to the judgment debtor only the excess received over and above that to which the former is entitled under the final judgment, with interest.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes and Manalastas for Eric Lee.

Baterina Baterina Casals Lozada & Tiblani and *Romulo Mabanta Buenaventura Sayoc & De Los Angeles* for Urban Bank, Inc.

Angara Abello Concepcion Regala & Cruz for Gonzalez, De Leon & Lee.

Fortun Narvasa & Salazar for Borlongan, Bejasa & Manuel.

Poblador Bautista and Reyes for Ben Lim & P. Siervo Dizon.

Sayuno Mendoza & San Jose for intervenor Unimega Properties Holdings Corp.

Solis & Medina Law Offices for movant Makati Sports Club, Inc.

Chato & Eleazar Law Offices for Bejasa and Manuel, Jr.

D E C I S I O N

SERENO, *J.*:

These consolidated petitions began as a simple case for payment of services rendered and for reimbursement of costs. The case spun a web of suits and counter-suits because of: (1) the size of the award for agent's fee rendered in favor of Atty. Magdaleno Peña (Peña) – PhP24,000,000 – rendered by the trial court; (2)

the controversial execution of the full judgment award of PhP28,500,000 (agent's fee plus reimbursement for costs and other damages) pending appeal; and (3) the finding of solidary liability against Urban Bank, Inc., and several of its corporate officers and directors together with the concomitant levying and sale in execution of the personal (even conjugal) properties of those officers and directors; and (4) the fact that assets with declared conservative values of at least **PhP181 Million** which, together with those with undeclared values could reach very much more than such amount,[1] were levied or sold on execution pending appeal to satisfy the PhP28.5 Million award in favor of Atty. Peña. Incidentally, two supersedeas bonds worth PhP80 Million (2.8 times the amount of the judgment) were filed by Urban Bank and some of its officers and directors to stay the execution pending appeal.

Had the four attendant circumstances not afflicted the original case, it would have been an open-and-shut review where this Court, applying even just the minimum equitable principle against unjust enrichment would have easily affirmed the grant of fair recompense to Atty. Peña for services he rendered for Urban Bank if such had been ordered by the trial court.

That Atty. Peña should be paid something by Urban Bank is not in dispute – the Court of Appeals (CA) and the Regional Trial Court (RTC) of Bago City, agreed on that. What they disagreed on is the basis and the size of the award. The trial court claims that the basis is an oral contract of agency and the award should be PhP28,5000,000; while, the appellate court said that Atty. Peña can only be paid under the legal principle

[1] The actual ceiling amount for the levied, garnished or executed properties pending appeal is uncertain because of the dearth of records. It seems that the figure could turn out to be very high, considering that the entire Urban Bank Plaza located in Sen. Gil Puyat Avenue, corner Chino Roces Avenue, Makati City in the name of Urban Bank was appraised at a value of **PhP2,830,559,000** as of 16 April 2002. Since 85 of the 160 or almost half of the condominium units of Urban Bank Plaza were levied, it is reasonable to assume that more than **PhP1.4 Billion** worth of bank properties were subject of execution pending appeal. (Appraisal Report as of 16 April 2002 of the Cuervo Appraisers; *rollo* [G. R. No. 145817], Vol. 2, at 1396-1423)

against unjust enrichment, and the total award in his favor should only amount to PhP3,000,000.

In the eyes of the trial court, the controlling finding is that Atty. Peña should be believed when he testified that in a telephone conversation, the president of Urban Bank, Teodoro Borlongan, a respondent herein, agreed to pay him for his services 10% of the value of the property then worth PhP240,000,000, or PhP24,000,000. Costs and other awards additionally amount to PhP4,500,000, for a total award of PhP28,500,000 according to the trial court. To the Court of Appeals, such an award has no basis, as in fact, no contract of agency exists between Atty. Peña and Urban Bank. Hence, Atty. Peña should only be recompensed according to the principle of unjust enrichment, and that he should be awarded the amount of PhP3,000,000 only for his services and reimbursements of costs.

The disparity in the size of the award given by the trial court *vis-à-vis* that of the Court of Appeals (PhP28,500,000 v. PhP3,000,000) must be placed in the context of the service that Atty. Peña proved that he rendered for Urban Bank. As the records bear, Atty. Peña's services consisted of causing the departure of unauthorized sub-tenants in twenty-three commercial establishments in an entertainment compound along Roxas Boulevard. It involved the filing of ejectment suits against them, Peña's personal defense in the counter-suits filed against him, his settlement with them to the tune of PhP1,500,000, which he advanced from his own funds, and his retention of security guards and expenditure for other costs amounting to more or less PhP1,500,000. There is no claim by Atty. Peña of any service beyond those. He claims damages from the threats to his life and safety from the angry tenants, as well as a vexatious collection suit he had to face from a creditor-friend from whom he borrowed PhP3,000,000 to finance the expenses for the services he rendered Urban Bank.

At the time the award of PhP28,500,000 by the trial court came out in 1999, the net worth of Urban Bank was

PhP2,219,781,104.[2] While the bank would be closed by the *Bangko Sentral ng Pilipinas* (BSP) a year later for having unilaterally declared a bank holiday contrary to banking rules, there was no reason to believe that at the time such award came out it could not satisfy a judgment of PhP28,500,000, a sum that was only 1% of its net worth, and a miniscule 0.2% of its total assets of PhP11,933,383,630.[3] In fact, no allegation of impending insolvency or attempt to abscond was ever raised by Atty. Peña and yet, the trial court granted execution pending appeal.

Interestingly, Peña had included as co-defendants with Urban Bank in the RTC case, several officers and board directors of Urban Bank. Not all board directors were sued, however. With respect to those included in the complaint, other than against Teodoro Borlongan, Corazon Bejasa, and Arturo Manuel, no evidence was ever offered as to their individual actions that gave rise to Atty. Peña's cause of action – the execution of the agency contract and its breach – and yet, these officers and directors were made solidarily liable by the trial court with Urban Bank for the alleged breach of the alleged corporate contract of agency. Execution pending appeal was also granted against them for this solidary liability resulting in the levy and sale in execution pending appeal of not only corporate properties of Urban Bank but also personal properties of the individual bank officers and directors. It would have been interesting to find out what drove Atty. Peña to sue the bank officers and directors of Urban Bank and why he chose to sue only some, but not all of the board directors of Urban Bank, but there is nothing on the record with which this analysis can be pursued.

Before us are: (a) the Petitions of Urban Bank (G. R. No. 145817) and the De Leon Group (G.R. No. 145822) questioning the propriety of the grant of execution pending appeal, and (b) the Petition of Atty. Peña (G. R. No. 162562) assailing the CA's

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[2] Report of Independent Public Accountants dated 25 February 2000 by the Sycip Gorres & Velayo, Co. (http://www.urbanbank.info/urbanweb/ubi_financial.htm last visited 07 October 2011)

[3] *Id.*

decision on the substantive merits of the case with respect to his claims of compensation based on an agency agreement.

Ordinarily, the final resolution by the Supreme Court of an appeal from a trial court decision would have automatic, generally-understood consequences on an order issued by the trial court for execution pending appeal. But this is no ordinary case, and the magnitude of the disproportions in this case is too mind-boggling that this Court must exert extra effort to correct whatever injustices have been occasioned in this case. Thus, our dispositions will include detailed instructions for several judicial officials to implement.

At core, these petitions can be resolved if we answer the following questions:

1. What is the legal basis for an award in favor of Peña for the services he rendered to Urban Bank? Should it be a contract of agency the fee for which was orally agreed on as Peña claims? Should it be the application of the Civil Code provisions on unjust enrichment? Or is it to be based on something else or a combination of the legal findings of both the RTC and the CA? How much should the award be?

2. Are the officers and directors of Urban Bank liable in their personal capacities for the amount claimed by Peña?

3. What are the effects of our answers to questions (1) and (2), on the various results of the execution pending appeal that happened here?

Factual Background of the Controversy

Urban Bank, Inc. (both petitioner and respondent in these two consolidated cases),[4] was a domestic Philippine corporation, engaged in the business of banking.[5] The eight individual

[4] Urban Bank is a petitioner in G. R. No. 145817; while it is a respondent in G. R. No. 162562.

[5] Urban Bank was placed under receivership by the Philippine Deposit Insurance Corporation (PDIC), and was eventually succeeded by Export and Industry Bank (EIB), after the PDIC approved the bank's rehabilitation plan. (BSP Minute Resolution No. 37 dated 12 July 2001; *rollo* [G.R. No. 145817], Vol. 1, at 843-845)

respondents in G. R. No. 162562 were officers and members of Urban Bank's board of directors, who were sued in their official and personal capacities.[6] On the other hand, Benjamin L. De Leon, Delfin C. Gonzalez, Jr., and Eric L. Lee, (hereinafter the de Leon Group), are the petitioners in G. R. No. 145822 and are three of the same bank officers and directors, who had separately filed the instant Petition before the Court.

Petitioner-respondent Atty. Magdaleno M. Peña (Peña)[7] is a lawyer by profession and was formerly a stockholder, director and corporate secretary of Isabel Sugar Company, Inc. (ISCI).[8]

ISCI owned a parcel of land[9] located in Pasay City (the Pasay property).[10] In 1984, ISCI leased the Pasay property for a period of 10 years.[11] Without its consent[12] and in violation of the lease contract,[13] the lessee subleased the land to several tenants, who in

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[6] (1) Teodoro Borlongan, (2) Delfin C. Gonzales, Jr., (3) Benjamin L. de Leon, (4) P. Siervo H. Dizon, (5) Eric L. Lee, (6) Ben T. Lim, Jr., (7) Corazon Bejasa, and (8) Arturo Manuel, Jr.

[7] Atty. Peña is the respondents in both the Petitions docketed as G. R. Nos. 145817 and 145822, while he is the petitioner in the Petition docketed as G. R. No. 162562.

[8] Regional Trial Court (RTC) – Bago City Decision dated 28 May 1999, at 2; *rollo* (G. R. No. 162562), Vol. 1, at 506.

[9] The 8,629 square meter parcel of land hosted what was then known as the Pasay International Food and Karaoke Club Compound, which is along Roxas Boulevard. (Exhibit "F", RTC records, Vol. 3, at 583)

[10] The Pasay property was covered by Transfer Certificate of Title (TCT) No. T-5382, under the name of ISCI. (RTC Decision dated 28 May 1999, at 1; *rollo* [G. R. No. 145817], Vol. 1, at 78)

[11] The Pasay property was leased to Mr. Ernesto P. Ochoa from 29 November 1984 to 29 November 1994. (Contract of Lease dated 29 November 1984; *rollo* [G.R. No. 162562], Vol. 1, at 278-280)

[12] ISCI Complaint dated 08 December 1994, par. 5, at 3. (Exhibit "E-2", RTC records, Vol. 3, at 574)

[13] "SUBLEASE PROHIBITED. That as distinguished from LESSEE's [Mr. Ochoa] rent-out operations above-mentioned, the LESSEE [Mr. Ochoa] shall not assign, cede or convey this lease, nor undertake to sub-lease the whole or substantially all of the lease premises [Pasay property] to any single third party, without the LESSOR's [ISCI's] consent in writing; …"

turn put up 23 establishments, mostly beer houses and night clubs, inside the compound.[14] In 1994, a few months before the lease contract was to expire, ISCI informed the lessee[15] and his tenants[16] that the lease would no longer be renewed and that it intended to take over the Pasay property[17] for the purpose of selling it.[18]

Two weeks before the lease over the Pasay property was to expire, ISCI and Urban Bank executed a Contract to Sell, whereby the latter would pay ISCI the amount of PhP241,612,000 in installments for the Pasay property.[19] Both parties agreed that the final installment of PhP25,000,000 would be released by

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(Contract of Lease dated 29 November 1984, par. 5 at 2; *rollo* [G.R. No. 162562], Vol. 1, at 279)

[14] RTC Decision dated 28 May 1999, at 1; *rollo* (G. R. No. 162562), Vol. 1, at 505.

[15] "Being the President, I find it proper to inform you about the non-renewal of the lease between you as lessee and our company as lessor over the company's property situated at Pasay City, when the lease expires on November 29, instant." (ISCI's Letter dated 04 February 1994; *rollo* [G. R. No. 162562], Vol. 1, at 283)

[16] "We would also like to take this opportunity to inform you and the other establishments that you represent that the lease contract of Mr. Ochoa on said property [Pasay property] will expire on November 29, 1994. It may even be terminated earlier because of continued violations of and non-compliance with the terms and conditions of the contract. Thereafter, we will recover possession of the property and all improvements thereon shall belong to our company [ISCI]." (ISCI's Letter dated 31 May 1994; *rollo* [G. R. No. 162562], Vol. 1, at 285)

[17] ISCI Complaint dated 08 December 1994, par. 6, at 3. (Exhibit "E-2", RTC records, Vol. 3, at 574)

[18] "BOARD RESOLUTION No. 003 Series of 1994. BE IT RESOLVES, AS IT IS HEREBY RESOLVED that the reception of offers to buy the Pasay property be centralized and the President be empowered and authorized to receive, review, admit and analyze all offers for the purchase of the Roxas Boulevard property, more specifically Lot No. 2251 covered by TCT No. T-5382, consisting of an area of 8,629 square meters, more or less." (ISCI's Secretary's Certificate dated 04 February 1994; *rollo* [G. R. No. 162562], Vol. 1, at 284)

[19] Contract to Sell dated 15 November 1994. (Exhibit "16", RTC records [Vol. 4] at 846-849)

the bank upon ISCI's delivery of full and actual possession of the land, free from any tenants.[20] In the meantime, the amount of the final installment would be held by the bank in escrow. The escrow provision in the Contract to Sell, thus, reads:

"The SELLER (ISCI) agrees that from the proceeds of the purchase prices of the subject Property (Pasay property), the BUYER (Urban Bank) shall withhold the amount of PHP 25,000,000.00 by way of escrow and **shall release this amount to the SELLER only upon its delivery to the BUYER of the full and actual possession and control of the Subject Property, free from tenants, occupants, squatters or other structures or from any liens, encumbrances, easements or any other obstruction or impediment to the free use and occupancy by the buyer of the subject Property or its exercise of the rights to ownership over the subject Property**, within a period of sixty (60) days from the date of payment by the BUYER of the purchase price of the subject Property net of the amounts authorized to be deducted or withheld under Item II (a) of this Contract.[21] (Emphasis supplied)

ISCI then instructed Peña, who was its director and corporate secretary, to take over possession of the Pasay property[22] against the tenants upon the expiration of the lease. ISCI's president, Mr. Enrique G. Montilla III (Montilla), faxed a letter to Peña, confirming the latter's engagement as the corporation's agent to handle the eviction of the tenants from the Pasay property, to wit:[23]

MEMORANDUM

TO: Atty. Magdaleno M. Pena
Director

FROM: Enrique G. Montilla III
President

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[20] *Id.*

[21] *Id.*

[22] RTC Decision dated 28 May 1999, at 2; *rollo* (G. R. No. 162562), Vol. 1, at 506.

[23] RTC Decision dated 28 May 1999, at 8; *rollo* (G. R. No. 162562), Vol. 1, at 512). *See also* ISCI's letter dated 31 May 1994; *rollo* (G. R. No. 162562), Vol. 1, at 285.

DATE: 26 November 1994

You are hereby directed to recover and take possession of the property of the corporation situated at Roxas Boulevard covered by TCT No. 5382 of the Register of Deeds for Pasay City immediately upon the expiration of the contract of lease over the said property on 29 November 1994. For this purpose you are authorized to engage the services of security guards to protect the property against intruders. You may also engage the services of a lawyer in case there is a need to go to court to protect the said property of the corporation. In addition you may take whatever steps or measures are necessary to ensure our continued possession of the property.

(sgd.) ENRIQUE G. MONTILLA III
President[24]

On 29 November 1994, the day the lease contract was to expire, ISCI and Urban Bank executed a Deed of Absolute Sale[25] over the Pasay property for the amount agreed upon in the Contract to Sell, but subject to the above escrow provision.[26] The title to the land was eventually transferred to the name of Urban Bank on 05 December 1994.[27]

On 30 November 1994, the lessee duly surrendered possession of the Pasay property to ISCI,[28] but the unauthorized sub-tenants refused to leave the area.[29] Pursuant to his authority from ISCI, Peña had the gates of the property closed to keep the sub-tenants

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[24] ISCI's fax letter dated 26 November 1994; Exhibit "3", RTC records, Vol. 4, at 810.

[25] Deed of Absolute Sale dated 29 November 1994; Exhibit "6-G" to "6-I", RTC records, Vol. 4, at 817-819.

[26] Deed of Absolute Sale dated 29 November 1994; Exhibit "6-G" to "6-I", RTC records, Vol. 4, at 817-819.

[27] TCT No. 134451 in the name of petitioner Urban Bank dated 05 December 1994; Exhibit "A", RTC records, Vol. 3, at 564-567.

[28] ISCI Complaint dated 08 December 1994, par. 7, at 3; Exhibit "E-2", RTC records, Vol.3, at 574.

[29] RTC Decision dated 28 May 1999, at 1; *rollo* (G. R. No. 162562), Vol. 1, at 505.

out.[30] He also posted security guards at the property,[31] services for which he advanced payments.[32] Despite the closure of the gates and the posting of the guards, the sub-tenants would come back in the evening, force open the gates, and proceed to carry on with their businesses.[33] On three separate occasions, the sub-tenants tried to break down the gates of the property, threw stones, and even threatened to return and inflict greater harm on those guarding it.[34]

In the meantime, a certain Marilyn G. Ong, as representative of ISCI, faxed a letter to Urban Bank – addressed to respondent Corazon Bejasa, who was then the bank's Senior Vice-President – requesting the issuance of a formal authority for Peña.[35] Two days thereafter, Ms. Ong faxed another letter to the bank, this time addressed to its president, respondent Teodoro Borlongan.[36]

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[30] RTC Decision dated 28 May 1999, at 2; *rollo* (G. R. No. 162562), Vol. 1, at 506.

[31] *Id.*

[32] Peña allegedly paid PhP641,547.41 to the Perm Security and Investigation Agency, Inc., for security services rendered in guarding the Pasay property from 30 November 1994 to 31 March 1995. (Letter and Certification both dated 19 November 1997; Exhibits "AA" and "AA-1", RTC records, Vol. 3, at 755-756).

[33] "The scenario continued for days when the gates would be closed in the morning and would be forced open in the evening by the operators of the night spots constructed on the subject property." (RTC Decision dated 28 May 1999, at 2; *rollo* [G. R. No. 162562], Vol. 1, at 506)

[34] ISCI's Complaint dated 08 December 1994, par. 10, at 4. (Exhibit "E-3", RTC records, Vol. 3, at 575)

[35] "Atty. Magdaleno M. Peña, who has been assigned by Isabela Sugar Company, Inc., to take charge of inspecting the tenants would like to request an authority similar to this from the Bank [petitioner Urban Bank], as new owners. Can you please issue something like this today as he needs this." (ISCI's letter dated 07 December 1994; Exhibit "1", RTC records, Vol. 4, at 808)

[36] "Dear Mr. Borlongan, I would like to request for an authorization from Urban Bank as per attached immediately – as the tenants are questioning the authority of the people there who are helping us to take over possession of the property. (Sgd.) MARILYN G. ONG" (ISCI's fax letter dated 09 December 1994; Exhibit "2", RTC records, Vol. 4, at 809)

She repeated therein the earlier request for authority for Peña, since the tenants were questioning ISCI's authority to take over the Pasay property.[37]

In response to the letters of Ms. Ong, petitioner-respondent bank, through individual respondents Bejasa and Arturo E. Manuel – Senior Vice-President and Vice-President, respectively – advised Peña[38] that the bank had noted the engagement of his services by ISCI and stressed that ISCI remained as the lawyer's principal.[39]

To prevent the sub-tenants from further appropriating the Pasay property,[40] petitioner-respondent Peña, as director and representative of ISCI, filed a complaint for injunction[41] (the First Injunction Complaint) with the RTC-Pasay City.[42] Acting on ISCI's prayer for preliminary relief, the trial court favorably issued a temporary restraining order (TRO),[43] which was duly

[37] RTC Decision dated 28 May 1999, at 8; *rollo* (G. R. No. 162562), Vol. 1, at 512.

[38] "This is to advise you [Peña] that we [petitioner Urban Bank] have noted the engagement of your services by Isabela Sugar Company to recover possession of the Roxas Boulevard property formerly covered by TCT No. 5382, effective November 29, 1994. **It is understood that your services have been contracted by and your principal remains to be Isabela Sugar Company**, which as Seller of the property and under the terms of our Contract to Sell dated November 29, 1994, has committed to deliver the full and actual possession of the said property to the buyer, Urban Bank, within the stipulated period." (Emphasis supplied; petitioner Urban Bank's letter dated 15 December 1994; Exhibit "4", RTC records, Vol. 4, at 811)

[39] RTC Decision dated 28 May 1999, at 8; *rollo* (G. R. No. 162562), Vol. 1, at 512.

[40] RTC Decision dated 28 May 1999, at 2; *rollo* (G. R. No. 162562), Vol. 1, at 506.

[41] ISCI's Complaint dated 08 December 1994; Exhibit "E" to "E-6", RTC records, Vol.3, at 572-578.

[42] ISCI's Complaint for injunction was docketed as Civil Case No. 94-1275. (*Id.*)

[43] "WHEREFORE, to prevent the main cause of action or principal relief sought by plaintiff (ISCI) from becoming moot and academic, the parties herein are directed to maintain the *status quo* more specifically,

implemented.[44] At the time the First Injunction Complaint was filed, a new title to the Pasay property had already been issued in the name of Urban Bank.[45]

On 19 December 1994, when "information reached the judge that the Pasay property had already been transferred by ISCI to Urban Bank, the trial court recalled the TRO and issued a break-open order for the property. According to Peña, it was the first time that he was apprised of the sale of the land by ISCI and of the transfer of its title in favor of the bank."[46] It is not clear from the records how such information reached the judge or what the break-open order was in response to.

On the same day that the TRO was recalled, petitioner-respondent Peña immediately contacted ISCI's president, Mr. Montilla, who in turn confirmed the sale of the Pasay property to Urban Bank.[47] Peña told Mr. Montilla that because of the break-open order of the RTC-Pasay City, he (Peña) would be recalling the security guards he had posted to secure the property. Mr. Montilla, however, asked him to suspend the planned

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restraining defendants (tenants) and all persons acting in their behaves (sic), from harassing and threatening plaintiff's personnel and from forcefully and unlawfully interfering with plaintiff's possession of the property until further orders from this Court. …" (RTC Order dated 13 December 1994 in Civil Case No. 94-1275; Exhibit "E-7" to "E-7-c", RTC records, Vol. 3, at 579-582)

[44] "The Regional Trial Court of Pasay City issued a Temporary Restraining Order in favor of plaintiff on December 13, 1994 and was implemented on December 17, 1994." (RTC Decision dated 28 May 1999, at 3; *rollo* [G.R. No. 162562], Vol. 1, at 507)

[45] Title to the Pasay property (TCT No. 134451) was issued on 05 December 1994, which was four days before the First Injunction Complaint was filed with the RTC Pasay City on 09 December 1994.

[46] This is according to the Decision of RTC-Bago City. (RTC Decision dated 28 May 1999, at 3; *rollo* [G R. No. 162562], Vol. 1, at 507) The records of the case in RTC-Pasay city are NOT with the Court, as none of the issues raised therein are before Us.

[47] Peña's Petition for Review dated 23 April 2004, at 6; *rollo* (G.R. No. 162562), Vol. 1, at 13.

withdrawal of the posted guards, so that ISCI could get in touch with petitioner-respondent bank regarding the matter.[48]

Later that same day, Peña received a telephone call from respondent Bejasa. After Peña informed her of the situation, she allegedly told him that Urban Bank would be retaining his services in guarding the Pasay property, and that he should continue his efforts in retaining possession thereof. He insisted, however, on talking to the Bank's president. Respondent Bejasa gave him the contact details of respondent Borlongan, then president of Urban Bank.[49]

The facts regarding the following phone conversation and correspondences are highly-controverted. Immediately after talking to respondent Bejasa, Peña got in touch with Urban Bank's president, respondent Borlongan. Peña explained that the policemen in Pasay City were sympathetic to the tenants and were threatening to force their way into the premises. He expressed his concern that violence might erupt between the tenants, the city police, and the security guards posted in the Pasay property. Respondent Borlongan supposedly assured him that the bank was going to retain his services, and that the latter should not give up possession of the subject land. Nevertheless, petitioner-respondent Peña demanded a written letter of authority from the bank. Respondent Borlongan acceded and instructed him to see respondent Bejasa for the letter.[50]

In the same telephone conversation, respondent Borlongan allegedly asked Peña to maintain possession of the Pasay property and to represent Urban Bank in any legal action that might be instituted relative to the property. Peña supposedly demanded 10% of the market value of the property as compensation and attorney's fees and reimbursement for all the expenses incurred

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[48] RTC Decision dated 28 May 1999, at 3; *rollo* (G. R. No. 162562), Vol. 1, at 507.

[49] RTC Decision dated 28 May 1999, at 3-4; *rollo* (G. R. No. 162562), Vol. 1, at 507-508.

[50] RTC Decision dated 28 May 1999, at 4; *rollo* (G. R. No. 162562), Vol. 1, at 508.

from the time he took over land until possession was turned over to Urban Bank. Respondent Borlongan purportedly agreed on condition that possession would be turned over to the bank, free of tenants, not later than four months; otherwise, Peña would lose the 10% compensation and attorney's fees.[51]

Later that afternoon, Peña received the bank's letter dated 19 December 1994, which was signed by respondents Bejasa and Manuel, and is quoted below:

> **This is to confirm the engagement of your services as the authorized representative of Urban Bank, specifically to hold and maintain possession of our abovecaptioned property [Pasay property] and to protect the same from former tenants, occupants or any other person who are threatening to return to the said property and/or interfere with your possession of the said property for and in our behalf**.
>
> You are likewise authorized to represent Urban Bank in any court action that you may institute to carry out the aforementioned duties, and to prevent any intruder, squatter or any other person not otherwise authorized in writing by Urban [B]ank from entering or staying in the premises.[52] (Emphasis supplied)

On even date, ISCI sent Urban Bank a letter, which acknowledged ISCI's engagement of Peña and commitment to pay for any expenses that may be incurred in the course of his services. ISCI's letter reads:

> This has reference to your property located along Roxas Boulevard, Pasay City [Pasay property] which you purchased from Isabela Sugar Company under a Deed of Absolute Sale executed on December 1, 1994.
>
> In line with our warranties as the Seller of the said property and our undertaking to deliver to you the full and actual possession and control of said property, free from tenants, occupants or squatters and from any obstruction or impediment to the free use and occupancy

[51] RTC Decision dated 28 May 1999, at 4-5; *rollo* (G. R. No. 162562), Vol. 1, at 508-509.

[52] Petitioner Urban Bank's Letter dated 19 December 1994; Exhibit "B", RTC records, Vol. 3, at 568.

of the property by Urban Bank, **we have engaged the services of Atty. Magdaleno M. Peña to hold and maintain possession of the property and to prevent the former tenants or occupants from entering or returning to the premises**. In view of the transfer of the ownership of the property to Urban Bank, it may be necessary for Urban Bank to appoint Atty. Peña likewise as its authorized representative for purposes of holding/maintaining continued possession of the said property and to represent Urban Bank in any court action that may be instituted for the abovementioned purposes.

It is understood that any attorney's fees, cost of litigation and any other charges or expenses that may be incurred relative to the exercise by Atty. Peña of his abovementioned duties shall be for the account of Isabela Sugar Company and any loss or damage that may be incurred to third parties shall be answerable by Isabela Sugar Company.[53] (Emphasis supplied)

The following narration of subsequent proceedings is uncontroverted.

Peña then moved for the dismissal of ISCI's First Injunction Complaint, filed on behalf of ISCI, on the ground of lack of personality to continue the action, since the Pasay property, subject of the suit, had already been transferred to Urban Bank.[54] The RTC-Pasay City dismissed the complaint and recalled its earlier break-open order.[55]

Thereafter, petitioner-respondent Peña, now in representation of Urban Bank, filed a separate complaint[56] (the Second Injunction Complaint) with the RTC-Makati City, to enjoin the tenants from entering the Pasay property.[57] Acting

[53] ISCI's Letter dated 19 December 1994 signed by Herman Ponce and Julie Abad; Exhibit "5", RTC records, Vol. 4, at 812.

[54] ISCI's Urgent *Ex-parte* Motion/Notice to Dismiss dated 21 December 1994; Exhibit "I" to "I-2", RTC records, Vol. 3, at 586-588.

[55] RTC Decision dated 28 May 1999, at 6; *rollo* (G. R. No. 162562), Vol. I at 510.

[56] Petitioner Urban Bank's Complaint dated 04 January 1995; Exhibit "J" to "J-6", RTC records, Vol. 3, at 589-595.

[57] Petitioner Urban Bank's Complaint was docketed as Civil Case No. 95-029.

on Urban Bank's preliminary prayer, the RTC-Makati City issued a TRO.[58]

While the Second Injunction Complaint was pending, Peña made efforts to settle the issue of possession of the Pasay property with the sub-tenants. During the negotiations, he was exposed to several civil and criminal cases they filed in connection with the task he had assumed for Urban Bank, and he received several threats against his life.[59] The sub-tenants eventually agreed to stay off the property for a total consideration of PhP1,500,000.[60] Peña advanced the payment for the full and final settlement of their claims against Urban Bank.[61]

Peña claims to have borrowed PhP3,000,000 from one of his friends in order to maintain possession thereof on behalf of Urban Bank.[62] According to him, although his creditor-friend granted him several extensions, he failed to pay his loan when it became due, and it later on became the subject of a separate collection suit for payment with interest and attorney's fees.[63] This collection suit became the basis for Atty. Peña's request for discretionary execution pending appeal later on.

On 07 February 1995, within the four-month period allegedly agreed upon in the telephone conversation, Peña formally informed Urban Bank that it could already take possession of the Pasay

[58] RTC-Makati City's Order dated 06 January 1995; Exhibit "K", RTC records, Vol. 3, at 599.

[59] RTC Decision dated 28 May 1999, at 6; *rollo* (G. R. No. 162562), Vol. 1, at 510.

[60] *Id.*

[61] Receipt dated 28 April 1995 issued by Atty. Noel B. Malaya from Peña for the amount of PhP1,500,000; Exhibit "BB", RTC records, Vol. 3 at 757.

[62] The PhP3,000,000 loan of Mr. Roberto Ignacio to Peña is covered by three Promissory Notes dated 30 November 1994, 20 December 1994 and 27 April 1995 for PhP1,000,000 each. The three loans were all due on 30 May 1995 with an express stipulation of five percent (5%) interest for every month of delay. (*Rollo* [G. R. No. 145817], Vol. 1, at 286-288)

[63] Mr. Ignacio's Complaint dated 03 April 1999 (Civil Case No. 99-93952); *rollo* (G. R. No. 145817), Vol. 1, at 281-285.

property.[64] There was however no mention of the compensation due and owed to him for the services he had rendered.

On 31 March 1995, the bank subsequently took actual possession of the property and installed its own guards at the premises.[65]

Peña thereafter made several attempts to contact respondents Borlongan and Bejasa by telephone, but the bank officers would not take any of his calls. On 24 January 1996, or nearly a year after he turned over possession of the Pasay property, Peña formally demanded from Urban Bank the payment of the 10% compensation and attorney's fees allegedly promised to him during his telephone conversation with Borlongan for securing and maintaining peaceful possession of the property.[66]

Proceedings on the Complaint for Compensation

On 28 January 1996, when Urban Bank refused to pay for his services in connection with the Pasay property, Peña filed a complaint[67] for recovery of agent's compensation and expenses, damages and attorney's fees in RTC-Bago City in the province of Negros Occidental.[68] Interestingly, Peña sued only six out of the eleven members of the Board of the Directors of Urban Bank.[69] No reason was given why the six directors were selected

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[64] Peña's letter dated 07 February 1995 to petitioner Urban Bank; Exhibit "C", RTC records, Vol. 3, at 569.

[65] RTC Decision dated 28 May 1999, at 6-7; *rollo* (G. R. No. 162562), Vol. 1, at 510-511.

[66] Peña's letter dated 24 January 1996; Exhibit "D," RTC records, Vol. 3, at 570.

[67] Peña's Complaint dated 28 February 1996; RTC records, Vol. 1 at 1-6.

[68] CA Amended Decision dated 18 August 2000, at 2; *rollo* (G. R. No. 145817), Vol. 1, at 11.

[69] At the time the complaint was filed in 1996, the eleven members of the Board of Directors of Urban Bank included: (1) **Teodoro C. Borlongan**; (2) **Benjamin L. de Leon**; (3) Claudio R. de Luzuriaga, Jr.; (4) **P. Siervo H. Dizon**; (5) Francisco C. Eizmendi, Jr., (6) **Delfin C. Gonzalez, Jr.**; (7) Noel A. Laman; (8) **Eric L. Lee**; (9) **Ben T. Lim Sr.**; (10) Jose P. Magno,

and the others excluded from Peña's complaint. In fact, as pointed out, Atty. Peña mistakenly impleaded as a defendant, Ben Y. Lim, Jr., who was never even a member of the Board of Directors of Urban Bank; while, Ben T. Lim, Sr., father and namesake of Ben Y. Lim, Jr., who had been a director of the bank, already passed away in 1997.[70]

In response to the complaint of Atty. Peña, Urban Bank and individual bank officers and directors argued that it was ISCI, the original owners of the Pasay property, that had engaged the services of Peña in securing the premises; and, consequently, they could not be held liable for the expenses Peña had incurred.[71]

On 28 May 1999, the RTC-Bago City[72] ruled in favor of Peña, after finding that an agency relationship had indeed been created between him and Urban Bank. The eight directors and bank officers were found to be solidarily liable with the bank for the payment of agency's fees. The trial court thus ordered Urban Bank and all eight defendant bank directors and officers whom Peña sued to pay the total amount of PhP28,500,000 (excluding costs of suit):

> WHEREFORE, premised from the foregoing, judgment is hereby rendered ordering defendants to pay plaintiff jointly and severally the following amounts:
>
> 1. ₱24,000,000 as compensation for plaintiff's services plus the legal rate of interest from the time of demand until fully paid;
>
> 2. ₱3,000,000 as reimbursement of plaintiff's expenses;
>
> 3. ₱1,000,000 as and for attorney's fees;
>
> 4. ₱500,000 as exemplary damages;

Jr., (11) Carlos C. Salinas. (Urban Bank List of Members of the Board of Directors for Year Ending 1995; *rollo* (G. R. No. 162562), Vol. 1, at 840).

[70] Comment dated 30 March 2005 of Ben Y. Lim, Jr., and P. Siervo H. Dizon; *rollo* (G. R. No. 162562), Vol. 1, at 804-817.

[71] Petitioners' Answer with Compulsory Counterclaim dated 28 October 1996; *rollo* (G. R. No. 145817), Vol. 1, at 245-252.

[72] The Decision of the RTC-Bago City was then rendered by Judge Edgardo L. Catilo.

5. Costs of suit.

SO ORDERED.[73]

Urban Bank and the individual defendant bank directors and officers filed a common Notice of Appeal,[74] which was given due course.[75] In the appeal, they questioned the factual finding that an agency relationship existed between the bank and Peña.[76]

Although they put up a single defense in the proceedings in the lower court, Urban Bank and individual defendants contracted different counsel and filed separate Briefs on appeal in the appellate court.

In its Brief,[77] Urban Bank[78] assigned as errors the trial court's reliance on the purported oral contract of agency and Peña's claims for compensation during the controverted telephone conversation with Borlongan, which were allegedly incredible.

Meanwhile, Benjamin L. de Leon, Delfin Gonzalez, Jr., and Eric L. Lee (the De Leon Group),[79] the petitioners in the instant Petition docketed as G. R. No. 145822, argued that, even on the assumption that there had been an agency contract with the bank, the trial court committed reversible error in holding them

[73] RTC Decision dated 28 May 1999, at 24; *rollo* (G. R. No. 145817), Vol. 1, at 101.

[74] Notice of Appeal dated 15 June 1999; RTC records, Vol. 5, at 1016.

[75] RTC Order dated 23 June 1999; RTC records, Vol. 5, at 1022.

[76] The appeal was docketed in the Court of Appeals as CA-G. R. CV No. 65756.

[77] Brief for Defendant-Appellant Urban Bank, Inc., dated 25 January 2002; CA *rollo* (CA-G.R. CV No. 65756), Vol. 1, at 110-175.

[78] The Singson Valdez & Associates Law Office entered its appearance for petitioner Urban Bank. (Notice of Appearance dated 07 November 2001; CA *rollo* [CA-G.R. CV No. 65756], Vol. 1, at 57-59) Although petitioner Urban Bank's previous counsel, the Poblador Bautista & Reyes Law Office, withdrew its appearance, it remained as counsel for the other individual petitioners. (Withdrawal of Appearance dated 07 August 2001; CA *rollo* [CA-G.R. CV No. 65756], Vol. 1, at 36-37).

[79] The De Leon Group was represented by the Abello Concepcion Regala & Cruz Law Office.

– as bank directors – solidarily liable with the corporation.[80]

On the other hand, Teodoro Borlongan, Corazon M. Bejasa, Arturo Manuel, Jr., Ben Y. Lim, Jr., and P. Siervo H. Dizon (the Borlongan Group)[81] reiterated similar arguments as those of the De Leon Group, adding that the claimed compensation of 10% of the purchase price of the Pasay property was not reasonable.[82]

Peña refuted all of their arguments[83] and prayed that the trial court's Decision be affirmed.[84]

Acting favorably on the appeal, the Court of Appeals[85] annulled the Decision of the RTC-Bago City and ruled that no agency relationship had been created. Nevertheless, it ordered Urban Bank to reimburse Peña for his expenses and to give him reasonable compensation for his efforts in clearing the Pasay

[80] De Leon Group's Appellants' Brief dated 28 January 2002; CA *rollo* (CA-G.R. CV No. 65756), Vol. 2, at 177-312.

[81] The Poblador Bautista & Reyes Law Office initially represented petitioner Borlongan Group, but was replaced by the Chato Eleazar Lagmay & Arreza Law Office. (Entry of Appearance dated 05 May 2003; CA *rollo*, [CA-G.R. CV No. 65756], Vol. 2, at 1201-1203) However, Benjamin Y. Lim and P. Siervo H. Dizon (the Lim Group) retained the Poblador Bautista & Reyes Law Office. (Withdrawal of Appearance dated 15 January 2003; CA *rollo* [CA-G.R. CV No. 65756], Vol. 2, at 1164-1166)

[82] Petitioner Borlongan Group's Brief for Appellants dated 18 April 2002; CA *rollo* (CA-G.R. CV No. 65756), Vol. 2, at 675-735.

[83] Peña's Appellee's Brief dated 07 September 2002; CA *rollo* (CA-G.R. CV No. 65756), Vol. 2, at 892-972.

[84] In a separate original petition under Rule 71, Peña also asked that Urban Bank and the individual officers and directors as well as their counsel be cited for indirect contempt for, among others, withholding material information from the appellate court as well as for misrepresenting the appearance of witnesses in the proceedings below. (Petition dated 05 September 2002; CA *rollo* [CA-G.R. SP No. 72698], Vol. 1, at 2-14) This petition for indirect contempt was later consolidated with the appeal of the main case. (CA Resolution dated 25 November 2002; CA *rollo* [CA-G.R. SP No. 72698], Vol. 1, at 295)

[85] The Court of Appeals' Sixth Division was then composed of CA Justices Delilah Vidallon-Magtolis, Jose L. Sabio, Jr., (*ponente*) and Hakim S. Abdulwahid.

property of tenants in the amount of PhP3,000,000, but absolved the bank directors and officers from solidary liability. The dispositive portion of the CA decision reads as follows:

> WHEREFORE, in view of the foregoing considerations, the May 28, 2000 Decision [sic] and the October 19, 2000 [sic] Special Order of the RTC of Bago City, Branch 62,[86] are hereby ANNULLED AND SET ASIDE. **However, the plaintiff-appellee [Peña] in CA GR CV No. 65756 is awarded the amount of ₱3 Million as reimbursement for his expenses as well as reasonable compensation for his efforts in clearing Urban Bank's property of unlawful occupants**. The award of exemplary damages, attorney's fees and costs of suit are deleted, the same not having been sufficiently proven. The petition for Indirect Contempt against all the respondents is DISMISSED for utter lack of merit. [87] (Emphasis supplied)

Peña duly filed a Motion for Reconsideration of the unfavorable CA Decision.[88] The appellate court, however, denied his motion.[89] The CA Decision and Resolution were appealed by Peña to this Court, through one of the three consolidated Rule 45 Petitions before us (G.R. No. 162562).

Execution Pending Appeal

On 07 June 1999, prior to the filing of the notice of appeal of Urban Bank and individual bank officers,[90] Peña moved for execution pending appeal[91] of the Decision rendered by the RTC-

[86] The dates of the trial court's orders appearing in the dispositive portion were later corrected by the CA and now reads "the May 28, 1999 Decision and the October 29, 2000 Special Order." (CA Resolution dated 08 March 2004, at 2; *rollo* [G.R. No. 162562], Vol. 1, at 80)

[87] CA Decision (CA GR SP No. 72698 & CV No. 65756) dated 06 November 2003; *rollo* (G.R. No. 162562), Vol. 1, at 82-111.

[88] Peña's Motion for Reconsideration dated 04 December 2003; *rollo* (G.R. No. 162562), Vol. 1, at 533-565.

[89] CA Resolution (CA GR SP No. 72698 & CV NO. 65756) dated 08 March 2004; *rollo* (G.R. No. 162562), Vol. 1, at 79-80.

[90] Notice of Appeal dated 15 June 1999; RTC records (Vol. V) at 1016.

[91] Peña's Motion for Execution dated 07 June 1999; *rollo* (G.R. No. 145817), Vol. 1, at 277-279; *see* Peña's Memorandum dated 13 October 1999; *rollo* (G.R. No. 145822), Vol. 1, at 371-376.

Bago City,[92] which had awarded him a total of PhP28,500,000 in compensation and damages.[93]

In supporting his prayer for discretionary execution, Peña cited the pending separate civil action for collection filed against him by his creditor-friend, who was demanding payment of a PhP3,000,000 loan.[94] According to Peña, he had used the proceeds of the loan for securing the bank's Pasay property. **No other reason for the prayer for execution pending appeal was given by Peña other than this collection suit.**[95]

In opposition to the motion, Urban Bank countered that the collection case was not a sufficient reason for allowing execution pending appeal.[96]

On 29 October 1999, the RTC-Bago City, through Judge Henry J. Trocino,[97] favorably granted Peña's motion and issued

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[92] RTC Decision dated 28 May 1999, at 24; *rollo* (G. R. No. 145817), Vol. 1, at 101.

[93] PhP 24,000,000 (compensation) + PhP3,000,000 (reimbursement) + PhP1,000,000 (attorney's fees) + PhP500,000 (exemplary damages) = PhP28,500,000 (excluding costs of suit)

[94] The Complaint filed against Peña was a civil action for collection of PhP3,500,000 and PhP100,000 attorney's fees, which was filed by Mr. Roberto R. Ignacio and was docketed as Civil Case No. 99-93952 with the Regional Trial Court of Manila. (Complaint dated 03 April 1999; *rollo* [G. R. No. 145822], Vol. 1, at 213-217)

[95] "4. Plaintiff has been unable to pay his loan precisely because defendants have not paid him his fees. Since Mr. Ignacio has been a long time friend of his, he has been granted several extensions but on 4 June 1999, plaintiff received a summons issued by the Regional Trial Court of Manila, Branch 16 for a collection case filed [by] said Mr. Ignacio. …

"6. … It is imperative therefore that this Honorable Court's Decision be executed immediately so that he could settle the obligation which he would not have contracted had defendants not engaged his services." (Peña's Motion for Execution dated 07 June 1999, at 2; *rollo* [G. R. No. 145817], Vol. 1, at 278)

[96] Petitioner Urban Bank's Opposition (to Motion for Execution) dated 15 June 1999; *rollo* (G. R. No. 145817), Vol. 1, at 289-300; *see* Petitioner Urban Bank's Memorandum dated 12 October 1999; *rollo* (G. R. No. 145822), Vol. 1, at 309-331.

[97] Petitioner Urban Bank had earlier moved for the voluntary inhibition of Judge Catilo. (Petitioner Urban Bank's Motion for Voluntary Inhibition

a Special Order authorizing execution pending appeal.[98] In accordance with this Special Order, Atty. Josephine Mutia-Hagad, the clerk of court and *ex officio* sheriff, issued a Writ of Execution[99] on the same day.[100] The Special Order and Writ of Execution were directed at the properties owned by Urban Bank as well as the properties of the eight individual bank directors and officers.

On 04 November 1999, affected by the trial court's grant of execution pending appeal, Urban Bank[101] filed a Rule 65 Petition with the CA to enjoin the Special Order and Writ of Execution issued by the trial court with a prayer for a TRO.[102]

On 09 November 1999, the appellate court favorably granted the TRO and preliminarily prohibited the implementation of the Special Order and Writ of Execution.[103]

On 12 January 2000, the CA eventually granted Urban Bank's Rule 65 Petition, and the RTC's Special Order and Writ of Execution, which permitted execution pending appeal, were annulled. The appellate court ruled:[104]

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by the Presiding Judge dated 15 June 1999; *rollo* [G.R. No. 145817], Vol. 1, at 301-306)

[98] RTC Special Order dated 29 October 1999; *rollo* (G.R. No. 145817), Vol. 1, at 880-889.

[99] Writ of Execution dated 28 May 1999; *rollo* (G. R. No. 145822), Vol. 1, at 152-154.

[100] The trial court's Special Order and Writ of Execution were the subjects of a Rule 65 Petition filed by Urban Bank with the CA, and later docketed as CA-G. R. SP No. 55667. (Urban Bank's Petition for *Certiorari* and Prohibition dated 29 November 1999; *rollo* [G. R. No. 145817], Vol. 1, at 307-345)

[101] Petitioner Urban Bank was represented in this Rule 65 Petition by the Poblador Bautista & Reyes Law Offices.

[102] Respondent Pena's Petition for *Certiorari* and Prohibition with Application for Temporary Restraining Order and Writ of Preliminary Injunction dated 04 November 1999; *rollo* (G. R. No. 145817), Vol. 1, at 307-338.

[103] CA Resolution dated 09 November 1999.

[104] CA Twelfth Division composed of Justices Godardo A. Jacinto, Marina V. Buzon (*ponente*) and Edgardo P. Cruz.

WHEREFORE, the instant petition is GRANTED. The Special Order and writ of execution, both dated October 29, 1999, are ANNULLED and SET ASIDE.

Respondents are directed to desist from further implementing the writ of execution and to lift the garnishment and levy made pursuant thereto.[105]

On 02 February 2000, Peña moved for the reconsideration of the CA's Decision;[106] while petitioners filed their corresponding Comment/Opposition thereto.[107]

During the pendency of Peña's Motion for Reconsideration, Urban Bank declared a bank holiday on 26 April 2000 and was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC).[108]

In its Amended Decision dated 18 August 2000, the CA[109] favorably granted Peña's Motion for Reconsideration, and reversed its earlier Decision to allow execution pending appeal.[110] The appellate court found that the bank holiday declared by the BSP after the promulgation of its earlier Decision, PDIC's receivership of Urban Bank, and the imminent insolvency thereof

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[105] CA Decision dated 12 January 2000; *rollo* (G. R. No. 145817), Vol. 1, at 346-358.

[106] Peña's Motion for Reconsideration dated 02 February 2000; *rollo* (G. R. No. 145817), Vol. 1, at 359-380.

[107] Petitioners' Comment/Opposition dated 14 April 2000; *rollo* (G. R. No. 145817), Vol. 1, at 381-401.

[108] The *Bangko Sentral ng Pilipinas* (BSP) issued Monetary Board Resolution No. 22 placing petitioner Urban Bank under receivership of the Philippine Deposit Insurance Corporation (PDIC), considering that the bank was suffering from illiquidity and its capital was deficient. (Minutes of Board Resolution No. 22 dated 26 April 2000; *rollo* [G. R. No. 145817], Vol. 1, at 232)

[109] CA Former Special Twelfth Division, Justices Godardo A. Jacinto, Roberto A. Barrios and Edgardo P. Cruz (*ponente*).

[110] This CA Amended Decision is the subject of petitioner Urban Bank's Rule 45 Petition in G. R. No. 145817. (*Rollo* [G. R. No. 145817], Vol. 1, at 10-21).

constituted changes in the bank's conditions that would justify execution pending appeal.[111]

On 29 August 2000, Urban Bank and its officers moved for the reconsideration of the Amended Decision.[112] The De Leon Group subsequently filed several Supplemental Motions for Reconsideration.[113] Thereafter, respondents Teodoro Borlongan and Corazon M. Bejasa also filed their separate Supplemental Motion for Reconsideration,[114] as did petitioner Ben T. Lim, Jr.[115]

On 19 October 2000, the Court of Appeals denied the motion for reconsideration for lack of merit and the other subsequent Supplemental Motions for Reconsideration for being filed out of time.[116] The appellate court also ordered Peña to post an indemnity bond.[117] The Amended Decision and the Resolution

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[111] "In the instant case, although petitioner Bank's imminent insolvency may not have been considered by the court *a quo* in allowing immediate execution, such ground, which has in the meantime arisen, may be relied upon by this Court in deciding the propriety of the execution pending appeal." (CA Amended Decision dated 18 August 2000, at 8; *rollo* (G. R. No. 145817), Vol. 1, at 17)

[112] Petitioners' Motion for Reconsideration dated 29 August 2000; *rollo* (G. R. No. 145817), Vol. 1, at 402-419.

[113] Petitioner De Leon Group's Supplemental Motion for Reconsideration dated 21 September 2000 (*rollo* [G. R. No. 145822], Vol. 1, at 791-815) and Second Supplemental Motion for Reconsideration dated 11 October 2000 (*rollo* [G. R. No. 145822], Vol. 1, at 851-867); *see also* CA Resolution dated 19 October 2000, at 1 (*rollo* [G. R. No. 145817], Vol. 1, at 23).

[114] Benjamin de Leon, Delfin C. Gonzales and Eric L Lee filed three separate Supplemental Motions for Reconsideration on 22 September 2000, 11 October 2000 and 16 October 2000. (CA Resolution dated 19 October 2000, at 1; *rollo* [G. R. No. 145817], Vol. 1, at 23)

[115] Petitioner Lim's Supplemental Motion for Reconsideration and Application for Temporary Restraining Order and Writ of Preliminary Injunction dated 13October 2000; *rollo* (G. R. No. 162562), Vol. 1, at 818-824.

[116] CA Resolution dated 19 October 2000 (CA-G.R. SP No. 55667); *rollo* (G.R. No. 145817), Vol. 1, at 23-26.

[117] "Respondent Magdaleno M. Peña is directed to post, within five (5) days from notice, an indemnity bond in the amount of ₱15,000,000.00

were the subjects of several Rule 45 Petitions filed by Urban Bank and individual petitioners (G.R. Nos. 145817, 145818 and 145822).

On the same day the CA denied its Motion for Reconsideration, the De Leon Group immediately moved for the stay of execution pending appeal upon the filing of a supersedeas bond.[118]

On 31 October 2000, the CA[119] granted the stay of the execution upon the filing by the De Leon Group of a PhP40,000,000 bond in favor of Peña.[120] Peña moved for the reconsideration of the stay order.[121]

In its Resolution dated 08 December 2000,[122] the appellate court denied Peña's Motion for Reconsideration and a stay order over the execution pending appeal was issued in favor of the De Leon Group, after they had filed their supersedeas bond.[123] The stay of execution pending appeal, however, excluded Urban Bank.[124]

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to answer for the damages which petitioners may suffer in case of reversal on appeal of the trial court's decision." (CA Resolution dated 19 October 2000, at 4; *rollo* [G.R. No. 145817], Vol. 1, at 26).

[118] Petitioner De Leon Group's *Ex Abundanti Cautela* Urgent Motion to Stay Execution Pending Appeal Upon Filing of Supersedeas Bond dated 19 October 2000; *rollo* (G. R. No. 145822), Vol. 1, at 869-879.

[119] The Special Former Special Twelfth Division was composed of Justices Bienvenido L. Reyes, Roberto A. Barrios, and Perlita J. Tria Tirona (*ponente*).

[120] CA Resolution dated 31 October 2000 (CA-G.R. SP No. 55667); *rollo* (G.R. No. 145817), Vol. 1, at 668-669.

[121] Peña's Urgent Motion for Reconsideration dated 06 November 2000 and Supplemental Motion dated 13 November 2000; *rollo* (G. R. No. 145822), Vol. 1, at 995-1008.

[122] CA Resolution dated 08 December 2000 (CA-G.R. SP No. 55667); *rollo* (G.R. No. 145817), Vol. 1, at 670-674.

[123] Petitioner De Leon Group's Compliance with Motion to Approve Supersedeas Bond dated 08 November 2000; *rollo* (G. R. No. 145822), Vol. 1, at 990-994.

[124] CA Resolution dated 08 December 2000 (CA-G.R. SP No. 55667); *rollo* (G.R. No. 145817), Vol. 1, at 670-674.

On 08 December 2000, Peña posted his indemnity bond as required by the CA.[125]

As mentioned earlier, Urban Bank, the De Leon Group, and the Borlongan Group filed around December 2000 separate Rule 45 Petitions in this Court, to assail the unfavorable CA Amended Decision and Resolution that affirmed the execution pending appeal. The details of these Rule 45 Petitions will be discussed in detail later on.

In the meantime, Export and Industry Bank (EIB) submitted its proposal for rehabilitation of Urban Bank to the BSP, and requested that the troubled bank be removed from receivership of the PDIC. On 12 July 2001, or almost a year after the Court of Appeals amended its decision to allow execution pending appeal, the rehabilitation plan of Urban Bank was approved by the Monetary Board of the BSP.[126] Thus, the Monetary Board subsequently lifted PDIC's statutory receivership of the bank.[127]

On 14 September 2001, Urban Bank, trying to follow the lead of the De Leon Group, made a similar request with the Court of Appeals for approval of its own supersedeas bond,[128] for the same amount of PhP40,000,000, and prayed that the execution of the RTC-Bago City's Decision against it be stayed as well.[129]

Sometime in September and October 2001, Urban Bank began receiving notices of levy and garnishment over its properties.

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[125] Peña's Compliance dated 08 December 2000; *rollo* (G. R. No. 145822), Vol. 1, at 1058-1060); *see* Peña's Comment dated 30 April 2001, at 12; *rollo* (G. R. No. 145817), Vol. 1, at 521.

[126] BSP Minute Resolution No. 37 dated 12 July 2001; *rollo* (G.R. No. 145817), Vol. 1, at 843-845.

[127] Petitioner Urban Bank's Urgent Motion to Approve Supersedeas Bond and to Stay Execution Pending Appeal dated 22 October 2001; *rollo* (G.R. No. 145817), Vol. 1, at 660-667.

[128] Surety Bond (MICO Bond No. 200104456) dated 13 September 2001; *rollo* (G.R. No. 145817), Vol. 1, at 740-741.

[129] Petitioner Urban Bank's Compliance with Motion to Approve Supersedeas Bond dated 14 September 2001 in CA-G.R. SP No. 55667; *rollo* (G.R. No. 145817), Vol. 1, at 675-709.

After it received Notice of the impending public execution sale of its shares in the Tagaytay Highlands International Golf Club,[130] Urban Bank reiterated its request for the approval of the supersedeas bond with the Court of Appeals and the issuance of the corresponding stay order.[131]

The appellate court, however, merely noted Urban Bank's motion on the ground that there was no showing whether a petition to the Supreme Court had been filed or given due course or denied.[132]

After the denial by the Court of Appeals of Urban Bank's motion for approval of its supersedeas bond, some of the levied properties of Urban Bank and the other bank officers were sold on public auction. The table below lists the properties that appear on record to have been levied and/or sold on execution pending appeal and the approximate value of some of these properties. They do not include properties covered by the Petition docketed as G.R. No. 145818.

TABLE OF LEVIED, GARNISHED AND/OR EXECUTED PROPERTIES PENDING APPEAL

Owner/ Defendant	Property Description	Estimated Value or Price at Public Auction	Total Amount	Remarks
	Three Club Shares Tagaytay Highlands International Golf Club[133]	As of 06 December 1999, one share was selling at ₱1.6 Million.[134]	4,800,000	

[130] Notice of Sale on Execution of Personal Property dated 27 September 2001; *rollo* (G.R. No. 145817), Vol. 1, at 714.

[131] Petitioner Urban Bank's Urgent Manifestation and Motion dated 02 October 2001; *rollo* (G.R. No. 145817), Vol. 1, at 710-712.

[132] CA Resolution dated 05 October 2001 in CA-G.R. SP No. 55667; *rollo* (G.R. No. 145817), Vol. 1, at 715-716.

[133] Notice of Sale on Execution of Personal Property dated 27 September 2001; *rollo* (G.R. No. 145817), Vol. 1, at 714.

[134] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; *rollo* (G. R. No. 145822), Vol. 1, at 708. (At

Urban Bank	Three Club Shares in Makati Sports, Club, Inc. (MSCI) [Covered by Stock Certificate Nos. A-1893, A-2305 and B-762][135]	As of 06 December 1999, MSCI Club Shares "A" and "B" were selling at PhP650,000 and PhP700,000, respectively.[136]	2,000,000[137]	Atty. Peña was one of the winning bidders in the auction sale together with his creditor friend, Roberto Ignacio, and Atty. Ramon Ereñeta.
	85 Condominium Units in the Urban Bank Plaza, Makati City[138]	The highest bid price obtained for the condominium units was PhP1M at the time of the execution sale.[139]	85,000,000	Intervenor Unimega purchased the 10 condominium units in the auction sale for ₱1M each or a total of ₱10 M.[140]

present, one share in Tagaytay Highlands International Golf Club is selling at PhP560,000 [http://www.ggaclubshares.com/ last visited 17 October 2011].)

[135] Notice of Sale on Execution of Personal Property dated 03 October 2001; *rollo* (G.R. No. 145817), Vol. 1, at 717; RTC Orders all dated 15 October 2001; *rollo* (G. R. No. 145822), Vol. 2, at 2923-2928.

[136] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; *rollo* (G. R. No. 145822), Vol. 1, at 708. (At present, Makati Sports Club Shares "A" and "B" are now selling at ₱200,000 and ₱230,000 respectively [http://www.ggaclubshares.com/ last visited 17 October 2011])

[137] Two MSCI "A" Club Shares at PhP650,000 each and one MSCI "B" Club Share at PhP700,000.

[138] Notice of Sale on Execution of Real Property dated 03 October 2001, covering Condominium Certificates of Title (CCT) Nos. 56034-39, 56052-69, 56088-56147, and 56154; *rollo* (G.R. No. 145817), Vol. 1, at 718-739. *See* Certifications dated 26 October 2001 and 31 October 2001 attesting to the sale of the CCTs covering units in Makati City registered under the name of Urban Bank; *rollo* (G. R. No. 145817), Vol. 1, at 769-770.

[139] Most of the condominium units were sold anywhere for as low as PhP100,000 to PhP1,000,000. The whole lot of 85 condominiums units in Urban Bank Plaza were sold for a total of **PhP27,400,000** only. (c/f Properties levied and attached; *rollo* [G. R. No. 145817], Vol. 1, at 976-980)

[140] Ten Certificates of Sale all dated 25 October 2001; *rollo* (G.R. No. 145817), Vol. 1, at 1005-1035.

	A 155 sqm. condominium unit, Makati City (CCT No. 57697)[141]	Estimates are based on report of Urban Bank[142]	12,400,000	
	A 12.5 sqm. condominium parking space (Parking Three, Unit P-46) in Makati City (CCT No. 57698)[143]		500,000	
	A 64,677 sqm. land in Tagaytay City (TCT No. 20471)[144]	Value based on estimate of Urban Bank[145]	35,572,350	
Teodoro Borlongan	One Club Share in Manila Polo Club (No. 3433)[146]	Borlongan's club share was estimated to be valued at ₱1,000,000.[147]	1,000,000	Notice of Sale on Execution on Personal Property dated 25 August 2000[148]

[141] Notice of Levy on Execution dated 05 November 1999 and Condominium Certificate of Title No. 57697 under the name of Urban Bank; RTC records, Vol. 5, at 1315-1318.

[142] Urban Bank Properties, Annex of Urban Bank's Letter dated 09 November 1999; RTC records, Vol. 5, at 1310.

[143] Notice of Levy on Execution dated 05 November 1999 and Condominium Certificate of Title No. 57698 under the name of Urban Bank; RTC records, Vol. 5, at 1319-1322.

[144] Notice of Levy on Execution dated 05 November 1999; RTC records, Vol. 5, at 1332-1333.

[145] Urban Bank Properties, Annex of Urban Bank's Letter dated 09 November 1999; RTC records, Vol. 5, at 1310.

[146] Letter dated 08 November 1999 of Manila Polo Club; RTC records, Vol. 5, at 1312; RTC Order dated 19 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2550-2552.

[147] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also* Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Polo Club sells at PhP7 Million. [http://www.ggaclubshares.com last visited 17 October 2011])

[148] *Rollo* (G. R. No. 145817), Vol. 1, at 422.

	One Club Share in Subic Bay Yacht Club[149]	One club share was estimated to be valued at ₱500,000.[150]	500,000	
	One Club Share in Baguio Country Club[151]	As of 06 December 1999, one share was selling at ₱870,000.[152]	870,000	
	One Club Share in MSCI[153]	As of 06 December 1999, MSCI Club Shares "A" and "B" were selling at PhP650,000 and PhP700,000 respectively.[154]	650,000	
	Real Property[155]	No estimate available on record.		

[149] RTC Order dated 31 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2542-2543; RTC Amended Order dated 13 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2546-2549; *see also Lee v. Trocino*, G. R. No. 164648, 06 August 2008, 561 SCRA 178.

[150] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also* Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Subic Bay Yacht Club sells at PhP150,000. [http://www.ggaclubshares.com last visited 17 October 2011])

[151] RTC Order dated 27 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2540-41.

[152] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; *rollo* (G. R. No. 145822), Vol. 1, at 708. (At present, one share in Baguio Country Club is selling at PhP650,000 [http://www.ggaclubshares.com/ last visited 17 October 2011].)

[153] RTC Order dated 27 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2540-41;

[154] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; *rollo* (G. R. No. 145822), Vol. 1, at 708. (At present, Makati Sports Club Shares "A" and "B" are now selling at ₱200,000 and ₱230,000 respectively [http://www.ggaclubshares.com/ last visited 17 October 2011])

[155] *Co v. Sillador*, A. M. No. P-07-2342, 31 August 2007, 531 SCRA 657.

	One Club Share in Manila Polo Club (No. 3818)[156]	Gonzales' club share was estimated to be valued at ₱4,000,000.[157]	4,000,000	Notice of Sale on Execution on Personal Property dated 25 August 2000[158]
	One Club Share in Baguio Country Club.[159]	Gonzales' club share was estimated to be valued at ₱1,077,000.[160]	1,077,000	
	One Club Share in Alabang Country Club (Member No. 550)[161]	Gonzales' club share was estimated to be valued at ₱2,000,000.[162]	2,000,000	

[156] Letter dated 08 November 1999 of Manila Polo Club; RTC records, Vol. 5, at 1312; RTC Order dated 19 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2550-2552; RTC Order dated 09 March 2001; *rollo* (G. R. No. 145822), Vol. 2, at 2558-2561.

[157] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also* Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Polo Club sells at PhP7 Million. [http://www.ggaclubshares.com last visited 17 October 2011])

[158] *Rollo* (G. R. No. 1458177), Vol. 1, at 420.

[159] Notice of Sale on Execution of Personal Property dated 22 September 2000; *rollo* (G. R. No. 145822). Vol. 2, at 2520; RTC Order dated 12 October 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2526-2527; RTC Order dated 24 January 2001; *rollo* (G. R. No. 145822), Vol. 2, at 2554-2557; *see also* Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; *rollo* (G. R. No. 145817), Vol. 2, at 1722.

[160] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also* Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one share in Baguio Country Club is selling at PhP650,000 [http://www.ggaclubshares.com/ last visited 17 October 2011].)

[161] Notice of Sale on Execution of Personal Property dated 09 October 2000; *rollo* (G. R. No. 145822). Vol. 2, at 2523; RTC Order dated 18 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2528-2529; *see also* Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; *rollo* (G. R. No. 145817), Vol. 2, at 1722.

[162] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also*

Delfin C. Gonzales, Jr.	30,585 shares of stock in D. C. Gonzales, Jr., Inc.[163]	₱20.00 per share[164]	611,700	
	40 Shares of stock in D. C. Gonzales, Jr., Inc.[165]	₱50.00 per share[166]	2,000,000	
Benjamin L. de Leon	One Club Share in Manila Polo Club (with Associate Membership) [No. 0597][167]	De Leon's Share was estimated at P4 M for the share and ₱1.05 M for the associate membership.[168]	5,050,000	Notice of Sale on Execution on Personal Property dated 25 August 2000[169]

Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, Alabang Country Club Shares "A" and "B" are selling at PhP1.95 M and PhP2.95M, respectively [http://www.ggaclubshares.com/ last visited 17 October 2011].)

[163] Notice of Garnishment dated 29 October 1999; *rollo* (G. R. No. 145822), Vol. 2, at 2571-2572; Notice of Sale on Execution of Personal Property dated 20 October 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2539; RTC Order dated 31 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2542-2543; RTC Amended Order dated 13 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2546-2549; *see also Lee v. Trocino, id.*

[164] RTC Order dated 31 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2542-2543.

[165] Notice of Sale on Execution of Personal Property dated 20 October 2000; *rollo* (G. R. No. 145822). Vol. 2, at 2539; RTC Order dated 31 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2544-2545; RTC Amended Order dated 13 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2546-2549; *see also Lee v. Trocino, id.*

[166] RTC Order dated 31 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2544-2545.

[167] Letter dated 08 November 1999 of Manila Polo Club; RTC records, Vol. 5, at 1312; RTC Order dated 19 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2550-2552; RTC Order dated 09 March 2001; *rollo* (G. R. No. 145822), Vol. 2, at 2558-2561.

[168] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also*

	One Club Share in MSCI (Stock Certificate No. A-175)[170]	De Leon's share was estimated at P450,000.[171]	450,000	
	One Club Share in Baguio Country Club (5523)[172]	As of 06 December 1999, one share was selling at least ₱870,000.[173]	870,000	
P. Siervo G. Dizon				No records available as to properties levied, garnished or executed pending appeal.

Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Polo Club sells at PhP7 Million. [http://www.ggaclubshares.com last visited 17 October 2011])

[169] *Rollo* (G. R. No. 145817), Vol. 1, at 425.

[170] Notice of Sale on Execution of Personal Property dated 22 September 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2522; RTC Order dated 27 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2540-41; *see also* Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3; *rollo* (G. R. No. 145817), Vol. 2, at 1721.

[171] Urban Bank's Manifestation and Motion dated 20 September 2005, at 3; *rollo* (G. R. No. 145817), Vol. 2, at 1721. (At present, a Makati Sports Club Share "A" is now selling at P200,000 [http://www.ggaclubshares.com/ last visited 17 October 2011])

[172] Notice of Sale on Execution of Personal Property dated 22 September 2000; *rollo* (G. R. No. 145822). Vol. 2, at 2521; RTC Order dated 27 October 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2540-2541.

[173] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; *rollo* (G. R. No. 145822), Vol. 1, at 708. (At present, one share in Baguio Country Club is selling at PhP650,000 [http://www.ggaclubshares.com/ last visited 17 October 2011].)

Eric L. Lee	One Club Share in Manila Polo Club (2038)[174]	Lee's' club share was estimated to be valued at ₱4,000,000.[175]	4,000,000	Notice of Sale on Execution on Personal Property dated 25 August 2000[176]
	One Club Share in Manila Golf Club, Inc.[177]	Lee's club share was estimated to be valued at ₱15,750,000.[178]	15,750,000	

[174] Letter dated 08 November 1999 of Manila Polo Club; RTC records, Vol. 5, at 1312; RTC Order dated 19 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2550-2552; RTC Order dated 09 March 2001; *rollo* (G. R. No. 145822), Vol. 2, at 2558-2561.

[175] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also* Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Polo Club sells at PhP7 Million. [http://www.ggaclubshares.com last visited 17 October 2011])

[176] *Rollo* (G. R. No. 1458177), Vol. 1, at 421.

[177] Notice of Sale on Execution of Personal Property dated 22 September 2000; *rollo* (G. R. No. 145822). Vol. 2, at 2519; RTC Order dated 04 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2525; RTC Order dated 20 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2553; *see also* Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; *rollo* (G. R. No. 145817), Vol. 2, at 1722.

[178] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also* Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Golf Club sells at PhP26.5 Million. [http://www.ggaclubshares.com last visited 17 October 2011])

	One Club Share in Sta. Elena Golf Club, Inc. (Class "A" Share)[179]	Lee's club share was estimated to be valued at ₱2,000,000.[180]	2,000,000	
	Two Club Shares in Tagaytay Highlands Int'l Golf Club, Inc.[181]	Lee's club shares were estimated to be valued at ₱1,000,000.[182]	1,000,000	Notice of Sale on Execution on Personal Property dated 25 August 2000[183]
	One Club Share in Subic Yacht Club[184]	Lee's club share was estimated to be valued at ₱500,000.[185]	500,000	

[179] Notice of Sale on Execution of Personal Property dated 09 October 2000; *rollo* (G. R. No. 145822). Vol. 2, at 2524; RTC Order dated 18 October 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2530-2531; *see also* Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; *rollo* (G. R. No. 145817), Vol. 2, at 1722.

[180] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also* Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Sta. Elena Club (both "A" and "B") sells at PhP2.3 Million. [http://www.ggaclubshares.com last visited 17 October 2011])

[181] RTC Order dated 19 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2550-2552; Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; *rollo* (G. R. No. 145817), Vol. 2, at 1722.

[182] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also* Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Tagaytay Highlands Int'l Gold Club sells at PhP560,000. [http://www.ggaclubshares.com last visited 17 October 2011])

[183] *Rollo* (G. R. No. 1458177), Vol. 1, at 423-424.

[184] Notice of Sale on Execution of Personal Property dated 20 October 2000; *rollo* (G. R. No. 145822). Vol. 2, at 2538; *see also* Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; *rollo* (G. R. No. 145817), Vol. 2, at 1722.

[185] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; *rollo* (G. R. No. 145817), Vol. 2, at 1721-1722. *See also*

	60,757 Shares of stock in EQL Properties, Inc.[186]	P20.00 per share	1,214,140	
	40 Shares of stock in EQL Properties, Inc.[187]	₱50.00 per share	2,000	
	Cash garnished from BPI Account[188]		100,000	
Ben T. Lim, Jr.				No records available as to properties levied, garnished or executed pending appeal.
Corazon Bejasa	Real Property[189]	No estimated value.		
Arturo Manuel, Jr.,	Real Property[190]	No estimated value.		
	TOTAL VALUE		**181,919,190**	

Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; *rollo* (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Subic Yacht Club sells at PhP150,000. [http://www.ggaclubshares.com last visited 17 October 2011])

[186] RTC Order dated 31 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2542-2543; RTC Amended Order dated 13 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2546-2549; *see also Lee v. Trocino, id.*

[187] RTC Order dated 31 October 2000, *rollo* (G. R. No. 145822), Vol. 2, at 2544-2545; RTC Amended Order dated 13 December 2000; *rollo* (G. R. No. 145822), Vol. 2, at 2546-2549; *see also Lee v. Trocino, id.*

[188] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; *rollo* (G. R. No. 145817), Vol. 2, at 1722.

[189] *Co v. Sillador, Id.*

[190] *Id.*

The sum of **PhP181,919,190** does not include many other properties and it is not difficult to believe that the total value covered reached more than that.[191] In summary, the estimated values and/or purchase prices at the auction sale of the properties of Urban Bank and its officers amounted to no less than **PhP181,919,190** already. This amounts to almost six times the value of the award given by the trial court. Otherwise stated, Peña, as judgment creditor, was overly secured by the levied and/or garnished properties for the amount of PhP28,500,000, where the judgment award was still subject of reversal on appeal.

On 22 October 2001, Urban Bank, with respect to its pending Rule 45 Petition in this Court, moved for the approval of its PhP40,000,000 supersedeas bond[192] and requested that the Court stay the execution pending appeal.[193] Peña opposed the motion on the ground that it had already been rendered moot and academic by the sale of the properties of the bank.[194]

On 23 October 2002, or almost a year after some of the condominium units were sold in a public auction, EIB, as the successor of Urban Bank, expressed to the sheriff of RTC-Bago City an intent to redeem the said condominium units.[195] Thus,

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[191] Based on the Appraisal Report as of 16 April 2002 conducted by Cuervo Appraisers, Inc., submitted by Urban Bank in their Opposition (To Motion for Reconsideration with Intervention) dated 29 April 2003, the ten condominium units alone purchased by Unimega for PhP10 Million (Units 21-2, 21-3, 21-5, 21-6, and 22-1 to 22-6) was already worth **PhP146,851,900**. Meanwhile, the fair market value of the entire lot of 85 condominium units sold on execution pending appeal could reach as even as much as **PhP1.4 Billion**. (Appraisal Report; *rollo* [G. R. No. 145817], Vol. 2, at 1396-1423)

[192] Malaysian Insurance Surety Bond (MICO Bond No. 200104456) dated 13 September 2001; *rollo* (G. R. No. 145817), Vol. 1, at 740-741.

[193] Petitioner Urban Bank's Urgent Motion to Approve Supersedeas Bond and to Stay Execution Pending Appeal dated 22 October 2001; *rollo* (G. R. No. 145817). Vol. 1, at 660-667.

[194] Peña's Opposition dated 31 October 2001; *rollo* (G. R. No. 145817), Vol. 1, at 752-768.

[195] EIB letter dated 23 October 2002; *rollo* (G.R. No. 145817), Vol. 2, at 1277.

EIB tendered three manager's checks in the total amount of PhP22,108,800[196] to redeem the properties that were previously under the name of Urban Bank.[197] Although the trial court noted the bank's Manifestation,[198] the sheriff returned the EIB's manager's checks. Thus, on 29 October 2002, EIB, through a motion, was prompted to turn over the checks to the trial court itself.[199]

When Urban Bank supposedly failed to redeem the condominium units according to the sheriff,[200] final Certificates of Sale were issued in favor of Unimega on 04 November 2002.[201] Upon the latter's motion, RTC-Bago City, in its Order dated 13 November 2002, ordered the Register of Deeds of Makati to transfer the Condominium Certificates of Title to the name of Unimega.[202] It has not been shown, though, whether this Order was followed.

This Court, acting on Urban Bank's earlier motion to approve its supersedeas bond, granted the same in its Resolution dated 19 November 2001.[203] Peña moved for reconsideration of the

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[196] The following manager's checks were attached to the Manifestation: (a) Manager's Check No. 80571 (PhP224,000); (b) Manager Check No. 80572 (PhP13,440,000); and (c) Manager's Check No. 80573 (PhP 8,440,800). (*Rollo* [G. R. No. 145817], Vol. 2, at 1281)

[197] Petitioner Urban Bank's Manifestation with Tender of Payment of the Redemption Price dated 24 October 2002; *rollo* (G.R. No. 145817), Vol. 2, at 1278-1281.

[198] RTC-Bago City's Order dated 28 October 2002; *rollo* (G. R. No. 145817), Vol. 2, at 1286.

[199] Petitioner Urban Bank's Motion with Manifestation dated 29 October 2002; *rollo* (G. R. No. 145817), Vol. 2, at 1287-1291.

[200] Sheriff Sillador's Affidavits of Non-Redemption both dated 04 November 2002; *rollo* (G.R. No. No. 145817), Vol. 1, at 1072-1074.

[201] Sheriff's Certificates of Final Sale both dated 04 November 2002; *rollo* (G.R. No. 145817), Vol. 1, at 1065-1071.

[202] RTC-Bago City's Order dated 13 November 2002; *rollo* (G.R. No. 145817), Vol. 1, at 1086-1089.

[203] SC Resolution dated 19 November 2001; *rollo* (G. R. No. 145817), Vol. 1, at 794-795.

approval,[204] but his motion was subsequently denied by the Court.[205]

Proceedings in the Supreme Court (G.R. Nos. 145817, 145818 & 145822)

On 21 December 2000, Urban Bank,[206] represented by its receiver, PDIC,[207] filed a Rule 45 Petition with this Court (docketed as G.R. No. 145817) to assail the CA's Amended Decision and Resolution granting execution pending appeal.[208] In response, Peña moved for the denial of the petition on the grounds of lack merit, violation of the rule against forum shopping, and non-payment of docket fees, among others.[209] In a separate Comment,[210] Peña also argued that the appellate court had committed no error when it considered the bank's "imminent insolvency" as a good reason for upholding the validity of the execution pending appeal.

On the other hand, the Borlongan Group[211] filed a separate Rule 45 Petition questioning the same Decision and Resolution,

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[204] Peña's Motion for Reconsideration (of the Resolution Approving the Supersedeas Bond) dated 07 December 2001; *rollo* (G.R. No. 145817), Vol. 1, at 846-862.

[205] SC Resolution dated 24 September 2003; *rollo* (G.R. No. 145817), Vol. 1, at 1151-1152.

[206] Petitioner Urban Bank's counsel, the Poblador Bautista & Reyes Law Office, was substituted by the Office of the Chief Legal Counsel of PDIC, which had become the bank's receiver at that time. (Substitution of Counsel dated 24 November 2000; *rollo* [G. R. No. 145817], Vol. 1, at 27-30)

[207] PDIC, as receiver of petitioner Urban Bank, was represented by the Ongkiko Kalaw Manhit & Acorda Law Offices. (Entry of Appearance dated 21 December 2000; *rollo* [G. R. No. 145817], Vol. 1, at 183-185)

[208] Petitioner Urban Bank's Petition for Review on *Certiorari* dated 21 December 2000; *rollo* (G. R. No. 145817), Vol. 1, at 186-213.

[209] Peña's Comment with Motion to Cite for Contempt and Urgent Motion to Dismiss dated 12 January 2001; *rollo* (G. R. No. 145817), Vol. 1, at 32-77.

[210] Peña's Comment dated 30 April 2001; *rollo* (G. R. No. 145817), at 510-555.

[211] Petitioner Borlongan Group, comprised of individual bank directors and officers Teodoro Borlongan, Corazon M. Bejasa, Arturo Manuel, Jr.,

docketed as G.R. No. 145818.[212] This Court initially denied their petition on the ground that it failed to sufficiently show that the CA committed reversible order.[213] The Borlongan Group twice moved for the reconsideration of the denial of their petition; but the Court nonetheless denied both motions for lack of merit.[214] This denial of the petition in G.R. No. 145818 became final and executory, with the issuance of the Entry of Judgment.[215]

Meanwhile, another Rule 45 Petition (G.R. No. 145822)[216] was filed by the De Leon Group, assailing the same Decisions of the appellate court. The Court also preliminarily denied this petition on the ground that the De Leon Group failed to file the appeal within the reglementary period and to pay certain fees.[217]

Despite the denial of the Rule 45 Petition in G.R. No. 145822 filed by the De Leon Group, the Court nonetheless ordered that the case be consolidated with Urban Bank's own Rule 45 Petition in G.R. No. 145817.[218] The Court subsequently gave due course

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Ben Y. Lim, Jr., and P. Siervo H. Dizon, was then represented by the Poblador Bautista & Reyes Law Offices.

[212] Petitioner Borlongan Group's Petition for Review on Certiorari dated 21 November 2000; *rollo* (G. R. No. 145822), Vol. 1, at 887-950.

[213] "Considering the allegations, issues and arguments adduced in the petition for review on Certiorari of the amended decision and resolution of the Court of Appeals dated August 18, 2000 and October 19, 2000, respectively, as well as respondent's comments thereon, the Court further Resolves to DENY the petition for failure of the petitioners to sufficiently show that the Court of Appeals committed any reversible error in the challenged amended decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case." (SC Resolution dated 29 January 2001 in G. R. No. 145818; *rollo* (G. R. No. 145822), Vol. 1, at 955-956)

[214] SC Resolution dated 25 June 2001 in G.R. No. 145818; *rollo* (G.R. No. 145817), Vol. 1, at 620-621.

[215] SC Entry of Judgment dated 11 May 2001 in G.R. No. 145818; *rollo* (G.R. No. 145817), Vol. 1, at 657-658.

[216] Petitioner De Leon Group's Petition for Review on Certiorari dated 06 December 2000; *rollo* (G. R. No. 145822), Vol. 1, at 14-75.

[217] SC Resolution dated 13 December 2000; *rollo* (G. R. No. 145822), Vol. 1, at 955-956.

[218] SC Resolution dated 12 November 2001; *rollo* (G. R. No. 145817), Vol. 1, at 796.

to both of these petitions.[219] In compliance with the Court's Order,[220] Urban Bank[221] and the De Leon Group[222] filed their respective Memoranda.

As detailed earlier, the Court granted and approved Urban Bank's supersedeas bond and stayed the execution pending appeal.

Considering the favorable stay of execution pending appeal, EIB, as the new owner and successor of Urban Bank, immediately wrote to tell[223] the corporate secretary of MSCI not to effect the cancellation or transfer of Urban Bank's three MSCI stock certificates previously sold in a public auction.[224] In reply, MSCI explained that since there was no injunction or stay order, it had no other option but to comply with the trial court's Order for the transfer. Eventually, however, it could not effect the transfer of one of the shares to Peña because a club share had already been previously registered in his name, and the club's bylaws prohibited a natural person from owning more than one share.[225] Meanwhile, one of the winning bidders in the public auction sale of the MSCI shares wrote to the latter to demand that the club share previously owned by Urban Bank be transferred

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[219] SC Resolution dated 24 September 2003; *rollo* (G. R. No. 145817), Vol. 1, at 1151-1152.

[220] *Id.*

[221] Petitioner Urban Bank's Memorandum dated 28 January 2004; *rollo* (G. R. No. 145822), Vol. 1, at 1267-1288.

[222] Petitioner De Leon Group's Memorandum dated 20 January 2004; *rollo* (G. R. No. 145822), Vol. 1, at 1221-1266.

[223] EIB letter dated 10 December 2001; *rollo* (G.R. No. 145817), Vol. 1, at 896-897; *see also* EIB letter dated 24 October 2001 (*rollo* [G.R. No. 145817], Vol. 1, at 956) and EIB letter dated 06 June 2002 (*rollo* [G.R. No. 145817], Vol. 1, at 939)

[224] Petitioner Urban Bank's three shares in the Makati Sports Club were previously sold in a public auction last 11 October 2001, conducted by the sheriff of RTC-Bago City. (RTC Orders all dated 15 October 2001; *rollo* [G.R. No. 145817], Vol. 1, at 890-895)

[225] MSCI's letter dated 26 November 2001; Annex "C" of MSCI's Motion for Clarification; *rollo* (G.R. No. 145817), Vol. 1, at 875-899.

to him.[226]

On 04 February 2002, considering the conflicting claims of Urban Bank (through EIB) and the winning bidders of the club shares, MSCI filed a Motion for Clarification of the Court's Resolution staying the execution pending appeal.[227]

In its Motion for Clarification dated 06 August 2002, Urban Bank likewise requested clarification of whether the stay order suspended, as well, its right to redeem the properties sold at a public auction.[228] The copy of Urban Bank's motion for clarification intended for Peña was mistakenly sent to the wrong counsel.

In its Resolution dated 13 November 2002, the Court explained that its earlier stay order prohibited the MSCI from transferring the shares, and that the one-year period for redemption of the bank's properties was likewise suspended:

> WHEREFORE, the Court hereby RESOLVES to clarify that as a consequence of its approval of the supersedeas bond, **the running of the one-year period for petitioner Urban Bank to redeem the properties sold at the public auctions held on October 4, 11 and 25, 2001 as well as the consolidation of the titles in favor of the buyers, is SUSPENDED OR STAYED**. MSCI is also prohibited from transferring petitioner Urban Bank's MSCI club shares to the winning bidders in the execution sale held on October 11, 2001.[229] (Emphasis supplied)

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[226] Atty. Ereñeta's letter dated 16 January 2002 (*rollo* [G.R. No. 145817], Vol. 1, at 898-899); Atty. Ereñeta's letter dated 30 May 2002 (*rollo* [G.R. No. 145817], Vol. 1, at 898-938). *See also* Atty. Ereñeta's Motion to Cite in Contempt of Court dated 22 July 2002 in Civil Case No. 754 (*rollo* [G.R. No. 145817], Vol. 1, at 944-948).

[227] Makati Sports Club's Motion for Clarification dated 04 February 2002; *rollo* (G.R. No. 145817), Vol. 1, at 875-879.

[228] Petitioner Urban Bank's Motion for Clarification dated 6 August 2002; *rollo* (G.R. No. 145817),Vol. 1, at 972-975. *See also* petitioner Urban Bank's Urgent Motion to Resolve dated 21 October 2002; *rollo* (G.R. No. 145817), Vol. 1, at 982-987.

[229] SC Resolution dated 13 November 2002; *rollo* (G.R. No. 145817), Vol. 1, at 988-990.

On 09 December 2002, Peña moved that the Court's Resolution be recalled, because he was not given an opportunity to be heard on Urban Bank's Motion for Clarification, which was sent to a different counsel.[230] Interposing its objection, the bank argued that the error in mistakenly sending the Motion for clarification to a different counsel was by sheer inadvertence,[231] but Peña was nonetheless aware of the motion, and that the Court's clarification did not create or diminish his rights in any case.[232]

The Motion for Clarification filed by Urban Bank, the Court's Resolution dated 13 November 2002 and Peña's Omnibus Motion praying for the recall of the said Resolution became the subject of an administrative case (Administrative Case No. 6332), which was treated as a separate matter and later on de-consolidated with the instant Petitions.[233] The Court had even called for an executive session[234] in which Peña, among others, appeared and was questioned by the then members of the Court's First Division, namely retired Chief Justice Hilario Davide, Justices Jose Vitug, Antonio Carpio and Adolfo Azcuna. Although the Petitions had earlier been assigned to Justice Carpio, he has since taken no part in the proceedings of this case and this resulted in the re-raffling of the Petitions. The transfer and unloading of the case by the subsequently assigned Justices as well as Peña's numerous motions for inhibition and/or re-raffle has likewise caused

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[230] Peña's Urgent Omnibus Motion dated 09 December 2002 (*rollo* [G. R. No. 145817], Vol. 1, at 1090-1102); *see also* Peña's Supplement to the Urgent Omnibus Motion dated 19 December 2002 (*rollo* [G. R. No. 145817], Vol. 1, at 1106-1110)

[231] Urban Bank attributed the mistake allegedly due to the fact that in one of the Court's Resolution (SC Resolution dated 13 February 2002), the ACCRA Law Office was mentioned as the "counsel of respondent." (Opposition [To Urgent Omnibus Motion and Supplement to Urgent Omnibus Motion] dated 28 February 2003, at 2-4; *rollo* [G.R. No. 145817], Vol. 2, at 1220-1222).

[232] Petitioner Urban Bank's Opposition dated 28 February 2003; *rollo* (G.R. No. 145817), Vol. 2, at 1219-1227.

[233] SC Resolution dated 31 August 2011.

[234] SC Resolution dated 17 February 2003; *rollo* (G.R. No. 145822), Vol. 3, at 3220-3221.

considerable delay in the disposition of the instant Petitions and the Administrative Case.

Unimega, which was the winning bidder of some of the publicly executed condominium units of Urban Bank, moved to intervene in the case and to have the Court's same Resolution suspending the one-year period of redemption of the properties be reconsidered.[235] Unimega claimed that ownership of the bank's titles to the 10 condominium units had already been transferred to the former at the time the Court issued the Resolution; and, thus, there was no more execution to be suspended or stayed. Only Urban Bank[236] opposed the motion[237]of intervenor Unimega on the ground that the latter was not a buyer in good faith, and that the purchase price was grossly disproportional to the fair market value of the condominium units.[238]

The Court eventually granted the Motion to Intervene considering that the intervenor's title to the condominium units purchased at the public auction would be affected, favorably or otherwise, by the judgment of the Court in this case. However, it held in abeyance the resolution of intervenor's Motion for Reconsideration, which might preempt the decision with respect

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[235] Intervenor Unimega's Motion for Reconsideration with Intervention dated 10 December 2002; *rollo* (G.R. No. 145817), Vol. 1, at 991-1004.

[236] Petitioner De Leon Group manifested that Unimega's intervention was only with respect to petitioner Urban Bank's properties (condominium units), but opposed the legal and factual conclusions of Unimega insofar as it deemed the titles to the executed properties to be consolidated in Unimega's name. (Petitioner De Leon Group's Manifestation and Comment dated 24 February; *rollo* [G. R. No. 145817], Vol. 2, at 1191-196)

[237] Petitioner Urban Bank's Opposition (to Motion for Reconsideration with Intervention) dated 29 April 2003; *rollo* (G.R. No. 145817), Vol. 2, at 1386-1394.

[238] According to petitioner Urban Bank, the fair market value of the condominium units (of varying sizes) purchased by Unimega, inclusive of the parking lots attached to the units, amounted to PhP175,849,850, which is grossly disproportional to the PhP10,000,000 paid by Unimega for all the 10 units during the auction sale. (Petitioner Urban Bank's Opposition dated 29 April 2003, at 4; *rollo*, [G. R. No. 145817], Vol. 2, at 1389)

to the propriety of execution pending appeal.[239] Thereafter, the bank adopted its earlier Opposition to the intervention as its answer to Unimega's petition-in-intervention.[240] Also in answer thereto, the De Leon Group adopted its earlier Manifestation and Comment.[241]

Intervenor Unimega then requested that a writ of possession be issued in its favor covering the 10 condominium units sold during the public auction.[242] The Court required the parties to file their comments on the request.[243] The Lim[244] and Borlongan Groups[245] manifested separately that they would not be affected by a resolution of the request of intervenor Unimega, since the latter was not among the contending parties to the incident. Peña similarly interposed no objection to the issuance of the writ of possession.[246] In contrast, Urban Bank opposed the application of Unimega on the ground that the latter was not entitled to possession of the levied properties, because the rules of extrajudicial foreclosure were not applicable to execution sales under Rule 39, and that intervenor was also not a buyer

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[239] SC Resolution dated 01 August 2005; *rollo* (G.R. No. 145817), Vol. 2, at 1623-1630.

[240] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005; *rollo* (G. R. No. 145817), Vol. 2, at 1719-1725.

[241] Petitioner De Leon Group's Manifestation dated 12 September 2005; *rollo* (G. R. No. 145817), Vol. 2, at 1759-1763.

[242] Intervenor Unimega's *Ex Parte* Petition for the Issuance of a Writ of Possession dated 28 June 2006; *rollo* (G. R. No. 162562), Vol. 2, at 1156-1169.

[243] SC Resolution dated 06 September 2006; *rollo* (G. R. No. 162562), Vol. 2, at 1171-1172.

[244] Petitioner Lim Group's Compliance and Comment dated 25 October 2006; *rollo* (G. R. No. 162562), Vol. 2, at 1181-1184.

[245] Petitioner Borlongan Group's (composed of the heirs of Borlongan, Bejasa and Manuel, Jr.) Compliance dated 30 October 2006; *rollo* (G. R. No. 162562), Vol. 2, at 1188-1189.

[246] Peña's Compliance and Comment dated 07 January 2008; *rollo* (G. R. No. 162562), Vol. 2, at 1233-1241.

in good faith.[247] In a similar vein, the De Leon Group opposed the application for a writ of possession, and further argued that the Court had already suspended the running of the one-year period of redemption in the execution sale.[248] Accordingly, intervenor Unimega countered that the right of redemption of the levied properties had already expired without having been exercised by the judgment debtor.[249]

In summary, the Court shall resolve the substantial issues in the following: (a) the Petition of Peña (G. R. No. 162562) assailing the CA's decision on the substantive merits of the case with respect to his claims of compensation based on an agency agreement; and (b) the Petitions of Urban Bank (G. R. No. 145817) and the De Leon Group (G R. No. 145822) questioning the propriety of the grant of execution pending appeal.

OUR RULING

I

Peña is entitled to payment for compensation for services rendered as agent of Urban Bank, but on the basis of the principles of unjust enrichment and *quantum meruit,* and not on the purported oral contract.

The Court finds that Peña should be paid for services rendered under the agency relationship that existed between him and Urban Bank based on the civil law principle against unjust enrichment, but the amount of payment he is entitled to should be made, again, under the principle against unjust enrichment and on the basis of *quantum meruit*.

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[247] Petitioner Urban Bank's Opposition (to *Ex Parte* Petition for the Issuance of a Writ of Possession) dated 08 November 2006; *rollo* (G. R. No. 162562), Vol. 2, at 1196-1201.

[248] Petitioner De Leon Group's Manifestation and Comment dated 17 November 2006; *rollo* (G. R. No. 162562), Vol. 2, at 1204-1211.

[249] Intervenor Unimega's Reply/Comment (to the Opposition of Urban Bank and Manifestation/Comment of Petitioners Gonzales, Jr., De Leon and Lee) dated 07 February 2007; *rollo* (G. R. No. 162562), Vol. 2, at 1212-1224.

In a contract of agency, agents bind themselves to render some service or to do something in representation or on behalf of the principal, with the consent or authority of the latter.[250] The basis of the civil law relationship of agency is representation,[251] the elements of which include the following: (a) the relationship is established by the parties' consent, express or implied; (b) the object is the execution of a juridical act in relation to a third person; (c) agents act as representatives and not for themselves; and (d) agents act within the scope of their authority.[252]

Whether or not an agency has been created is determined by the fact that one is representing and acting for another.[253] The law makes no presumption of agency; proving its existence, nature and extent is incumbent upon the person alleging it.[254]

With respect to the status of Atty. Peña's relationship with Urban Bank, the trial and the appellate courts made conflicting findings that shall be reconciled by the Court. On one end, the appellate court made a definitive ruling that **no agency relationship** existed at all between Peña and the bank, despite the services performed by Peña with respect to the Pasay property purchased by the bank. Although the Court of Appeals ruled against an award of agent's compensation, it still saw fit to award Peña with Ph3,000,000 for expenses incurred for his efforts in clearing the Pasay property of tenants.[255] On the other

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[250] CIVIL CODE, Art. 1868.

[251] *Victorias Milling Co., Inc. v. CA*, G. R. No. 117356, 19 June 2000, 33 SCRA 663, citing *Bordador v. Luz*, 283 SCRA 374, 382 (1997).

[252] *Eurotech Industrial Technologies v. Cuizon*, G. R. No. 167552, 23 April 2007, 521 SCRA 584, citing *Yu Eng Cho v. Pan American World Airways, Inc.*, 385 Phil. 453, 465 (2000).

[253] *Yun Kwan Byung v. PAGCOR*, G.R. No. 163553, 11 December 2009, 608 SCRA 107, citing *Angeles v. Philippine National Railways*, 500 SCRA 444, 452 (2006).

[254] *Tuason v. Heirs of Ramos*, G.R. No. 156262, 14 July 2005, 463 SCRA 408, citing *Victorias Milling Co., Inc. v. CA*, 389 Phil. 184, 196 (2000); *Lim v. CA*, 321 Phil. 782, 794, (1995).

[255] "WHEREFORE, in view of the foregoing considerations, the May 28, 2000 Decision [sic] and the October 19, 2000 [sic] Special Order of

extreme, the trial court heavily relied on the sole telephone conversation between Peña and Urban Bank's President to establish that the principal-agent relationship created between them included an agreement to pay Peña the **huge amount of PhP24,000,000**. In its defense, Urban Bank insisted that Peña was never an agent of the bank, but an agent of ISCI, since the latter, as seller of the Pasay property committed to transferring it free from tenants. Meanwhile, Peña argues on the basis of his successful and peaceful ejectment of the sub-tenants, who previously occupied the Pasay property.

Based on the evidence on records and the proceedings below, the Court concludes that Urban Bank constituted Atty. Peña as its agent to secure possession of the Pasay property. This conclusion, however, is not determinative of the basis of the amount of payment that must be made to him by the bank. The context in which the agency was created lays the basis for the amount of compensation Atty. Peña is entitled to.

The transactional history and context of the sale between ISCI and Urban Bank of the Pasay property, and Atty. Peña's participation in the transfer of possession thereof to Urban Bank provide crucial linkages that establish the nature of the relationship between the lawyer and the landowner-bank.

The evidence reveals that at the time that the Contract to Sell was executed on 15 November 1994, and even when the Deed of Absolute Sale was executed two weeks later on 29 November 1994, as far as Urban Bank was concerned, Peña was nowhere in the picture. All discussions and correspondences were between the President and Corporate Secretary of Urban

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the RTC of Bago City, Branch 62, are hereby ANNULLED AND SET ASIDE. However, the plaintiff-appellee in CA GR CV No. 65756 is awarded the amount of ₱3 Million as reimbursement for his expenses as well as reasonable compensation for his efforts in clearing Urban Bank's property of unlawful occupants. The award of exemplary damages, attorney's fees and costs of suit are deleted, the same not having been sufficiently proven. The petition for Indirect Contempt against all the respondents is DISMISSED for utter lack of merit." (CA Decision [CA GR SP No. 72698 & CV No. 65756] dated 06 November 2003; *rollo* [G.R. No. 162562], Vol. 1, at 82-111)

Bank, on one hand, and the President of ISCI, on the other. The title to the Pasay property was transferred to Urban Bank on 5 December 1994. Interestingly, Peña testifies that it was only on 19 December 1994 that he learned that the land had already been sold by ISCI to Urban Bank, notwithstanding the fact that Peña was a director of ISCI. Peña was not asked to render any service for Urban Bank, neither did he perform any service for Urban Bank at that point.

ISCI undertook in the Contract to Sell, to physically deliver the property to Urban Bank, within 60 days from 29 November 1994,[256] under conditions of "full and actual possession and control ..., free from tenants, occupants, squatters or other structures or from any liens, encumbrances, easements or any other obstruction or impediment to the free use and occupancy by the buyer of the subject Property or its exercise of the rights to ownership over the subject Property...."[257] To guarantee this undertaking, ISCI agreed to the escrow provision where PhP25,000,000 (which is a little over 10% of the value of the Pasay property) would be withheld by Urban Bank from the total contract price until there is full compliance with this undertaking.

Apparently to ensure that ISCI is able to deliver the property physically clean to Urban Bank, it was ISCI's president, Enrique Montilla who directed on 26 November 1994 one of its directors, Peña, to immediately recover and take possession of the property upon expiration of the contract of lease on 29 November 1994.[258] Peña thus first came into the picture as a director of ISCI who was constituted as its agent to recover the Pasay property against the lessee as well as the sub-tenants who were occupying the property in violation of the lease agreement.[259] He was able to

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[256] When Urban Bank paid the purchase price less authorized retention money under the Deed of Absolute Sale.

[257] Contract to Sell dated 15 November 1994. (Exhibit "16", RTC records [Vol. 4] at 846-849)

[258] ISCI's fax letter dated 26 November 1994; Exhibit "3", RTC records, Vol. 4, at 810.

[259] "SUBLEASE PROHIBITED. That as distinguished from LESSEE's [Mr. Ochoa] rent-out operations above-mentioned, the LESSEE [Mr. Ochoa]

obtain possession of the property from the lessee on the following day, but the unauthorized sub-tenants refused to vacate the property.

It was only on 7 December 1994, that Urban Bank was informed of the services that Peña was rendering for ISCI. The faxed letter from ISCI's Marilyn Ong reads:

> **Atty. Magdaleno M. Peña, who has been assigned by Isabela Sugar Company, Inc., to take charge of inspecting the tenants** would like to request an authority similar to this from the Bank, as new owners. Can you please issue something like this today as he needs this.[260]

Two days later, on 9 December 1994, ISCI sent Urban Bank another letter that reads:

> Dear Mr. Borlongan, I would like to request for an authorization from Urban Bank as per attached immediately – **as the tenants are questioning the authority of the people there who are helping us to take over possession of the property**. (Emphasis supplied)[261]

It is clear from the above that ISCI was asking Urban Bank for help to comply with ISCI's own contractual obligation with the bank under the terms of the sale of the Pasay property. Urban Bank could have ignored the request, since it was exclusively the obligation of ISCI, as the seller, to deliver a clean property to Urban Bank without any help from the latter.

A full-bodied and confident interpretation of the contracts between ISCI and Urban Bank should have led the latter to inform the unauthorized sub-tenants that under its obligation

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shall not assign, cede or convey this lease, nor undertake to sub-lease the whole or substantially all of the lease premises [Pasay property] to any single third party, without the LESSOR's [ISCI's] consent in writing; …" (Contract of Lease dated 29 November 1984, par. 5 at 2; *rollo* [G.R. No. 162562], Vol. 1, at 279)

[260] ISCI's letter dated 07 December 1994; Exhibit "1", RTC records, Vol. 4, at 808.

[261] ISCI's fax letter dated 09 December 1994; Exhibit "2", RTC records, Vol. 4, at 809.

as seller to Urban Bank, it was under duty and had continuing authority to recover clean possession of the property, despite the transfer of title. Yet, what unauthorized sub-tenant, especially in the kind of operations being conducted within the Pasay property, would care to listen or even understand such argument?

Urban Bank thus chose to cooperate with ISCI without realizing the kind of trouble that it would reap in the process. In an apparent attempt to allow the efforts of ISCI to secure the property to succeed, it recognized Peña's role in helping ISCI, but stopped short of granting him authority to act on its behalf. In response to the two written requests of ISCI, Urban Bank sent this letter to Peña on 15 December 1994:

> This is to advise you that we have noted the engagement of your services by Isabela Sugar Company to recover possession of the Roxas Boulevard property formerly covered by TCT No. 5382, effective November 29, 1994. **It is understood that your services have been contracted by and your principal remains to be the Isabela Sugar Company**, which as seller of the property and under the terms of our Contract to Sell dated November 29, 1994, has committed to deliver the full and actual possession of the said property to the buyer, Urban Bank, within the stipulated period.[262] (Emphasis supplied)

Up to this point, it is unmistakable that Urban Bank was staying clear from making any contractual commitment to Peña and conveyed its sense that whatever responsibilities arose in retaining Peña were to be shouldered by ISCI.

According to the RTC-Bago City, in the reversed Decision, Atty. Peña only knew of the sale between ISCI and Urban Bank at the time the RTC-Pasay City recalled the TRO and issued a break-open order:

> "… when information reached the (Pasay City) judge that the Pasay property had already been transferred by ISCI to Urban Bank, the trial court recalled the TRO and issued a break-open order for the property. According to Peña, it was the first time that he was

[262] Urban Bank's letter dated 15 December 1994; Exhibit "4", RTC records, Vol. 4, at 811.

apprised of the sale of the land by ISCI and of the transfer of its title in favor of the bank."[263]

There is something contradictory between some of the trial court's factual findings and Peña's claim that it was only on 19 December 1994 that he first learned of the sale of the property to Urban Bank. It is difficult to believe Peña on this point considering: (1) that he was a board director of ISCI and a sale of this significant and valuable property of ISCI requires the approval of the board of directors of ISCI; and (2) that ISCI twice requested Urban Bank for authority to be issued in his favor (07 and 9 December 1994), 12 and 10 days before 19 December 1994, since it would be contrary to human experience for Peña not to have been informed by an officer of ISCI beforehand that a request for authority for him was being sent to Urban Bank.

The sequence of fast-moving developments, edged with a sense of panic, with respect to the decision of the RTC-Pasay City to recall the temporary restraining order and issue a break-open order on 19 December 1994 in the First Injunction Complaint, is highly enlightening to this Court.

First, Peña allegedly called up the president of ISCI, Montilla, who, according to Peña, confirmed to him that the Pasay property had indeed been sold to Urban Bank.

Second, Peña allegedly told Montilla that he (Peña) would be withdrawing his guards from the property because of the break-open order from the RTC-Pasay City.

Third, Montilla requested Peña to suspend the withdrawal of the guards while ISCI gets in touch with Urban Bank.

Fourth, apparently in view of Montilla's efforts, Bejasa, an officer of Urban Bank called Peña and according to the latter, told him that Urban Bank would continue retaining his services

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[263] RTC Decision dated 28 May 1999, at 3; *rollo* (G R. No. 162562), Vol. 1, at 507. However, the records of the case in RTC-Pasay City with respect to the First Injunction Complaint filed by Peña on behalf of ISCI are NOT with this Court, as none of the issues raised therein are before Us.

and for him to please continue with his effort to secure the property.

Fifth, this statement of Bejasa was not enough for Peña and he insisted that he be enabled to talk with no less than the President of Urban Bank, Borlongan. At this point, Bejasa gave him the phone number of Borlongan.

Sixth, immediately after the conversation with Bejasa, Peña calls Borlongan and tells Borlongan that violence might erupt in the property because the Pasay City policemen, who were sympathetic to the tenants, were threatening to force their way through the property.

At this point, if indeed this conversation took place, which Borlongan contests, what would have been the response of Borlongan? Any prudent president of a bank, which has just purchased a PhP240,000,000 property plagued by unauthorized and unruly sub-tenants of the previous owner, would have sought to continue the possession of ISCI, thru Peña, and he would have agreed to the reasonable requests of Peña. Borlongan could also have said that the problem of having the sub-tenants ejected is completely ISCI's and ISCI should resolve the matter on its own that without bothering the bank, with all its other problems. But the specter of violence, especially as night was approaching in a newly-bought property of Urban Bank, was not something that any publicly-listed bank would want publicized. To the extent that the violence could be prevented by the president of Urban Bank, it is expected that he would opt to have it prevented.

But could such response embrace the following legal consequences as Peña claims to have arisen from the telephone conversation with Borlongan: (1) A contract of agency was created between Peña and Urban Bank whereby Borlongan agreed to retain the services of Peña directly; (2) This contract of agency was to be embodied in a written letter of authority from Urban Bank; and (3) The agency fee of Peña was to be 10% of the market value as "attorney's fees and compensation" and reimbursement of all expenses of Peña from the time he took over the land until possession is turned over to Urban Bank.

This Court concludes that the legal consequences described in statements (1) and (2) above indeed took place and that the facts support them. However, the evidence does not support Peña's claim that Urban Bank agreed to "attorney's fees and compensation" of 10% of the market value of the property.

Urban Bank's letter dated 19 December 1994 confirmed in no uncertain terms Peña's designation as its authorized representative to secure and maintain possession of the Pasay property against the tenants. Under the terms of the letter, petitioner-respondent bank confirmed his engagement (a) "**to hold and maintain possession**" of the Pasay property; (b) "**to protect the same** from former tenants, occupants or any other person who are threatening to return to the said property and/or interfere with your possession of the said property for and in our behalf"; and (c) **to represent the bank in any instituted court action** intended to prevent any intruder from entering or staying in the premises.[264]

These three express directives of petitioner-respondent bank's letter admits of no other construction than that a specific and special authority was given to Peña to act on behalf of the bank with respect to the latter's claims of ownership over the property against the tenants. Having stipulated on the due execution and genuineness of the letter during pretrial,[265] the bank is bound by the terms thereof and is subject to the necessary consequences of Peña's reliance thereon. No amount of denial can overcome the presumption that we give this letter – that it means what it says.

In any case, the subsequent actions of Urban Bank resulted in the ratification of Peña's authority as an agent acting on its behalf with respect to the Pasay property. By ratification, even an unauthorized act of an agent becomes an authorized act of

[264] Petitioner Urban Bank's letter dated 19 December 1994; Exhibit "B", RTC records, Vol. 3, at 568.

[265] "The due execution and genuineness of the letter dated December 19, 1994 sent by the defendant Urban Bank to the plaintiff; …"(Pre-Trial Order dated 23 September 1997, at 3; RTC records, Vol. 2, at 501)

the principal.[266]

Both sides readily admit that it was Peña who was responsible for clearing the property of the tenants and other occupants, and who turned over possession of the Pasay property to petitioner-respondent bank.[267] When the latter received full and actual possession of the property from him, it did not protest or refute his authority as an agent to do so. Neither did Urban Bank contest Peña's occupation of the premises, or his installation of security guards at the site, starting from the expiry of the lease until the property was turned over to the bank, by which time it had already been vested with ownership thereof. Furthermore, when Peña filed the Second Injunction Complaint in the RTC-Makati City under the name of petitioner-respondent bank, the latter did not interpose any objection or move to dismiss the complaint on the basis of his lack of authority to represent its interest as the owner of the property. When he successfully negotiated with the tenants regarding their departure from its Pasay property, still no protest was heard from it. After possession was turned over to the bank, the tenants accepted PhP1,500,000 from Peña, in "full and final settlement" of their claims against Urban Bank, and not against ISCI.[268]

In all these instances, petitioner-respondent bank did not repudiate the actions of Peña, even if it was fully aware of his representations to third parties on its behalf as owner of the Pasay property. Its tacit acquiescence to his dealings with respect to the Pasay property and the tenants spoke of its intent to ratify his actions, as if these were its own. Even assuming *arguendo*

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[266] *Cua v. Ocampo Tan*, G.R. Nos. 181455-56 & 182008, 04 December 2009, 607 SCRA 645, citing *Yasuma v. Heirs of Cecilio S. de Villa*, 499 SCRA 466, 471-472 (2006).

[267] RTC's Order dated 04 November 1997, modifying the Pre-trial Order dated 23 September 1997; RTC records, Vol. 2, at 514-519.

[268] "Received from Atty. Magdaleno M. Peña the amount of One Million Five Hundred Thousand Pesos (PhP1,500,000) representing full and final settlement of our claims against Urban Bank Incorporated arising from the closure of the Australian Club located in the former International Food Complex along Roxas Boulevard, Pasay City, Metro Manila." (Receipt dated 28 April 1995; Exhibit "BB", RTC records, Vol.3, at 757)

that it issued no written authority, and that the oral contract was not substantially established, the bank duly ratified his acts as its agent by its acquiescence and acceptance of the benefits, namely, the peaceful turnover of possession of the property free from sub-tenants.

Even if, however, Peña was constituted as the agent of Urban Bank, it does not necessarily preclude that a third party would be liable for the payment of the agency fee of Peña. Nor does it preclude the legal fact that Peña while an agent of Urban Bank, was also an agent of ISCI, and that his agency from the latter never terminated. This is because the authority given to Peña by both ISCI and Urban Bank was common – to secure the clean possession of the property so that it may be turned over to Urban Bank. This is an ordinary legal phenomenon – that an agent would be an agent for the purpose of pursuing a shared goal so that the common objective of a transferor and a new transferee would be met.

Indeed, the Civil Code expressly acknowledged instances when two or more principals have granted a power of attorney to an agent for a **common transaction**.[269] The agency relationship between an agent and two principals may even be considered extinguished if the object or the purpose of the agency is accomplished.[270] In this case, Peña's services as an agent of both ISCI and Urban Bank were engaged for one shared purpose or transaction, which was to deliver the property free from unauthorized sub-tenants to the new owner – a task that Peña was able to achieve and is entitled to receive payment for.

That the agency between ISCI and Peña continued, that ISCI is to shoulder the agency fee and reimbursement for costs of Peña, and that Urban Bank never agreed to pay him a 10% agency fee is established and supported by the following:

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[269] "When two or more principals have granted a power of attorney for a common transaction, any one of them may revoke the same without the consent of the others." (CIVIL CODE, Art. 1925)

[270] "Agency is extinguished: … (5) By the accomplishment of the object or purpose of the agency; …." (CIVIL CODE, Art. 1919)

First, the initial agency relationship between ISCI and Peña persisted. No proof was ever offered that the letter of 26 November 1994 of Mr. Montilla of ISCI to Peña, for the latter "to immediately recover and take possession of the property upon expiration of the contract of lease on 29 November 1994" was terminated. It is axiomatic that the appointment of a new agent for the same business or transaction revokes the previous agency from the day on which notice thereof was given to the former agent.[271] If it is true that the agency relationship was to be borne by Urban Bank alone, Peña should have demonstrated that his previous agency relationship with ISCI is incompatible with his new relationship with Urban Bank, and was thus terminated.

Second, instead, what is on the record is that ISCI confirmed the continuation of this agency between Peña and itself and committed to pay for the services of Peña, in its letter to Urban Bank dated 19 December 1994 which reads:

> In line with our warranties as the Seller of the said property and our undertaking to deliver to you the full and actual possession and control of said property, free from tenants, occupants or squatters and from any obstruction or impediment to the free use and occupancy of the property by Urban Bank, **we have engaged the services of Atty. Magdaleno M. Peña to hold and maintain possession of the property and to prevent the former tenants or occupants from entering or returning to the premises**. In view of the transfer of the ownership of the property to Urban Bank, it may be necessary for Urban Bank to appoint Atty. Peña likewise as its authorized representative for purposes of holding/maintaining continued possession of the said property and to represent Urban Bank in any court action that may be instituted for the abovementioned purposes.
>
> **It is understood that any attorney's fees, cost of litigation and any other charges or expenses that may be incurred relative to the exercise by Atty. Peña of his abovementioned duties shall be for the account of Isabela Sugar Company** and any loss or damage that may be incurred to third parties shall be answerable by Isabela Sugar Company.[272] (Emphasis supplied)

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[271] Civil Code, Art. 1923.

[272] ISCI's Letter dated 19 December 1994 signed by Herman Ponce and Julie Abad; Exhibit "5", RTC records, Vol. 4, at 812.

Third, Peña has never shown any written confirmation of his 10% agency fee, whether in a note, letter, memorandum or board resolution of Urban Bank. An agency fee amounting to PhP24,000,000 is not a trifling amount, and corporations do not grant their presidents unilateral authority to bind the corporation to such an amount, especially not a banking corporation which is closely supervised by the BSP for being a business seriously imbued with public interest. There is nothing on record except the self-serving testimony of Peña that Borlongan agreed to pay him this amount in the controverted telephone conversation.

Fourth, while ordinarily, uncontradicted testimony will be accorded its full weight, we cannot grant full probative value to the testimony of Peña for the following reasons: (a) Peña is not a credible witness for testifying that he only learned of the sale of the property of 19 December 1994 when the acts of ISCI, of Urban Bank and his own up to that point all indicated that he must have known about the sale to Urban Bank; and (b) it is incredible that Urban Bank will agree to add another PhP24,000,000 to the cost of the property by agreeing to the agency fee demanded by Peña. No prudent and reasonable person would agree to expose his corporation to a new liability of PhP24,000,000 even if, in this case, a refusal would lead to the Pasay City policemen and unauthorized sub-tenants entering the guarded property and would possibly erupt in violence.

Peña's account of an oral agreement with Urban Bank for the payment of PhP24,000,000 is just too much for any court to believe. Whatever may be the agreement between Peña and ISCI for compensation is not before this Court. This is not to say, however, that Urban Bank has no liability to Peña. It has. Payment to him is required because the Civil Code demands that no one should be unjustly enriched at the expense of another. This payment is to be measured by the standards of *quantum meruit*.

Amount of Compensation

Agency is presumed to be for compensation. But because in this case we find no evidence that Urban Bank agreed to pay

Peña a specific amount or percentage of amount for his services, we turn to the principle against unjust enrichment and on the basis of *quantum meruit*.

Since there was no written agreement with respect to the compensation due and owed to Atty. Peña under the letter dated 19 December 1994, the Court will resort to determining the amount based on the well-established rules on *quantum meruit*.

Agency is presumed to be for compensation.[273] Unless the contrary intent is shown, a person who acts as an agent does so with the expectation of payment according to the agreement and to the services rendered or results effected.[274] We find that the agency of Peña comprised of services ordinarily performed by a lawyer who is tasked with the job of ensuring clean possession by the owner of a property. We thus measure what he is entitled to for the legal services rendered.

A stipulation on a lawyer's compensation in a written contract for professional services ordinarily controls the amount of fees that the contracting lawyer may be allowed to collect, unless the court finds the amount to be unconscionable.[275] In the absence of a written contract for professional services, the attorney's fees are fixed on the basis of *quantum meruit*,[276] *i.e.*, the reasonable worth of the attorney's services.[277] When an agent

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[273] CIVIL CODE, Art. 1875; *cf. National Brewery & Allied Industries Labor Union of the Phils. v. San Miguel Brewery, Inc.*, G.R. No. L-18170, 31 August 1963, 8 SCRA 805.

[274] 3 Am. Jur. 2d. § 246, citing *Monroe v. Grolier Soc. of London*, 208 Cal. 447, 281 P. 604, 65 A.L.R. 989 (1929); *Chamberlain v. Abeles*, 88 Cal. App. 2d 291, 198 P.2d 927 (2d Dist. 1948).

[275] RULES OF COURT, Rule 138, Sec. 24; *Orocio v. Anguluan*, G.R. Nos. 179892-93, 30 January 2009, 577 SCRA 531.

[276] "*Quantum meruit* means that in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves." (*H. L. Carlos Construction, Inc., v. Marina Properties Corp.*, G. R. No. 147614, 29 January 2004, 421 SCRA 428, citing *Republic v. Court of Appeals*, 359 Phil. 530, 640 [1998])

[277] *Rayos v. Hernandez*, G. R. No. 169079, 12 February 2007, 515 SCRA 517; *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, G.R. No. 160334, 11 September 2006, 501 SCRA 192.

performs services for a principal at the latter's request, the law will normally imply a promise on the part of the principal to pay for the reasonable worth of those services.[278] The intent of a principal to compensate the agent for services performed on behalf of the former will be inferred from the principal's request for the agents.[279]

In this instance, no extra-ordinary skills employing advanced legal training nor sophisticated legal maneuvering were required to be employed in ejecting 23 sub-tenants who have no lease contract with the property owner, and whose only authority to enter the premises was unlawfully given by a former tenant whose own tenancy has clearly expired. The 23 sub-tenants operated beer houses and nightclubs, ordinary retail establishments for which no sophisticated structure prevented easy entry. After Peña succeeded in locking the gate of the compound, the sub-tenants would open the padlock and resume their businesses at night. Indeed, it appears that only security guards, chains and padlocks were needed to keep them out. It was only the alleged connivance of Pasay City policemen that Peña's ability to retain the possession was rendered insecure. And how much did it take Peña to enter into a settlement agreement with them and make all these problems go away? By Peña's own account, PhP1,500,000 only. That means that each tenant received an average of PhP65,217.40 only. Surely, the legal services of Peña cannot be much more than what the sub-tenants were willing to settle for in the first place. We therefore award him the equivalent amount of PhP1,500,000 for the legal and other related services he rendered to eject the illegally staying tenants of Urban Bank's property.

The Court of Appeals correctly reversed the trial court and found it to have acted with grave abuse of discretion in granting astounding monetary awards amounting to a total of

[278] *Transcontinental Underwriters Agency, S. R. L., v. American Agency Underwriters,* 680 F.2d 298, 300 (18 May 1982), citing *Miller v. Wilson,* 24 Pa. 114 (1854).

[279] *Id.*

PhP28,500,000 without any basis.[280] For the lower court to have latched on to the self-serving claims of a telephone agreement as sufficient support for extending a multi-million peso award is highly irregular. Absent any clear basis for the amount of the lawyer's compensation, the trial court should have instinctively resorted to *quantum meruit*, instead of insisting on a figure with circumstantial and spurious justification.

We cannot also agree with the Decision penned by Judge Edgardo L. Catilo characterizing Pena's 10% fee as believable because it is nearly congruent to the PhP25 Million retention money held in escrow for ISCI until a clean physical and legal turn-over of the property is effected:

> We now come to the reasonableness of the compensation prayed for by the plaintiff which is 10% of the current market value which defendants claim to be preposterous and glaringly excessive. Plaintiff [Peña] testified that defendant Borlongan agreed to such an amount and this has not been denied by Ted Borlongan. The term "current market value of the property" is hereby interpreted by the court to mean the current market value of the property at the time the contract was entered into. To interpret it in accordance with the submission of the plaintiff that it is the current market value of the property at the time payment is made would be preposterous. The only evidence on record where the court can determine the market value of the property at the time the contract of agency was entered into between plaintiff and defendant is the consideration stated in the sales agreement between Isabela Sugar Company, Inc. and Urban bank which is ₱241,612,000.00. Ten percent of this amount is a reasonable compensation of the services rendered by the plaintiff considering the "no cure, no pay" arrangement between the parties and the risks which plaintiff had to undertake.[281]

In the first place, the Decision of Judge Catilo makes Peña's demand of an agency fee of PhP24 Million, an additional burden on Urban Bank. The Decision does not make the retention money responsible for the same, or acquit Urban Bank of any liability

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[280] CA Decision dated 06 November 2003, at 23; *rollo* (G. R. No. 162562), Vol. 1, at 104.

[281] RTC Decision dated 28 May 1999, at 21; RTC records, Vol. 4, at 962.

to ISCI if it pays the PhP24 Million directly to Pena instead of ISCI. In the second place, the amount of money that is retained by transferees of property transactions while the transferor is undertaking acts to ensure a clean and peaceful transfer to the transferee does not normally approximate a one-to-one relationship to the services of ejecting unwanted occupants. They may be inclusive of other costs, and not only legal costs, with enough allowances for contingencies, and may take into consideration other liabilities as well. The amount can even be entirely arbitrary, and may have been caused by the practice followed by Urban Bank as advised by its officers and lawyers or by industry practice in cases where an expensive property has some tenancy problems. In other words, Judge Catilo's statement is a *non sequitur*, is contrary to normal human experience, and sounds like an argument being made to fit Peña's demand for a shocking pay-out.

In any case, 10% of the purchase price of the Pasay property – a staggering PhP24,161,200 – is an **unconscionable amount**, which we find reason to reduce. Neither will the Court accede to the settlement offer of Peña to Urban Bank of at least PhP38,000,000 for alleged legal expenses incurred during the course of the proceedings,[282] an amount that he has not substantiated at any time.

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[282] "12. It is true that Atty. Singson had been offering the amount of ₱25 million to respondent but the latter could not agree to the said amount because his legal expenses alone since this case started in 1996 (and considering that it spawned several other case) would already have reached ₱10 million. In clearing the Roxas Boulevard property, he had to borrow ₱3 million (an amount which had been earning interest since 1995) from his good friend Mr. Roberto Ignacio. When respondent's services were engaged by petitioner, he was promised ten (10%) of the property's value which was at least ₱25 million. Thus, even if respondent agreed to forego the interests that had accrued since 1996, and even if Mr. Ignacio agreed to collect from him only the principal loaned amount, **he would still be entitled to at least ₱38 million**. To respondent's mind, therefore, ₱25 million was out of the question." (Peña's Consolidated Reply dated 01 April 2003, at 6-7; *rollo* [G. R. No. 145822], Vol. 3, at 3359-3360)

Lawyering is not a business; it is a profession in which duty to public service, not money, is the primary consideration.[283] The principle of *quantum meruit* applies if lawyers are employed **without a price agreed upon for their services**, in which case they would be entitled to receive what they merit for their services, or as much as they have earned.[284] In fixing a reasonable compensation for the services rendered by a lawyer on the basis of *quantum meruit*, one may consider factors such as the time spent and extent of services rendered; novelty and difficulty of the questions involved; importance of the subject matter; skill demanded; probability of losing other employment as a result of acceptance of the proffered case; customary charges for similar services; amount involved in the controversy and the resulting benefits for the client; certainty of compensation; character of employment; and professional standing of the lawyer.[285]

Hence, the Court affirms the appellate court's award of PhP3,000,000 to Peña, for expenses incurred corresponding to the performance of his services. An additional award of PhP1,500,000 is granted to him for the services he performed as a lawyer in securing the rights of Urban Bank as owner of the Pasay property.

II

The corporate officers and directors of Urban Bank are not solidarily or personally liable with their properties for the corporate liability of Urban Bank to Atty. Peña.

The obligation to pay Peña's compensation, however, falls solely on Urban Bank. Absent any proof that individual petitioners as bank officers acted in bad faith or with gross negligence or assented to a patently unlawful act, they cannot be held solidarily

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[283] *Adrimisin v. Javier*, A.C. No. 2591, 08 September 2006, 501 SCRA 192.

[284] *Quilban v. Robinol*, A. C. Nos. 2144 & 2180, 10 April 1989, 171 SCRA 768; *see Traders Royal Bank Employees Union, v. NLRC*, G.R. No. 120592, 14 March 1997, 269 SCRA 733.

[285] *Catly v. Navarro*, G.R. No. 167239, 05 May 2010, 620 SCRA 151, citing *Orocio v. Anguluan*, 577 SCRA 531, 551-552 (2009).

liable together with the corporation for services performed by the latter's agent to secure possession of the Pasay property. Thus, the trial court had indeed committed grave abuse of discretion when it issued a ruling against the eight individual defendant bank directors and officers and its Decision should be absolutely reversed and set aside.

A corporation, as a juridical entity, may act only through its directors, officers and employees.[286] Obligations incurred as a result of the acts of the directors and officers as corporate agents are not their personal liabilities but those of the corporation they represent.[287] To hold a director or an officer personally liable for corporate obligations, two requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.[288] "To hold a director, a trustee or an officer personally liable for the debts of the corporation and, thus, pierce the veil of corporate fiction, bad faith or gross negligence by the director, trustee or officer in directing the corporate affairs must be established clearly and convincingly."[289]

Peña failed to allege and convincingly show that individual defendant bank directors and officers assented to patently unlawful acts of the bank, or that they were guilty of gross negligence or bad faith. Contrary to his claim, the Complaint[290] in the lower

[286] *Lambert Pawnbrokers and Jewelry Corp., v. Binamira*, G. R. No. 170464, 12 July 2010, 624 SCRA 705.

[287] *Id.*

[288] *Francisco v. Mallen, Jr.*, G. R. No. 173169, 22 September 2010, 631 SCRA 118, citing Section 31 of the Corporation Code and *Ramoso v. Court of Appeals*, 400 Phil. 1260 (2000).

[289] *Magaling v. Ong*, G.R. No. 173333, 13 August 2008, 562 SCRA.

[290] "7. The defendant URBAN BANK through its President, defendant TEODORO BORLONGAN, and the defendants Board [of] Directors as well as its Senior Vice President CORAZON BEJASA and VICE President, Arturo Manuel, Jr., entered into an agency agreement with the plaintiff,

court never alleged that individual defendants acquiesced to an unlawful act or were grossly negligent or acted in bad faith.[291] Neither is there any specific allegation of gross negligence or action in bad faith that is attributable to the individual defendants in performance of their official duties.

In any event, Peña did not adduce any proof that the eight individual defendants performed unlawful acts or were grossly negligent or in bad faith. Aside from the general allegation that they were corporate officers or members of the board of directors of Urban Bank, **no specific acts were alleged and proved to warrant a finding of solidary liability**. At most, petitioners Borlongan, Bejasa and Manuel were identified as those who had processed the agency agreement with Peña through their telephone conversations with him and/or written authorization letter.

Aside from Borlongan, Bejasa and Manuel, Atty. Peña in the complaint pointed to no specific act or circumstance to justify the inclusion of Delfin C. Gonzalez, Jr., Benjamin L. de Leon, P. Siervo H. Dizon, Eric L. Lee, and Ben T. Lim, Jr., except for the fact that they were members of the Board of Directors of Urban Bank at that time. That the five other members of the Board of Directors were excluded from Peña's complaint highlights the peculiarity of their inclusion. What is more, the complaint mistakenly included **Ben Y. Lim, Jr.**, who had not even been a member of the Board of Directors of Urban Bank. In any case, his father and namesake, Ben T. Lim, Sr., who had been a director of the bank at that time, had already passed away in 1997.

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whereby the latter in behalf of defendant URBAN BANK, shall hold and maintain possession of the aforedescribed property, prevent entry of intruders, interlopers, and squatters therein and finally turnover peaceful possession thereof to defendant URBAN BANK; it was further agreed that for the services rendered as its agent, defendant URBAN BANK shall pay plaintiff a fee in an amount equivalent to 10% of the market value of the property prevailing at the time of the payment." (Peña's Complaint dated 28 February 1996, at 2; RTC records, Vol. 1, at 2)

[291] Peña's Petition dated 23 April 2004, at 61-65; *rollo* (G.R. No. 162562), Vol. 1, at 68-72.

In ruling for the solidary liability of the other bank directors, the decision of the trial court hinged solely on the purported admission of Arturo Manuel, Jr., that the transactions with Atty. Peña were approved by the Board of Directors:

> In this case, plaintiff testified as to the personal participation of defendants Ted Borlongan and Corazon Bejasa in the subject transaction. On the other hand, with respect to the other defendants, it was the defendants themselves, through witness Arturo Manuel, Jr., **who admitted that all the transactions involved in this case were approved by the board of directors**. Thus, the court has sufficient basis to hold the directors jointly and severally liable with defendant Urban Bank, Inc.[292] (Emphasis supplied)

The Decision of the RTC-Bago City must be utterly rejected on this point because its conclusion of any cause of action, much less actual legal liability on the part of Urban Bank's corporate officers and directors are shorn of any factual finding. That they assented to the transactions of the bank with respect to Atty. Peña's services without any showing that these corporate actions were patently unlawful or that the officers were guilty of gross negligence or bad faith is insufficient to hold them solidarily liable with Urban Bank. It seems absurd that the trial court will hold the impleaded selected members of the Board of Directors only, but not the others who also purportedly approved the transactions. Neither is the reason behind the finding of "solidariness" with Urban Bank in such liability explained at all. It is void for completely being devoid of facts and the law on which the finding of liability is based.

The Court of Appeals correctly rejected the claim of personal liability against the individual petitioners when it held as follows:

> The plaintiff-appellee's complaint before the court *a quo* does not point to any particular act of either one or all of the defendants-appellants that will subject them to personal liability. His complaint merely asserts that defendant Borlongan and Atty. Bejasa acted for and in behalf of Urban Bank in securing his services in protecting

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[292] RTC Decision dated 28 May 1999, at 23; RTC records, Vol. 4, at 964.

the bank's newly acquired property. Hence, We cannot allow the same.[293]

Peña had argued that individual defendant bank directors and officers should be held personally and solidarily liable with petitioner-respondent bank, since they failed to argue for limited corporate liability.[294] The trial court subscribed to his reasoning and held that the failure to resort to the said defense constituted a waiver on the part of individual defendants.[295] The Court is not persuaded.

As the complainant on the trial court level, Peña carried the burden of proving that the eight individual defendants performed specific acts that would make them personally liable for the obligations of the corporation. This he failed to do. He cannot capitalize on their alleged failure to offer a defense, when he had not discharged his responsibility of establishing their personal liabilities in the first place. This Court cannot sustain the individual liabilities of the bank officers when Peña, at the onset, has not persuasively demonstrated their assent to patently unlawful acts of the bank, or that they were guilty of gross negligence or bad faith, regardless of the weaknesses of the defenses raised. This is too basic a requirement that this Court must demand sufficient proof before we can disregard the separate legal personality of the corporation from its officers.

Hence, only Urban Bank, not individual defendants, is liable to pay Peña's compensation for services he rendered in securing

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[293] CA Decision dated 06 November 2003, at 24-25; *rollo* (G. R. No. 162562), Vol. 1, at 105-106.

[294] Peña's Petition dated 23 April 2004, *supra* note 126.

[295] "Impleaded as defendants in this case are the members of the board of directors of Urban bank who were sought to be held liable in the same manner as the bank. Their failure to raise the defense of limited corporate liability in their Motion to Dismiss or in their Answer in consequence with the provision of Rule 9 of the 1997 Rules of Civil Procedure constitute a waiver on their part to bring up this defense. Thus, this warrants the court to hold all the defendants in this case jointly and severally liable with Urban Bank, Inc., This pronouncement finds basis in plaintiff's general prayer for such further or other relief as may be deemed just or equitable." (RTC Decision 28 May 1999, at 22-23; RTC records, Vol. 4, at 963-964)

possession of the Pasay property. Its liability in this case is, however, without prejudice to its possible claim against ISCI for reimbursement under their separate agreements.

III

Considering the absolute nullification of the trial court's Decision, the proceedings arising from the execution pending appeal based on the said Decision is likewise completely vacated.

Since the trial court's main Decision awarding PhP28,500,000 in favor of Peña has been nullified above, the execution pending appeal attendant thereto, as a result, no longer has any leg to stand on and is thus completely vacated.

To recall, prior to the filing of Urban Bank of its notice of appeal in the main case,[296] Peña moved on 07 June 1999 for execution pending appeal[297] of the Decision,[298] which had awarded him a total of PhP28,500,000 in compensation and damages.[299] In supporting his prayer for discretionary execution, **Peña cited no other reason than the pending separate civil action for collection filed against him by a creditor**, who was demanding payment of a PhP3,000,000 loan.[300]According to him, he had used the proceeds of the loan for securing the bank's Pasay

[296] Notice of Appeal dated 15 June 1999; RTC records (Vol. V) at 1016-1017.

[297] Peña's Motion for Execution dated 07 June 1999; *rollo* (G. R. No. 145817), Vol. 1, at 277-279; *see* Peña's Memorandum dated 13 October 1999; *rollo* (G. R. No. 145822), Vol. 1, at 371-376.

[298] RTC Decision dated 28 May 1999, at 24; *rollo* (G. R. No. 145817), Vol. 1, at 101.

[299] PhP 24,000,000 (compensation) + PhP3,000,000 (reimbursement) + PhP1,000,000 (attorney's fees) + PhP500,000 (exemplary damages) = PhP28,500,000 (excluding costs of suit)

[300] "4. Plaintiff has been unable to pay his loan precisely because defendants have not paid him his fees. Since. Mr. Ignacio has been a long time friend of his, he has been granted several extensions but on 4 June 1999, plaintiff received a summons issued by the Regional Trial Court of Manila, Branch 16 for a collection case filed [by] said Mr. Ignacio. …

"6. … It is imperative therefore that this Honorable Court's Decision be executed immediately so that he could settle the obligation which he

property.[301] In opposition to the motion, Urban Bank countered that the collection case was not a sufficient reason for allowing execution pending appeal.[302]

Favorably acting on Peña's motion, the RTC-Bago City, through Judge Henry J. Trocino,[303] issued a Special Order authorizing execution pending appeal on the basis of Peña's indebtedness to his creditor-friend.[304] In accordance with this Special Order, Atty. Josephine Mutia-Hagad, the clerk of court and *ex officio* sheriff, expeditiously issued a Writ of Execution on the same day.[305] The trial court's Special Order and Writ of Execution were the subjects of a Rule 65 Petition filed by Urban Bank with the CA.[306]

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would not have contracted had defendants not engaged his services." (Peña's Motion for Execution dated 07 June 1999, at 2; *rollo* [G. R. No. 145817], Vol. 1, at 278)

[301] The Complaint filed against Peña was a civil action for collection of PhP3,500,000 and PhP100,000 attorney's fees, which was filed by Mr. Roberto R. Ignacio and was docketed as Civil Case No. 99-93952 with the Regional Trial Court of Manila. (Complaint dated 03 April 1999; *rollo* [G. R. No. 145822], Vol. 1, at 213-217)

[302] Petitioner Urban Bank's Opposition (to Motion for Execution) dated 15 June 1999; *rollo* (G. R. No. 145817), Vol. 1, at 289-300; *see* Petitioner Urban Bank's Memorandum dated 12 October 1999; *rollo* (G. R. No. 145822), Vol. 1, at 309-331.

[303] Petitioner Urban Bank had earlier moved for the voluntary inhibition of Judge Catilo. (Petitioner Urban Bank's Motion for Voluntary Inhibition by the Presiding Judge dated 15 June 1999; *rollo* [G.R. No. 145817], Vol. 1, at 301-306)

[304] "The court finds that the pendency of the case for collection of money against plaintiff is a good reason for immediate execution." (RTC Special Order dated 29 October 1999, at 7; *rollo* [G.R. No. 145817], Vol. 1, at 886)

[305] Writ of Execution dated 28 May 1999; *rollo* (G. R. No. 145822), Vol. 1, at 152-154.

[306] The said Rule 65 Petition in the Court of Appeals was docketed as CA-G. R. SP No. 55667. (Petitioner Urban Bank's Petition for *Certiorari* and Prohibition dated 29 November 1999; *rollo* [G. R. No. 145817], Vol. 1, at 307-345)

Both the Special Order and Writ of Execution are nullified for two reasons:

(1) Since the Decision of the RTC-Bago City is completely vacated, all its issuances pursuant to the Decision, including the Special Order and the Writ of Execution are likewise vacated; and

(2) The Special Order authorizing execution pending appeal based on the collection suit filed against Atty. Peña had no basis under the Rules of Court, and the same infirmity thus afflicts the Writ of Execution issued pursuant thereto.

Since the Decision of the RTC-Bago City is vacated, all orders and writs pursuant thereto are likewise vacated.

Considering that the Special Order and Writ of Execution was a result of the trial court's earlier award of PhP28,500,000, the nullification or complete reversal of the said award necessarily translates to the vacation as well of the processes arising therefrom, including all the proceedings for the execution pending appeal.

Considering the unconscionable award given by the trial court and the unjustified imposition of solidary liability against the eight bank officers, the Court is vacating the Decision of the RTC-Bago City Decision. The trial court erroneously made solidarily liable Urban Bank's directors and officers without even any allegations, much less proof, of any acts of bad faith, negligence or malice in the performance of their duties. In addition, the trial court mistakenly anchored its astounding award of damages amounting PhP28,500,000 on the basis of the mere account of Atty. Peña of a telephone conversation, without even considering the surrounding circumstances and the sheer disproportion to the legal services rendered to the bank.

A void judgment never acquires finality.[307] In contemplation of law, that void decision is deemed non-existent.[308] *Quod nullum*

[307] *Nazareno v. Court of Appeals*, G. R. No. 111610, 27 February 2002, 378 SCRA 28.

[308] *Id.*

est, nullum producit effectum.[309] Hence, the validity of the execution pending appeal will ultimately hinge on the court's findings with respect to the decision in which the execution is based.

Although discretionary execution can proceed independently while the appeal on the merits is pending, the outcome of the main case will greatly impact the execution pending appeal, especially in instances where as in this case, there is a complete reversal of the trial court's decision. Thus, if the decision on the merits is completely nullified, then the concomitant execution pending appeal is likewise without any effect. In fact, the Rules of Court expressly provide for the possibility of reversal, complete or partial, of a final judgment which has been executed on appeal.[310] Precisely, the execution pending appeal does not bar the continuance of the appeal on the merits, for the Rules of Court explicitly provide for restitution according to equity and justice in case the executed judgment is reversed on appeal.[311]

Considering that the Decision of the RTC-Bago City has been completely vacated and declared null and void, it produces no effect whatsoever. Thus, the Special Order and its concomitant Writ of Execution pending appeal is likewise annulled and is also without effect. Consequently, all levies, garnishment and sales executed pending appeal are declared null and void, with the concomitant duty of restitution under the Rules of Court, as will be discussed later on.

In any case, the trial court's grant of execution pending appeal lacks sufficient basis under the law and jurisprudence.

We rule that the pendency of a collection suit by a third party creditor which credit was obtained by the winning judgment

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[309] "That which is a nullity produces no effect." (*Maagad v. Maagad*, G.R. No. 171762, 05 June 2009, 588 SCRA 649)

[310] RULES OF COURT, Rule 39, Sec. 5.

[311] *Silverio v. Court of Appeals*, G.R. No. L-39861, 17 March 1986, 141 SCRA 527.

creditor in another case, is not a sufficiently good reason to allow execution pending appeal as the Rules of Court provide. Execution pending appeal is an extraordinary remedy allowed only when there are reasons to believe that the judgment debtor will not be able to satisfy the judgment debt if the appeals process will still have to be awaited. It requires proof of circumstances such as insolvency or attempts to escape, abscond or evade a just debt.

In *Florendo v. Paramount Insurance, Corp.*,[312] the Court explained that the execution pending appeal is an exception to the general rule that execution issues as a matter of right, when a judgment has become final and executory:

> As such exception, the court's discretion in allowing it must be **strictly construed** and firmly grounded on the existence of good reasons. **"Good reasons," it has been held, consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory**. The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity. (Emphasis supplied)

Indeed, the presence or the absence of good reasons remains the yardstick in allowing the remedy of execution pending appeal, which should consist of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later.[313] Thus, the Court held that even the financial distress of the prevailing company is not sufficient reason to call for execution pending appeal:

> In addressing this issue, the Court must stress that the execution of a judgment before its finality must be founded upon good reasons. The yardstick remains the presence or the absence of good reasons consisting of exceptional circumstances of such urgency as to outweigh

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[312] G. R. No. 167976, 20 January 2010, 610 SCRA 377.

[313] *Diesel Construction Company, Inc., v. Jollibee Foods Corp.*, G.R. No. 136805, 28 January 2000, 323 SCRA 844.

the injury or damage that the losing party may suffer, should the appealed judgment be reversed later. Good reason imports a superior circumstance that will outweigh injury or damage to the adverse party. In the case at bar, petitioner failed to show "paramount and compelling reasons of urgency and justice." Petitioner cites as good reason merely the fact that "it is a small-time building contractor that could ill-afford the protracted delay in the reimbursement of the advances it made for the aforesaid increased costs of . . . construction of the [respondent's] buildings."

Petitioner's allegedly precarious financial condition, however, is not by itself a jurisprudentially compelling circumstance warranting immediate execution. The financial distress of a juridical entity is not comparable to a case involving a natural person — such as a very old and sickly one without any means of livelihood, an heir seeking an order for support and monthly allowance for subsistence, or one who dies.

Indeed, the alleged financial distress of a corporation does not outweigh the long standing general policy of enforcing only final and executory judgments. Certainly, a juridical entity like petitioner corporation has, other than extraordinary execution, alternative remedies like loans, advances, internal cash generation and the like to address its precarious financial condition. (Emphasis supplied)

In *Philippine Bank of Communications v. Court of Appeals*,[314] the Court denied execution pending appeal to a juridical entity which allegedly was in financial distress and was facing civil and criminal suits with respect to the collection of a sum of money. It ruled that the financial distress of the prevailing party in a final judgment which was still pending appeal may not be likened to the situation of a natural person who is ill, of advanced age or dying as to justify execution pending appeal:

It is significant to stress that private respondent Falcon is a juridical entity and not a natural person. **Even assuming that it was indeed in financial distress and on the verge of facing civil or even criminal suits, the immediate execution of a judgment in its favor pending appeal cannot be justified as Falcon's situation may not be likened to a case of a natural person who may be ill or may be of advanced**

[314] *Philippine Bank of Communications v. Court of Appeals*, G. R. No. 126158, 23 September 1997, 279 SCRA 364.

age. **Even the danger of extinction of the corporation will not *per se* justify a discretionary execution** unless there are showings of other good reasons, such as for instance, impending insolvency of the adverse party or the appeal being patently dilatory. But even as to the latter reason, it was noted in *Aquino vs. Santiago* (161 SCRA 570 [1988]), that it is not for the trial judge to determine the merit of a decision he rendered as this is the role of the appellate court. Hence, it is not within competence of the trial court, in resolving a motion for execution pending appeal, to rule that the appeal is patently dilatory and rely on the same as its basis for finding good reason to grant the motion. Only an appellate court can appreciate the dilatory intent of an appeal as an additional good reason in upholding an order for execution pending appeal which may have been issued by the trial court for other good reasons, or in cases where the motion for execution pending appeal is filed with the appellate court in accordance with Section 2, paragraph (a), Rule 39 of the 1997 Rules of Court.

What is worse, only one case was actually filed against Falcon and this is the complaint for collection filed by Solidbank. The other cases are "impending", so it is said. **Other than said Solidbank case, Falcon's survival as a body corporate cannot be threatened by anticipated litigation**. This notwithstanding, and even assuming that there was a serious threat to Falcon's continued corporate existence, we hold that it is not tantamount nor even similar to an impending death of a natural person. The material existence of a juridical person is not on the same plane as that of human life. The survival of a juridical personality is clearly outweighed by the long standing general policy of enforcing only final and executory judgments. (Emphasis supplied)

In this case, the trial court supported its discretionary grant of execution based on the alleged collection suit filed against Peña by his creditor friend for PhP3,000,000:

It has been established that the plaintiff secured the loan for the purpose of using the money to comply with the mandate of defendant bank to hold and maintain possession of the parcel of land in Pasay City and to prevent intruders and former tenants from occupying the said property. The purpose of the loan was very specific and the same was made known to defendant bank through defendant Teodoro Borlongan. The loan was not secured for some other purpose. Truth

to tell, the plaintiff accomplished his mission in clearing the property of tenants, intruders and squatters, long before the deadline given him by the defendant bank. The plaintiff was assured by no less than the President of defendant bank of the availability of funds for his compensation and reimbursement of his expenses. Had he been paid by defendant bank soon after he had fulfilled his obligation, he could have settled his loan obligation with his creditor.

Defendants were benefitted by the services rendered by the plaintiff. While plaintiff has complied with the undertaking, the defendants, however, failed to perform their obligation to the plaintiff.

The plaintiff stands to suffer greatly if the collection case against him is not addressed. Firstly, as shown in Exhibit "C", plaintiff's total obligation with Roberto Ignacio as of May 1999 is PhP24,192,000.00. This amount, if left unpaid, will continue to increase due to interest charges being imposed by the creditor to the prejudice of plaintiff. Secondly, a preliminary attachment has already been issued and this would restrict the plaintiff from freely exercising his rights over his property during the pendency of the case.

In their opposition, defendants claim that plaintiff's indebtedness is a ruse, however, defendants failed to adduce evidence to support its claim.

The court finds that the pendency of the case for collection of money against plaintiff is a good reason for immediate execution.[315]

The mere fact that Atty. Peña was already subjected to a collection suit for payment of the loan proceeds he used to perform his services for Urban Bank is not an acceptable reason to order the execution pending appeal against the bank. Financial distress arising from a lone collection suit and not due to the advanced age of the party is not an urgent or compelling reason that would justify the immediate levy on the properties of Urban Bank pending appeal. That Peña would made liable in the collection suit filed by his creditor-friend would be not reasonably result in rendering illusory the final judgment in the instant action for agent's compensation.

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[315] RTC Special Order dated 29 October 1999, at 6-7; *rollo* (G. R. No. 145817), Vol. 1, at 885-886.

Peña's purported difficulty in paying the loan proceeds used to perform his services does not outweigh the injury or damages that might result should Urban Bank obtain a reversal of the judgment, as it did in this case. Urban Bank even asserts that the collection suit filed against Peña was a mere ruse to provide justification for the execution pending appeal, no matter how flimsy.[316] As quoted above, the trial court noted Atty. Peña's total obligation to his creditor-friend as of May 1999 was already the incredible amount of PhP24,192,000.00, even when the Complaint dated 03 April 1999 itself, which spawned the collection suit included only a prayer for payment of PhP3,500,000 with attorney's fees of PhP100,000.[317] It seems absurd that Atty. Peña would agree to obtaining a loan from his own friend, when the Promissory Notes provided for a penalty of 5% interest per month or 60% per annum for delay in the payment.[318] It sounds more

[316] "17. More likely than not, the "Mr. Ignacio case" was a **convenient ruse** employed by Private Respondent [Peña]. **It should be noted that Mr. Ignacio stated in his complaint that "(Private Respondent's) assurance that his client (Petitioner Bank) was going to pay him before (30 May 1995) was what induced (Ignacio) to grant the loans in the first place." However, on 30 November 1994, the day of the first alleged "loan" of ₱1,000,000, Petitioner Bank was not even in the picture yet.** In fact, "it was only (on December 19,1994), that plaintiff Private Respondent herein) was appraised (sic) that the property had already been sold and the title thereto ha[d] already been transferred to Urban Bank." How then could Petitioner Bank have assured payment to Private Respondent by 30 May 1995, which assurances were allegedly what induced the release of the loan? On the other hand, if the 30 November 1994 loan was taken out because Private Respondents was "instructed by his relatives" at ISCI to clear the property of occupants, why in the world would Private Respondents have to take out the loan with his friend, in his own name?" (Petition for *Certiorari* and Prohibition dated 04November 1999, at 14-15; *rollo* (G. R. No. 145817), Vol. 1, at 320-321; emphasis supplied and citations omitted)

[317] "WHEREFORE, plaintiff respectfully prays that upon the filing of this Complaint, a writ of preliminary attachment be issued *ex-parte* to cover all of defendants' property and that after due proceedings, defendant be made to pay the principal amount of ₱3,500,000.00 plus interests and attorney's fees in the amount of ₱100,000.00." (Mr. Roberto Ignacio's Complaint dated 03 April 1999, at 3-4; RTC records, Vol. 4, at 983-984)

[318] "It is understood that default on my part will entitle payee to 5% interest for every month of delay." (Promissory Notes dated 30 November 1994, 20 December 1994, and 27 April 1995; RTC records, Vol. 4, 986-988)

like a creative justification of the immediate execution of the PhP28.5 Million judgment notwithstanding the appeal.

In fact, the Court of Appeals noted Atty. Peña's admission of sufficient properties to answer for any liability arising from the collection suit arising from his creditor-friend. In initially denying the execution pending appeal, the appellate court held that:

> On the other hand, private respondent's claim that the only way he could pay his indebtedness to Roberto Ignacio is through the money that he expects to receive from petitioners in payment of his services is belied by his testimony at the hearing conducted by the trial court on the motion for execution pending appeal wherein petitioners were able to secure an admission from him that he has some assets which could be attached by Roberto Ignacio and that he would probably have other assets left even after the attachment.[319]

Hence, to rule that a pending collection suit against Atty. Peña, which has not been shown to result in his insolvency, would be to encourage judgment creditors to indirectly and indiscriminately instigate collection suits or cite pending actions, related or not, as a "good reason" to routinely avail of the remedy of discretionary execution.[320] As an exception to the general rule on execution after final and executory judgment, the reasons offered by Atty. Peña to justify execution pending appeal must be strictly construed.

Neither will the Court accept the trial court's unfounded assumption that Urban Bank's appeal was merely dilatory, as in fact, the PhP28,500,000 award given by the trial court was overturned by the appellate court and eventually by this Court.

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[319] CA Decision dated 12 January 2000 in C. A.-G. R. SP No. 55667, at 11-12; *rollo* (G. R. No. 145817), Vol. 1, at 356-357.

[320] "[E]xecution pending appeal must be strictly construed being an exception to the general rule. So, too, execution pending appeal is not to be availed of and applied routinely, but only in extraordinary circumstances." (*Corona International, Inc., v. Court of Appeals*, G. R. No. 127851, 18 October 2000, 343 SCRA 512)

Moreover, at the time the Special Order of Judge Henry Trociño of the RTC-Bago City came out in 1999, Urban Bank had assets worth more than PhP11 Billion and had a net worth of more than PhP2 Billion. There was no reason then to believe that Urban Bank could not satisfy a judgment of PhP28,500,000, a sum that was only 1% of its net worth, and 1/5 of 1% of its total assets of PhP11,933,383,630.[321] Urban Bank was even given a Solvency, Liquidity and Management Rating of 82.89 over 100 by no less than the BSP[322] and reportedly had liquid assets amounting to PhP2,036,878.[323] In fact, no allegation of impending insolvency or attempt to abscond was ever raised by Atty. Peña and yet, the trial court granted execution pending appeal.

Since the original order granting execution pending appeal was completely void for containing no justifiable reason, it follows that any affirmance of the same by the Court of Appeals is likewise void.

The Decision of the Court of Appeals in the case docketed as CA-G.R. SP No. 55667, finding a new reason for granting execution pending appeal, *i.e.*, the receivership of Urban Bank, is likewise erroneous, notwithstanding this Court's ruling in *Lee v. Trocino*.[324] In accordance with the subsequent Resolution

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[321] http://www.urbanbank.info/urbanweb/ubi_financial.htm last visited 07 October 2011.

[322] BSP Letter dated 04 December 1998; *rollo* (G. R. No. 145822), Vol. 1, at 622.

[323] Business World Special Report, The Commercial Banking System, Selected Balance Sheet Accounts as of 27 September 1999; *rollo* (G. R. No. 145822), Vol. 1, at 624.

[324] "**We agree with the appellate court's ratiocination in CA-G.R. SP No. 55667 that there is good ground to order execution pending appeal**. Records show that on April 26, 2000, Urban Bank declared a bank holiday, and the Bangko Sentral ng Pilipinas (BSP) ordered its closure. Subsequently, Urban Bank was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC); five of its senior officials, including defendants (in the trial court) Borlongan and Bejasa, were placed in the hold-departure list of the Bureau of Immigration and Deportation pending

of the Court in abovementioned case of *Lee v. Trocino*,[325] we directly resolve the issue of the insufficiency of the reasons that led to the grant of execution pending appeal.

In cases where the two or more defendants are made subsidiarily or solidarily liable by the final judgment of the trial court, discretionary execution can be allowed if **all the defendants** have been found to be insolvent. Considering that only Urban Bank, and not the other eight individual defendants, was later on considered by the Court of Appeals to have been "in danger of insolvency," is not sufficient reason to allow execution pending appeal, since the liability for the award to Peña was made (albeit, mistakenly) solidarily liable together with the bank officers.

In *Flexo Manufacturing Corp. v. Columbus Food, Inc., and Pacific Meat Company, Inc.*,[326] both Columbus Food, Inc., (Columbus Food) and Pacific Meat Company, Inc., (Pacific

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investigation for alleged anomalous transactions (*e.g.* violation of the Single Borrower's Limit provision of Republic Act No. 8791, or the General Banking Law of 2000) and bank fraud which led to Urban Bank's financial collapse. Furthermore, several administrative, criminal and civil cases had been filed against Urban Bank officials, who are defendants in Civil Case No. 754. Also, in the Peña disbarment case, the Court found the existence of an agency relation between Peña and Urban Bank, thereby entitling the former to collection of fees for his services. Impending insolvency of the adverse party constitutes good ground for execution pending appeal." (*Lee v. Trocino*, G.R. No. 164648, 06 August 2008, 561 SCRA 178)

[325] "Nevertheless, in the interest of an orderly and judicious administration of justice, we resolve to amend specific portions of our Decision which do not affect in any significant manner the integrity of our original disposition of the case. Thus, with regard to whether or not there exists an agency relationship between Urban Bank and Peña, the matter should be left to the final determination of the Court in G.R. No. 162562. **Anent the soundness of the lower court's grant of execution pending appeal, which necessarily settles the validity of the Special Order and Writ of Execution, the decision in G.R. No. 145822 must be awaited**. Accordingly, **our original dispositions** regarding Urban Bank's liability to Peña and **finding good reasons for execution pending appeal are hereby withdrawn** in order to make way for their resolution in the other petitions pending with the Court." (*Lee v. Trocino*, G.R. No. 164648, 19 June 2009, 590 SCRA 32)

[326] G.R. No. 164857, 11 April 2005, 455 SCRA 272.

Meat) were found by the trial court therein to be solidarily liable to Flexo Manufacturing, Inc., (Flexo Manufacturing) for the principal obligation of PhP2,957,270.00. The lower court also granted execution pending appeal on the basis of the insolvency of Columbus Food, **even if Pacific Meat was not found to be insolvent**. Affirming the reversal ordered by the Court of Appeals, this Court ruled that since there was another party who was solidarily liable to pay for the judgment debt, aside from the insolvent Columbus Food, there was no good reason to allow the execution pending appeal:

Regarding the state of insolvency of Columbus, the case of *Philippine National Bank v. Puno*, held:

> "While this Court in several cases has held that insolvency of the judgment debtor or imminent danger thereof is a good reason for discretionary execution, otherwise to await a final and executory judgment may not only diminish but may nullify all chances for recovery on execution from said judgment debtor, We are constrained to rule otherwise in this particular case. **In the aforecited cases, there was either only one defeated party or judgment debtor who was, however, insolvent or there were several such parties but all were insolvent, hence the aforesaid rationale for discretionary execution was present**. In the case at bar, it is undisputed that, assuming MMIC is insolvent, its co-defendant PNB is not. **It cannot, therefore, be plausibly assumed that the judgment might become illusory; if MMIC cannot satisfy the judgment, PNB will answer for it.** It will be observed that, under the dispositive portion of the judgment hereinbefore quoted, the liability of PNB is either subsidiary or solidary.

Thus, when there are two or more defendants and one is not insolvent, the insolvency of a co-defendant is not a good reason to justify execution pending appeal if their liability under the judgment is either subsidiary or solidary. In this case, Pacific was adjudged to be solidarily liable with Columbus. Therefore, the latter is not the only party that may be answerable to Flexo. **Its insolvency does not amount to a good reason to grant execution pending appeal**. (Emphasis supplied)

Similarly, the trial court in this case found Urban Bank and all eight individual bank officers solidarily liable to Atty. Peña for the payment of the PhP28,500,000 award. Hence, had the judgment been upheld on appeal, Atty. Peña could have demanded payment from any of the nine defendants. Thus, it was a mistake for the Court of Appeals to have affirmed execution pending appeal based solely on the receivership of Urban Bank, when there were eight other individual defendants, who were solidarily liable but were not shown to have been insolvent. Since Urban Bank's co-defendants were not found to have been insolvent, there was no good reason for the Court of Appeals to immediately order execution pending appeal, since Atty. Peña's award could have been satisfied by the eight other defendants, especially when the de Leon Group filed its supersedeas bond.

It seems incongruous for Atty. Peña to be accorded the benefit of erroneously impleading several bank directors, who had no direct hand in the transaction, but at the same time, concentrating solely on Urban Bank's inability to pay to justify execution pending appeal, regardless of the financial capacity of its other co-defendants. Worse, he capitalized on the insolvency and/or receivership of Urban Bank to levy or garnish properties of the eight other individual defendants, who were never shown to have been incapable of paying the judgment debt in the first place. The disposition on the execution pending appeal may have been different had Atty. Peña filed suit against Urban Bank alone minus the bank officers and the same bank was found solely liable for the award and later on declared under receivership.

In addition, a judgment creditor of a bank, which has been ordered by the BSP to be subject of receivership, has to fall in line like every other creditor of the bank and file its claim under the proper procedures for banks that have been taken over by the PDIC. Under Section 30 of Republic Act No. 7653, otherwise known as the New Central Bank Act, which prevailed at that time, once a bank is under receivership, the receiver shall immediately gather and take charge of all the assets and liabilities of the bank and administer the same for the benefit of its creditors and all of the bank's assets shall be considered as under *custodial*

legis and exempt from any order of garnishment, levy, attachment or execution.[327] In the Minute Resolution of the Monetary Board of the BSP, Urban Bank was not only prevented from doing business in the Philippines but its asset and affairs were placed under receivership as provided for under the same law.[328] In fact, even Peña himself assured the PDIC, as receiver of Urban Bank, that he would not schedule or undertake execution sales of the bank's assets for as long as the bank remains in receivership.[329] Until the approval of the rehabilitation or the initiation of the liquidation proceedings, all creditors of the bank

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[327] "The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

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(2) … The assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution. …." (Republic Act No. 7653, Sec. 30)

[328] "1. To prohibit the bank from doing business in the Philippines and to place its assets and affairs under receivership in accordance with Section 30 of R. A. No. 7653; …" (Monetary Board's Minute Resolution No. 22 dated 26 April 2000; *rollo* [G. R. No. 145817] , Vol. 1, at 232)

[329] "In connection with the above-referenced cases, please be informed that neither the undersigned [Peña] nor the sheriff of RTC Br. 62, Bago City, has initiated execution sale activities against the properties and assets of Urban Bank (UB) after the latter was ordered closed by the Bangko Sentral ng Pilipinas and placed under receivership of the PDIC.

"As the judgment creditor in the aforementioned cases, I would like to assure you that no execution sale of UB's assets shall be scheduled or

under receivership shall stand on equal footing with respect to demanding satisfaction of their debts, and cannot be extended preferred status by an execution pending appeal with respect to the bank's assets:

> … [t]o execute the judgment would unduly deplete the assets of respondent bank to the obvious prejudice of other creditors. After the Monetary Board has declared that a bank is insolvent and has ordered it to cease operations, the Board becomes the trustee of its assets for the equal benefit of all the depositors and creditors. After its insolvency, one creditor cannot obtain an advantage or preference over another by an attachment, execution or otherwise. **Until there is an approved rehabilitation or the initiation of the liquidation proceedings, creditors of the bank stand on equal footing with respect to demanding satisfaction of their debts, and cannot be afforded special treatment by an execution pending appeal with respect to the bank's assets**.[330] (Emphasis supplied)

Moreover, assuming that the CA was correct in finding a reason to justify the execution pending appeal because of the supervening event of Urban Bank's closure, the assumption by the EIB of the liabilities of Urban Bank meant that any execution pending appeal can be granted only if EIB itself is shown to be unable to satisfy Peña's judgment award of PhP28,500,000. That is not at all the case. In just one particular sale on execution herein, EIB offered to answer in cash for a substantial part of Peña's claims, as evidenced by EIB's capacity and willingness to redeem the executed properties (condominium units sold to intervenor Unimega) by tendering manager's checks for more than PhP22 Million[331] which is already 77.57% of Peña's total award from the trial court.[332] The fact that EIB's offer to take

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undertaken for as long as the bank remains under receivership." (Peña's Letter dated 19 December 2000; *rollo* [G. R. No. 145817], Vol. 1, at 599)

[330] *Philippine Veterans Bank v. Intermediate Appellate Court*, G. R. No. 73162, 23 October 1989, 178 SCRA 645.

[331] Petitioner Urban Bank, through EIB, had previously expressed its intent to redeem the 10 condominium units sold to intervenor Unimega during the public execution sale.

[332] The RTC-Bago City in the Decision in the main case awarded Peña a total of PhP28,500,000 in compensation and/or damages; EIB tendered

over Urban Bank means it was able to satisfy the BSP's concern that all legitimate liabilities of Urban Bank be duly discharged.

As an exception to the general rule that only final judgments may be executed,[333] the grant of execution pending appeal must perforce be based on "good reasons." These reasons must consist of compelling or superior circumstances demanding urgency which will outweigh the injury or damages suffered, should the losing party secure a reversal of the judgment or final order.[334] The circumstances that would reasonably justify superior urgency, demanding interim execution of Peña's claims for compensation and/or damages, have already been settled by the financial capacity of the eight other co-defendants, the approval of the supersedeas bonds, the subsequent takeover by EIB, and the successor bank's stable financial condition,[335] which can answer for the judgment debt. Thus, Peña's interest as a judgment creditor is already well-protected.

While there is a general rule that a final and executory judgment in the main case will render moot and academic a petition questioning the exercise of the trial court's discretion in allowing execution pending appeal, we find it necessary to rule categorically on this question because of the magnitude of the aberrations

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three manager's checks totaling PhP22,108,800 to redeem the 10 condominium units sold to intervenor Unimega, an amount that is more than three-fourths of the award in the main case.

[333] *Florendo v. Paramount Insurance Corp.*, G.R. No. 167976, 20 January 2010, 610 SCRA 377, citing *City of Iligan v. Principal Management Group, Inc.*, 455 Phil. 335, 344 (2003).

[334] *Stronghold Insurance, Co., Inc., v. Felix*, G.R. No. 148090, 28 November 2006, 508 SCRA 357, citing *Heirs of Macabangkit Sangkay v. National Power Corporation*, 489 SCRA 401, 417 (2006).

[335] "UBI is expected to reopen by end of August 2011. Upon reopening liabilities (as provided in the memorandum of agreement) up to ₱500,000 (inclusive of the ₱100,000 insured deposit) shall be paid and the balance payable in the next three (3) years with the first 30% serviced on the first year, 30% on the second year and 40% on the third year." (PDIC Letter dated 13 August 2001 to Atty. Peña; *rollo* [G. R. No. 145817], Vol. 1, at 654)

that attended the execution pending appeal in the Decision of the RTC-Bago City.

Irregularities in the Levy and Sale on Execution Pending Appeal

Assuming that the Special Order granting execution pending appeal were valid, issues have been raised on alleged irregularities that mar the levy and sale on execution of the properties of Urban Bank and its officers and directors. Many of the facts have not been sufficiently litigated before the trial and appellate courts for us to fully rule on the issue, nevertheless, from what is on record, the following are the observations of this Court:

First, contrary to the general rules on execution, no opportunity was given to Urban Bank or the other co-defendants to pay the judgment debt in cash or certified check.[336] Before proceeding on the levying and garnishing personal and real properties, demand must be made by the sheriff against the judgment debtors, Urban Bank and the eight other individual bank officers, for the immediate payment of the award subject of the execution pending appeal. It has not been shown whether Urban Bank and its officers and directors were afforded such an opportunity. Instead of garnishing personal properties of the bank, the sheriff inexplicably proceeded to levy substantial real properties of the bank and its officers at the onset.

Second, assuming that Urban Bank and its officers did not possess sufficient cash or funds to pay for the judgment debt pending appeal, they should have been given the option to choose which of their properties to be garnished and/or levied. In this case, Urban Bank exercised its option by presenting to the sheriff various parcels of land, whose values amount to more than PhP76,882,925 and were sufficient to satisfy the judgment debt.[337]

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[336] Rule 39, Sec. 9 (a).

[337] Letter dated 09 November 1999; RTC records, Vol. 5, at 1308-1309; Petitioner Urban Bank's Memorandum dated 28 January 2004, par. 12, at 4; *rollo* (G. R. No. 145822), Vol. 1, at 1270; *see also* petitioner De Leon Group's Memorandum dated 20 January 2004, par. 1.12, at 6; *rollo* (G. R. No. 145822), Vol. 1, at 1226.

Among those presented by the bank, only the property located in Tagaytay was levied upon by the sheriff.[338] No sufficient reason was raised why the bank's chosen properties were rejected or inadequate for purposes of securing the judgment debt pending appeal. Worse, the Sheriff proceeded with garnishing and levying on as many properties of Urban Bank and its officers, in disregard of their right to choose under the rules.

Third, the public auction sales conducted in the execution pending appeal sold more properties of Urban Bank and the directors than what was sufficient to satisfy the debt. Indeed, the conservative value of the properties levied herein by the sheriff amounting to more than **PhP181,919,190**, consisting of prime condominium units in the heart of the Makati Business district, a lot in Tagaytay City, shares in exclusive clubs, and shares of stock, among others, was more than sufficient to answer for the **PhP28,500,000** judgment debt six times over. Rather than stop when the properties sold had approximated the monetary award, the execution sale pending appeal continued and unduly benefitted Atty. Peña, who, as judgment creditor and, at times, the winning bidder, purchased most of the properties sold.

Fourth, it was supremely disconcerting how Urban Bank, through its successor EIB, was unduly deprived of the opportunity to redeem the properties, even after presenting manager's checks[339] equal to the purchase price of the condominium units sold at the execution sale. No reason was offered by the trial court[340] or the sheriff[341] for rejecting the redemption price tendered by

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[338] *Id.*

[339] The following manager's checks were attached to the Manifestation: (a) Manager's Check No. 80571 (PhP224,000); (b) Manager Check No. 80572 (PhP13,440,000); and (c) Manager's Check No. 80573 (PhP 8,440,800). (*Rollo* [G. R. No. 145817], Vol. 2, at 1281)

[340] RTC Order dated 13 November 2002; *rollo* (G. R. No. 145817), Vol. 1, at 1086-1089.

[341] Sheriff Sillador's Affidavits of Non-Redemption both dated 04 November 2002; *rollo* (G.R. No. No. 145817), Vol. 1, at 1072-1074.

EIB in order to recover the properties executed and sold in public auction pending appeal.

Finally, the Court cannot turn a blind eye to the fact that there was already a sufficient supersedeas bond given to answer for whatever monetary award will be given in the end. To recall, the De Leon Group had already tendered a supersedeas bond of PhP40,000,000 in the Court of Appeals to prevent execution pending appeal over their properties. In fact, even Urban Bank tendered a separate supersedeas bond of equal amount with this Court, for a total of PhP80,000,000 to secure any judgment to be awarded to Atty. Peña. That execution sales over the properties of judgment debtors proceeded despite the three-fold value of securities compared to the amount of the award indicates bad faith, if not malice, with respect to the conduct of the execution pending appeal.

Inasmuch as the RTC Decision has already been vacated and an independent finding has been made by this Court of the complete nullity of the order granting execution pending appeal, it follows that all acts pursuant to such order and its writ are also void. It does not follow however, that the Court's Decision in *Co v. Sillador*,[342] is nullified, inasmuch as an equally-important legal doctrine – the immutability of Supreme Court final decisions – is also to be considered. In any case, the factual circumstances and the ruling on that case were limited to the actions of Sheriff Allan Sillador with respect to properties levied under the same Special Order and Writ of Execution, which were subject of third party claims made by the spouses of Teodoro Borlongan, Corazon Bejasa and Arturo Manuel, Jr.[343] It does not encompass

[342] In that case, Sheriff Allan Sillador of RTC-Bago City levied and sold on public auction supposedly conjugal properties of Teodoro Borlongan, Corazon Bejasa and Arturo Manuel, Jr., despite the third party claims asserted by their respective spouse. The Court found Sheriff Sillador administratively liable for his failure to comply with the mandatory procedures for the conduct of the auction sale. (A. M. No. P-07-2342, 31 August 2007, 531 SCRA 657)

[343] After the RTC-Bago City granted execution pending appeal in the main case, judgment obligors Teodoro Borlongan, Corazon Bejasa and Arturo

other specific events and acts committed in the course of the execution pending appeal that may warrant administrative or disciplinary actions. Having said that, this Court leaves it to the parties to explore avenues for redress in such a situation.

The observation on the irregularities above-enumerated are made for the purpose of correcting the injustice that has been committed herein, by allowing the Court to pursue the question of who was responsible for such gross violation of the rules on execution, and for the Court to find measures to improve the safeguards against abuse of court processes. It is for this reason that the Office of the Court Administrator will be given a special task by the Court on this matter. Judge Henry Trocino of RTC-Bago City, who issued the Special Order and had supervisory authority over the proceedings of the execution pending appeal, would have been included under such administrative investigation by the Office of the Court Administrator, were it not for his retirement from the judicial service.

The Court's Suspension Order of Execution Pending Appeal

Acting on Atty. Peña's Omnibus Motion dated 09 December 2002[344] and Unimega's Motion for Reconsideration dated 10 December 2002[345] with respect to the Court's Order dated 13

Manuel, Jr., received a notice of sale on execution of real properties involving their respective lots. Their respective spouses filed Notices/Affidavits of Third Party Claim with Sheriff Allan Sillador and claimed that the levied properties are included in their conjugal estates. The said administrative complaint was filed with respect to the irregularities attendant the auction sale of these conjugal properties conducted by Sheriff Sillador. Sheriff Sillador was found to found guilty of simple neglect of duty and suspended for a period of 1 month without pay with a stern warning that a repetition of the same or similar acts will be dealt with more severely. (*Co. v. Sillador*, *id.*)

[344] Peña's Urgent Omnibus Motion dated 09 December 2002 (*rollo* [G. R. No. 145817], Vol. 1, at 1090-1102); *see also* Peña's Supplement to the Urgent Omnibus Motion dated 19 December 2002 (*rollo* [G. R. No. 145817], Vol. 1, at 1106-1110)

[345] Intervenor Unimega's Motion for Reconsideration with Intervention dated 10 December 2002; *rollo* (G.R. No. 145817), Vol. 1, at 991-1004.

November 2002[346] that clarified the earlier stay order against the execution pending appeal,[347] the Court hereby denies both motions. The Court is fully correct in suspending the period for the running of the redemption period of the properties of Urban Bank and its officers and directors that were levied and subject of execution sale to satisfy the judgment debt in favor of Atty. Peña, the Court having conclusively determined that the supersedeas bond filed was sufficient and considering the subsequent finding that the said execution pending appeal lacks any sufficient ground for the grant thereof.

As to the theory of Atty. Peña that the actuations of Justice Carpio, the then *ponente* of this case, in drafting the questioned Order should positively impact his motion for reconsideration of the same, the Court finds this argument utterly devoid of merit.

In the first place, that questioned Order was not the decision of only a single member of the Court, Justice Carpio, but of the entire division to which he belonged, then composed of retired Chief Justice Hilario Davide, Justices Jose Vitug, Consuelo Ynares-Santiago and Adolfo Azcuna. This Order was affirmed by the same Division as its duly-promulgated order. In relation to this, the affirmation by the Division of this Order demonstrates that there is no truth to Atty. Peña's claim that Justice Carpio fabricated the Order.

In the second place, Atty. Peña's claim of undue interest against Justice Carpio specifically with respect to the latter having the instant case transferred to his new Division, is based on ignorance of the system of assignment of cases in the Supreme Court. When a reorganization of the Court takes place in the form of a change in the composition of Divisions, due to the retirement or loss of a member, the Justices do not thereby lose

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[346] SC Resolution dated 13 November 2002; *rollo* (G.R. No. 145817), Vol. 1, at 988-990.

[347] SC Resolution dated 19 November 2001; *rollo* (G. R. No. 145817), Vol. 1, at 794-795.

their case assignments but bring the latter with them to their new Divisions.[348] The cases are then transferred to the Justices' new Divisions, by way of the corresponding request from each justice. Each justice is in fact, required to make this request, otherwise the *rollo* of the cases of which he is Member-in-Charge will be retained by a Division in which he is no longer a member. Indeed, Atty. Peña's imagination has gotten the better of him.

Thirdly, his insinuation (which he denies) that Justice Carpio may have been bribed because the latter has a new Mercedes Benz[349] is highly offensive and has no place where his points should have been confined to legal reasons and arguments.

Incidentally, Atty. Peña has voiced the fear in the Letter of Complaint filed in the Court's Committee on Ethics and Ethical Standards,[350] which he brought against the *ponente* of this Decision, that she will suppress material information regarding

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[348] "*Effect of reorganization of Divisions on assigned cases.* – In the reorganization of the membership of Divisions, cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle." (Internal Rules of the Supreme Court [A. M. No. 10-4-20-SC, as amended], Rule 2, Sec. 9)

[349] "Private respondent [Peña] composed himself and tried to recall if there was any pending incident with this Honorable Court regarding the suspension of the redemption period but he could not remember any. **In an effort to hide his discomfort, respondent teased Atty. Singson about bribing the ponente to get such an order.** Much to his surprise, Atty. Singson did not even bother to deny and in fact explained that they obviously had to exert extra effort because they could not afford to lose the properties involved (consisting mainly of almost all the units in the Urban Bank Plaza in Makati City) as it might cause the bank (now Export Industry Bank) to close down." (Peña's Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January 2006, at 2-3; *see* SC TSN dated 03 March 2002, at 55-58)

[350] Letter Complaint dated 16 September 2011 (*Re:* Justices Carpio and Sereno) filed with the Court's Committee on Ethics and Ethical Standards; *see* Supplement to the Very Urgent Motion for Re-Raffle dated 20 September 2011.

the issuance of the Order suspending the redemption period because of her close relationship to Justice Carpio. Contrary to this fear, this Decision is frontally disposing of this claim by stating that there is no basis to believe that the questioned Order was anything than the joint decision of the five members of the then First Division, and that his arguments in his motion to reconsider does not persuade this Court to vary in any form the questioned order. Moreover, our disposition of this case renders moot his motion to reconsider the order.

It must be emphasized that the prolonged resolution of the procedural issue in the Petitions in G.R. Nos. 145817 and 145822 on the execution pending appeal is due in no small part to the delays arising from Peña's peculiar penchant for filing successive motions for inhibition and re-raffle.[351] The Court cannot sanction

[351] 1. Peña's *Motion to Inhibit* (Re: Justice Artemio V. Panganiban) dated 12 January 2001; 2. *Urgent Motion to Inhibit* (Re: Justice Arturo Buena) dated 20 August 2001; 3. *Letter Complaint* (Re: Justice Buena) dated 28 October 2001; 4. *Motion to Inhibit* (Re: Justice Panganiban) dated 18 February 2002; 5. *Reply* (Re: Justice Panganiban) dated 15 March 2001; 6. *Urgent Motion to Inhibit* (re: *ponente*) dated 30 January 2003; 7. *Motion to Inhibit* (Re: Justice Leonardo A. Quisumbing) dated 08 July 2004; 8. *Motion to Inhibit* (Re: Justice Panganiban) dated 28 December 2004; 9. *Motion to Inhibit* (Re: Justice Eduardo Antonio B. Nachura) dated 17 December 2007; 10. *Motion for Inhibition* (Re: Justice Panganiban) dated 28 December 2004; 11. *Reiteratory Motion to Recuse* dated 03 March 2006 (Re: Justice Panganiban); 12. *Motion to Inhibit* (Re: Justice Nachura) dated 07 January 2008; 13. *Urgent Consolidated Motion to Reiterate Request for Inhibition* (Re: Justice Antonio T. Carpio) dated 02 June 2008; 14. *Urgent Motion for Re-Raffle* (Re: Justice Presbitero J. Velasco) dated 10 July 2008; 15. *Supplement to the Urgent Motion for Re-Raffle* (Re: Justices Conchita Carpio Morales and Dante O. Tinga) dated 04 August 2008; 16. *Urgent Consolidated Motion for Re-Raffle* (Re: Justices Carpio Morales, Tinga and Velasco) dated 14 August 2008; 17. *Urgent Consolidated Motion for Re-Raffle* (Re: Justices Arturo D. Brion, Leonardo A. Quisumbing, Carpio Morales, Tinga, Velasco, Quisumbing) dated 28 August 2008; 18. *Motion to Inhibit* (Re: Justice Carpio) dated 21 January 2010; 19. *Very Urgent Motion to Inhibit* (Re: Justices Carpio Morales and Ma. Lourdes P. A. Sereno) dated 30 March 2011; 20. *Very Urgent Motion to Inhibit* dated 22 August 2011 (Re: Justice Sereno); and 21. *Very Urgent Motion to Re-Raffle* dated 01 September 2011 (Re: Justices Carpio, Jose Perez and Sereno).

Peña's repeated requests for voluntary inhibition of members of the Court based on the sole ground of his own self-serving allegations of lack of faith and trust, and would like to reiterate, at this point, the policy of the Court not to tolerate acts of litigants who, for just about any conceivable reason, seek to disqualify a judge (or justice) for their own purpose, under a plea of bias, hostility, prejudice or prejudgment.[352] The Court cannot allow the unnecessary and successive requests for inhibition, lest it opens the floodgates to forum-shopping where litigants look for a judge more friendly and sympathetic to their cause than previous ones.[353]

Restitution of the Bank's Executed Properties

The Court is still confronted with the supervening acts related to the execution pending appeal and the reversal of the award of damages, which affect the rights of the parties as well as of the intervenors to the case, specifically, intervenor Unimega. In completely resolving the differing claims and performing its educational function, the Court shall briefly encapsulate and restate the operational rules governing execution pending appeal

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[352] *Pasricha v. Don Luis Dison Realty, Inc.*, G.R. No. 136409, 14 March 2008, 548 SCRA 273.

[353] "We agree that judges have the duty of protecting the integrity of the judiciary as an institution worthy of public trust and confidence. **But under the circumstances here, we also agree that unnecessary inhibition of judges in a case would open the floodgates to forum-shopping**. More so, considering that Judge Magpale **was not the first judge that TAN had asked to be inhibited on the same allegation of prejudgment**. **To allow successive inhibitions would justify petitioners' apprehension about the practice of certain litigants shopping for a judge more friendly and sympathetic to their cause than previous ones**.

"As held in *Mateo, Jr. v. Hon. Villaluz*, the invitation for judges to disqualify themselves need not always be heeded. It is not always desirable that they should do so. It might amount in certain cases to their being recreant about their duties. **It could also be an instrument whereby a party could inhibit a judge in the hope of getting another more amenable to his persuasion**." (*Chin, v. Court of Appeals*, G. R. No. 144618, 15 August 2003, 409 SCRA 206; emphasis supplied)

when there has been a reversal of the trial court's Decision on the award of damages in order to guide the parties as well as the bench and bar in general. The necessity of making these detailed instructions is prompted by the most natural question an ordinary person with a sense of justice will ask after reading the facts: How can an obligation to pay for the services of a lawyer so that 23 unwanted tenants leave a corporation's property lead to the loss or the impairment of use of more than **PhP181 Million** worth of properties of that corporation and of its officers and directors? Obviously, this Court must undertake corrective actions swiftly.

The rule is that, where the executed judgment is reversed totally or partially, or annulled – on appeal or otherwise – the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.[354] The Rules of Court precisely provides for restitution according to equity, in case the executed judgment is reversed on appeal.[355] "In an execution pending appeal, funds are advanced by the losing party to the prevailing party with **the implied obligation of the latter to repay the former, in case the appellate court cancels or reduces the monetary award**."[356]

In disposing of the main case subject of these Petitions, the Court totally reversed the staggering amount of damages given by the trial court, and limited on a *quantum meruit* basis the agent's compensation to PhP4,500,000 only. However, properties of Urban Bank and individual petitioners have been garnished and levied upon in the amount of supposedly more than PhP85,399,350.[357]

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[354] RULES OF COURT, Rule 39, Sec. 5.

[355] *Legaspi v. Ong*, G.R. No. 141311, 26 May 2005, 459 SCRA 122.

[356] *Pilipinas Bank v. Court of Appeals*, G. R. No. 97873, 12 August 1993, 225 SCRA 268.

[357] Petitioner De Leon Group's Memorandum dated 20 January 2004; at 15-16; *rollo* (G.R. No. 145822), Vol. 1, at 1235-1236.

Applying the foregoing rules, petitioner-respondent bank is entitled to complete and full restitution of its levied properties, subject to the payment of the PhP4,500,000. Meanwhile, petitioners bank officers, all of whom have not been found individually or solidarily liable, are entitled to full restitution of all their properties levied upon and garnished, since they have been exonerated from corporate liability with respect to the bank's agency relationship with Peña.

Considering the monetary award to Peña and the levy on and execution of some of its properties pending appeal, Urban Bank, now EIB, may satisfy the judgment in the main case and at the same time fully recover all the properties executed owing to the complete reversal of the trial court's awarded damages. It must immediately and fully pay the judgment debt before the entire lot of levied properties, subject of the execution pending appeal, is restored to it.[358]

Due to the complete reversal of the trial court's award for damages, which was the basis of the Special Order and Writ of Execution allowing execution pending appeal, intervenor Unimega and other bidders who participated in the public auction sales are liable to completely restore to petitioner-respondent bank all of the properties sold and purchased therein. Although execution pending appeal is sanctioned under the rules and jurisprudence, when the executed decision is reversed, the premature execution is considered to have lost its legal bases. The situation necessarily requires equitable restitution to the party prejudiced thereby.[359] As a matter of principle, courts

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[358] RULES OF COURT, Rule 39, Sec. 9 (a).

[359] "Legal solutions *in pari materia* are not wanting. Section 2 of Rule 39 of the Rules of Court authorize for goods reasons, the immediate execution of decisions of the Courts of First Instance during the pendency of an appeal, but then, evidently to avoid injustice, Section 5 of the same Rule provides: 'When the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such order of restitution as equity and justice may warrant under the circumstances.' I am aware of no better principle than that underlying this provision that can be applied to the case at bar, for here, as in the case

are authorized at any time to order the return of property erroneously ordered to be delivered to one party, if the order is found to have been issued without jurisdiction.[360]

As a purchaser of properties under an execution sale, with an appeal on the main case still pending, intervenor Unimega knew or was bound to know that its title to the properties, purchased in the premature public auction sale, was contingent on the outcome of the appeal and could possibly be reversed. Until the judgment on the main case on which the execution pending appeal hinges is rendered final and executory in favor of the prevailing judgment creditor, it is incumbent on the purchasers in the execution sale to preserve the levied properties. They shall be personally liable for their failure to do so, especially if the judgment is reversed, as in this case.[361] In fact, if specific restitution becomes impracticable – such as when the properties pass on to innocent third parties – the losing party in the execution

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before Us, **the order of immediate execution is concededly authorized when issued, but it is considered, in effect, as losing its legal basis after the executed decision is reversed or modified, hence the necessity of equitable restitution to the party prejudiced by the premature execution**." (Dissenting Opinion of Justice Antonio P. Barredo in *Yarcia v. City of Baguio*, G. R. No. L-27562, 29 May 1970, 33 SCRA 419; emphasis supplied)

[360] "The gist of the appeal is that since the order for the dismissal of the case was issued on August 20, 1960, and said dismissal had become final, the court could no longer issue its order of December 9, 1960 directing the return of the property. The argument while apparently correct would be productive of clear injustice. As a matter of principle courts should be authorized, as in this case, at any time to order the return of property erroneously ordered to be delivered to one party, if the order was found to have been issued without jurisdiction. Authority for the return of the property is expressed under the provision of Section 5 of Rule 39, Rules of Court …" (*Esler v. Ellama*, G. R. No. L-18236, 31 January 1964, 10 SCRA 138)

[361] "It is no defense that, prior to the finality of the judgment of the appellate court, the land and its products had been already distributed among the heirs of the late Ceferino Datoon. His administratrix, appellant herein, personally knew of the claim of appellee Salas; she also knew, and was bound to know, that the judgment of the Court of First Instance

even becomes liable for the full value of the property at the time of its seizure, with interest. The Court has ruled:

> When a judgment is executed pending appeal and subsequently overturned in the appellate court, the party who moved for immediate execution should, upon return of the case to the lower court, be required to make specific restitution of such property of the prevailing party as he or any person acting in his behalf may have acquired at the execution sale. **If specific restitution becomes impracticable, the losing party in the execution becomes liable for the full value of the property at the time of its seizure, with interest**.
>
> While the trial court may have acted judiciously under the premises, its action resulted in grave injustice to the private respondents. It cannot be gainsaid that it is incumbent upon the plaintiffs in execution (Arandas) to return whatever they got by means of the judgment prior to its reversal. **And if perchance some of the properties might have passed on to innocent third parties as happened in the case at bar, the Arandas are duty bound nonetheless to return the corresponding value of said properties as mandated by the Rules**. (Emphasis supplied)[362]

In this case, the rights of intervenor Unimega to the 10 condominium units bought during the public auction sale under the Special Order are rendered nugatory by the reversal of the award of unconscionable damages by the trial court. It cannot claim to be an innocent third-party purchaser of the levied condominium units, since the execution sale was precisely made pending appeal. It cannot simply assume that whatever inaction or delay was incurred in the process of the appeal of the main Decision would automatically render the remedy dilatory in

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dismissing the complaint had been appealed, and could be reversed. **It was, therefore, incumbent upon her to reserve the land and its products from distribution among the heirs of Datoon until final judgment was rendered, and she is personally answerable for her failure to do so, apart from the obligation of the heirs themselves not to profit from what is not theirs**." (*Salas v. Quinga*, G. R. No. L-20294, 30 January 1965, 13 SCRA 143)

[362] *Aranda v. Court of Appeals*, G.R. No. 63188, 13 June 1990, 186 SCRA 456, citing *Po Pauco v. Tan Junco*, 49 Phil. 349 (1926) and *Hilario v. Hicks*, 40 Phil. 576 (1919).

character.[363] Whatever rights were acquired by intervenor Unimega from the execution sale under the trial court's Special Orders are conditional on the final outcome of the appeal in the main case. Unlike in auction sales arising from final and executory judgments, both the judgment creditor and the third parties who participate in auction sales pending appeal are deemed to knowingly assume and voluntarily accept the risks of a possible reversal of the decision in the main case by the appellate court.

Therefore, intervenor Unimega is required to restore the condominium units to Urban Bank. Although the intervenor has caused the annotation of the sale and levied on the titles to those units, the titles have remained under the name of the bank, owing to the supersedeas bond it had filed and the Court's own orders that timely suspended the transfer of the titles and further execution pending appeal.

The obligation to restore the properties to petitioner-respondent bank is, however, without prejudice to the concurrent right of intervenor Unimega to the return of the PhP10,000,000 the latter paid for the condominium units, which Peña received as judgment creditor in satisfaction of the trial court's earlier Decision.[364]

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[363] "It is submitted that under the premises movant-intervenor acted in good faith when it proceeded to participate in the execution sale despite the pendency of the appeal of the petitioner to this Honorable Court considering that at the time of the sale this Honorable Court have not yet acted on the said appeal inspite of the fact that the same was filed before the scheduled execution sale. In such case, the movant-intervenor can assume in good faith that the inaction on the appeal taking into account the urgency of the situation, would mean that the appeal was only dilatory in character." (Intervenor Unimega's Reply dated 22 May 2003, at 2; *rollo* (G. R. No. 145822), Vol. 3, at 3524)

[364] "*Recovery of price if sale not effective*; *revival of judgment*. — **If the purchaser of real property sold on execution, or his successor in interest,** fails to recover the possession thereof, or **is evicted therefrom**, in consequence of irregularities in the proceedings concerning the sale, or **because the judgment has been reversed or set aside**, or because the property sold was exempt from execution, or because a third person has vindicated his claim to the property, **he may on motion in the same action or in a separate action recover from the judgment obligee the price**

Consequently, intervenor's earlier request for the issuance of a writ of possession[365] over those units no longer has any leg to stand on. Not being entitled to a writ of possession under the present circumstances, Unimega's *ex parte* petition is consequently denied.

Upon the reversal of the main Decision, the levied properties itself, subject of execution pending appeal must be returned to the judgment debtor, if those properties are still in the possession of the judgment creditor, plus compensation to the former for the deprivation and the use thereof.[366] The obligation to return the property itself is likewise imposed on a third-party purchaser, like intervenor Unimega, in cases wherein it **directly participated in the public auction sale**, and the **title to the executed property has not yet been transferred**. The third-party purchaser shall, however, be entitled to reimbursement from the judgment creditor, with interest.

Considering the foregoing points, the Court adopts with modification the rules of restitution expounded by retired Justice Florenz D. Regalado in his seminal work on civil procedure,[367] which the appellate court itself cited earlier.[368] In cases in which restitution of the prematurely executed property is no longer

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paid, with interest, or so much thereof as has not been delivered to the judgment obligor, or he may, on motion, have the original judgment revived in his name for the whole price with interest, or so much thereof as has been delivered to the judgment obligor. The judgment so revived shall have the same force and effect as an original judgment would have as of the date of the revival and no more." (Rules of Court, Rule 39, Sec. 34; emphasis supplied)

[365] Intervenor Unimega's *Ex Parte* Petition for the Issuance of a Writ of Possession dated 28 June 2006; *rollo* (G.R. No. 162562), Vol. 2, at 1156-1169.

[366] Florenz D. Regalado, *REMEDIAL LAW COMPENDIUM* II 8th ed. (2002), at 424.

[367] Regalado, *id.* at 424, citing *Po Pauco v. Tan Juco*, 49 Phil. 349 (1926).

[368] CA Resolution dated 19 October 2000, at 3-4; *rollo* (G.R. No. 145817), Vol. 1, at 25-26.

possible, compensation shall be made in favor of the judgment debtor in the following manner:

a. If the purchaser at the public auction is the judgment creditor, he must pay the full value of the property at the time of its seizure, with interest.

b. If the purchaser at the public auction is a third party, and **title to the property has already been validly and timely transferred to the name of that party**, the judgment creditor must pay the amount realized from the sheriff's sale of that property, with interest.

c. If the judgment award is reduced on appeal, the judgment creditor must return to the judgment debtor only the excess received over and above that to which the former is entitled under the final judgment, with interest.

In summary, Urban Bank is entitled to complete restoration and return of the properties levied on execution considering the absolute reversal of the award of damages, upon the payment of the judgment debt herein amounting to PhP4,500,000, with interest as indicated in the dispositive portion. With respect to individual petitioners, they are entitled to the absolute restitution of their executed properties, except when restitution has become impossible, in which case Peña shall be liable for the full value of the property at the time of its seizure, with interest. Whether Urban Bank and the bank officers and directors are entitled to any claim for damages against Peña and his indemnity bond is best ventilated before the trial court, as prescribed under the procedural rules on execution pending appeal.

WHEREFORE, the Court *DENIES* Atty. Magdaleno Peña's Petition for Review dated 23 April 2004 (G. R. No. 162562) and *AFFIRMS WITH MODIFICATION* the Court of Appeals' Decision dated 06 November 2003 having correctly found that the Regional Trial Court of Bago City gravely abused its discretion in awarding unconscionable damages against Urban Bank, Inc., and its officers. The Decision of the Regional Trial Court of Bago City dated 28 May 1999 is hence *VACATED.*

Nevertheless, Urban Bank, Inc., is *ORDERED* to pay Atty. Peña the amount of PhP3,000,000 as reimbursement for his expenses and an additional PhP1,500,000 as compensation for his services, with interest at 6% per annum from 28 May 1999, without prejudice to the right of Urban Bank to invoke payment of this sum under a right of set-off against the amount of PhP25,000,000 that has been placed in escrow for the benefit of Isabela Sugar Company, Inc. The Complaint against the eight other individual petitioners, namely Teodoro Borlongan (+), Delfin C. Gonzales, Jr., Benjamin L. de Leon, P. Siervo G. Dizon, Eric L. Lee, Ben Y. Lim, Jr., Corazon Bejasa, and Arturo Manuel, Jr., is hereby *DISMISSED*.

The **Petitions for Review on *Certiorari*** filed by petitioners Urban Bank (G. R. No. 145817) and Benjamin L. de Leon, Delfin Gonzalez, Jr., and Eric L. Lee (G. R. No. 145822) are hereby *GRANTED* under the following conditions:

a. Urban Bank, Teodoro Borlongan, Delfin C. Gonzalez, Jr., Benjamin L. de Leon, P. Siervo H. Dizon, Eric L. Lee, Ben Y. Lim, Jr., Corazon Bejasa, and Arturo Manuel, Jr., (respondent bank officers) shall be restored to full ownership and possession of all properties executed pending appeal;

b. If the property levied or garnished has been sold on execution pending appeal and Atty. Magdaleno Peña is the winning bidder or purchaser, he must fully restore the property to Urban Bank or respondent bank officers, and if actual restitution of the property is impossible, then he shall pay the full value of the property at the time of its seizure, with interest;

c. If the property levied or garnished has been sold to a third party purchaser at the public auction, and **title to the property has not been validly and timely transferred to the name of the third party**, the ownership and possession of the property shall be returned to Urban Bank or respondent bank officers, subject to the third party's right to claim restitution for the purchase price paid at the execution sale against the judgment creditor;

d. If the purchaser at the public auction is a third party, and **title to the property has already been validly and timely transferred to the name of that party**, Atty. Peña must pay Urban Bank or respondent bank officers the amount realized from the sheriff's sale of that property, with interest from the time the property was seized.

The Omnibus Motion dated 09 December 2002 filed by Atty. Peña and Motion for Reconsideration dated 10 December 2002 filed by Unimega with respect to the Court's Order dated 13 November 2002 is hereby *DENIED*.

The Office of the Court Administrator is ordered to conduct an investigation into the possible administrative liabilities of Atty. Josephine Mutia-Hagad, the then RTC-Bago City's Clerk of Court, and Allan D. Sillador, the then Deputy Sheriff of Bago City, for the irregularities attending the execution pending appeal in this case, including all judicial officers or sheriffs in the various places in which execution was implemented, and to submit a report thereon within 120 days from receipt of this Decision.

The Office of the Court Administrator is also directed to make recommendations for the prevention of abuses of judicial processes in relation to executions, especially those pending appeal, whether thru administrative circulars from this Court or thru a revision of the Rules of Court, within 30 days from submission of the report on administrative liabilities adverted to above. Let a copy of the Court's Decision in this case be sent to the Office of the Court Administrator.

The Presiding Judge of RTC Bago City shall make a full report on all incidents related to the execution in this case, including all returns on the writ of execution herein.

Because so much suspicious circumstances have attended the execution in this case by the Regional Trial Court of Bago City, the proceedings with respect to any restitution due and owing under the circumstances shall be transferred to the Regional Trial Court in the National Capital Region, Makati City, a court

with venue to hear cases involving Urban Bank/Export and Industry Bank whose headquarters is located in Makati City. The Executive Judge of the Regional Trial Court of Makati City is ordered to include the execution of the Decision and the proceedings for the restitution of the case in the next available raffle.

The Regional Trial Court of Makati City, to which the case shall be raffled, is hereby designated as the court that will fully implement the restorative directives of this Decision with respect to the execution of the final judgment, return of properties wrongfully executed, or the payment of the value of properties that can no longer be restored, in accordance with Section 5, Rule 39 of the Rules of Court. The parties are directed to address the implementation of this part of the Decision to the sala to which the case will be raffled.

No pronouncement as to costs.

SO ORDERED.

Brion (Acting Chairperson), Villarama, Jr.,[*] *Mendoza,*[**] and *Perlas-Bernabe,*[***] *JJ.,* concur.

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[*] Additional member vice *J.* Antonio T. Carpio per Raffle dated 7 June 2010.

[**] Additional member vice *J.* Bienvenido L. Reyes per Raffle dated 17 October 2011.

[***] Additional member vice *J.* Jose P. Perez per S.O. No. 1114.

THIRD DIVISION

[G.R. No. 151993. October 19, 2011]

MARITIME FACTORS INC., *petitioner, vs.* **BIENVENIDO R. HINDANG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTIONS.— In a petition for review on *certiorari*, our jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous. We are not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record. We find these exceptions in this case.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION (NLRC); PROCEEDINGS BEFORE THE NLRC ARE NOT COVERED BY THE TECHNICAL RULES OF EVIDENCE AND PROCEDURE AS OBSERVED IN THE REGULAR COURTS; CASE AT BAR.— The three tribunals agreed to respondent's claim that the photocopy of a fax transmission of Dr. Hameed's medical report is unverifiable and unreliable; thus, did not give credence to the same. However, we find that respondent is stopped from raising its objection to such photocopy of medical report, since respondent even lifted portions in the report which would allegedly prove his claim of Danilo's death by strangulation. Notably, respondent would refer to portions of the medical report which suit his purpose but raises the report's authenticity and reliability since the conclusion was adverse to him. Respondent cannot now claim

that the medical report which was merely a translation of the original report in Arabic cannot be given legal effect, since respondent had referred to the same medical report to argue its case. It is settled that the LA and the NLRC are directed to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of substantial justice. Considering the foregoing, we find reversible error committed by the LA, the NLRC and the CA in discrediting Dr. Hameed's medical report for being a mere photocopy of a fax transmission. Again, we stress that proceedings before the NLRC are not covered by the technical rules of evidence and procedure as observed in the regular courts. Technical rules of evidence do not apply if the decision to grant the petition proceeds from an examination of its sufficiency as well as careful look into the arguments contained in position papers and other documents.

3. ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION; STANDARD EMPLOYMENT CONTRACT GOVERNING THE EMPLOYMENT OF ALL FILIPINO SEAMEN ON BOARD OCEAN-GOING VESSELS; DEATH BENEFITS; THE EMPLOYER MAY BE EXEMPT FROM LIABILITY IF IT CAN SUCCESSFULLY PROVE THAT THE SEAMAN'S DEATH WAS CAUSED BY AN INJURY DIRECTLY ATTRIBUTABLE TO HIS DELIBERATE OR WILLFUL ACT; CASE AT BAR.— In order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. This rule, however, is not absolute. The employer may be exempt from liability if it can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act. Clearly, respondent's entitlement to any death benefit depends on whether petitioner's evidence suffices to prove that Danilo committed suicide, and the burden of proof rests on petitioner. We find that petitioner was able to prove that Danilo's death was attributable to his deliberate act of killing himself by committing suicide.

APPEARANCES OF COUNSEL

Fernandez Pacheco & Dizon Law Offices for petitioner.
Himerio Jose L. Garcia IV for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated November 28, 2001 and the Resolution[2] dated January 29, 2002, of the Court of Appeals (CA) in CA-G.R. SP No. 57478.

The antecedent facts are as follows:

On June 10, 1994, petitioner Maritime Factors, Inc., a domestic manning agency, for and in behalf of its foreign principal Bahrain Marine Contracting/Panama, engaged the services of Danilo R. Hindang (Danilo) to work as GP/Deckhand on board the M/T "Reya," a Panamanian-registered ocean-going vessel. Danilo's contract of employment was for a period of 12 months with a basic monthly salary of US$230.00.[3]

On July 27, 1994, while within the territorial jurisdiction of the Kingdom of Saudi Arabia and on board the vessel, Chief Mate Marcial Lauron, Jr., AB Jaime Aguinaldo and Oiler Allan P. Sarabia forced open Danilo's cabin door by taking out the screws on the door lock with a screw driver. They found Danilo's body inside the locker (wardrobe) of his cabin.[4] Danilo was found hanging by a strap on his neck in a kneeling position.[5]

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[1] Penned by Associate Justice B. A. Adefuin-dela Cruz, with Associate Justices Wenceslao I. Agnir, Jr. and Rebecca de Guia-Salvador, concurring, *rollo*, pp. 40-45.

[2] *Id.* at 47.

[3] *Id.* at 54.

[4] *Id.* at 55.

[5] *Id.*

Upon arriving at West Pier, Ras Tanurah, they turned over Danilo's body to the Saudi police authorities, who then brought the body to Dr. Ossman Abdel Hameed, the Medical Examiner of the Eastern Region, Kingdom of Saudi Arabia. Dr. Hameed conducted an autopsy on Danilo's remains and concluded that Danilo committed suicide by hanging himself.[6]

Danilo's remains were repatriated to the Philippines where an autopsy was requested by Danilo's family. The autopsy was conducted by Dr. Maximo L. Reyes, a Medico-Legal Officer of the National Bureau of Investigation (NBI) and concluded that the cause of Danilo's death was Asphyxia by Strangulation, Ligature.[7] Dr. Reyes subsequently issued a Certification[8] dated December 27, 1994 clarifying that Danilo died of Asphyxia by strangulation which meant that somebody caused his death based on his autopsy findings.

On August 24, 1994, respondent Bienvenido R. Hindang, brother of the deceased seaman Danilo, filed for death compensation benefits pursuant to the POEA Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels. The case was docketed as POEA Case No. 94-08-2599.[9] Since efforts to settle the case amicably proved futile, the Labor Arbiter (LA) directed the parties to submit their respective position papers.

Petitioner filed its Position Paper claiming that based on Dr. Hameed's medical jurisprudence report, Danilo committed suicide by hanging himself; thus, his death is not compensable. Petitioner submitted a photocopy of the fax transmission of the medical jurisprudence report of Dr. Hameed where the latter stated that the cause of Danilo's death was suicide by hanging himself. Petitioner also submitted the written report dated September 21, 1994 of Danilo's fellow crew members stating that Danilo's

[6] *Id.* at 56-59.

[7] *Id.* at 251.

[8] *Id.* at 253.

[9] *Id.* at 60.

cabin door was locked, thus, they forced open it and found Danilo inside the locker room hanging by his neck in a kneeling position.

In his Position Paper, respondent contended that the NBI autopsy report categorically declared that the cause of Danilo's death was Asphyxia by strangulation, ligature; that the alleged Dr. Hameed's medical report cannot be given legal effect, since the report was a mere photocopy of a fax transmission from petitioner's foreign principal, hence, the document was unreliable as to its due execution and genuineness. Respondent lifted portions in Dr. Hameed's medical report to rebut the finding that Danilo committed suicide.

On November 29, 1996, the LA rendered its decision,[10] the decretal portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Maritime Factors, Inc. and/or its foreign employer Bahrain Marine Contracting/PANAMA to jointly and severally pay Danilo Hindang's death benefits through his next of kin Bienvenido R. Hindang, pursuant to the POEA Standard Contract for Seafarers, in the amount of US$50,000.00 or at its Philippine Currency equivalent at the exchange rate prevailing during the time of payment.[11]

The LA found that Danilo did not commit suicide, thus, the claim for his death benefit must prosper. It found, among others, that the NBI autopsy report concluding that Danilo died of Asphyxia by strangulation should be given credence as against petitioner's evidence which consisted of a mere photocopy of the fax transmission of the medical jurisprudence report of Dr. Hameed; that the medical report was unreliable, since its genuineness and due execution could not be verified especially so that the report was purportedly prepared by a foreign government officer; and that under the POEA Standard Employment Contract for Filipino Seamen, the burden of proof to prove non-compensability of the death of the seaman is on

[10] *Id.* at 77-85. Per Labor Arbiter Pedro C. Ramos; Docketed as NLRC OCW Case No. RAB-IV-5-547-96-L.

[11] *Id.* at 84-85.

the employer which petitioner failed to discharge. The LA also found that there was no proof submitted that Danilo had been observed to be losing his mind as to kill himself.

Petitioner filed its Memorandum of Appeal[12] with the National Labor Relations Commission (NLRC).

On August 18, 1998, the NLRC rendered a Resolution[13] which affirmed *in toto* the LA decision.

Petitioner's motion for reconsideration was also denied in a Resolution[14] dated December 8, 1999.

Petitioner filed with the CA a petition for *certiorari* under Rule 65 assailing the NLRC resolutions for having been issued with grave abuse of discretion. Respondent filed his Comment, while the petitioner its Rejoinder thereto.

In a Decision dated November 28, 2001, the CA denied the petition and affirmed the NLRC resolutions.

The CA found that respondent through the NBI autopsy report and the certification issued by the medico-legal officer, Dr. Reyes, was able to prove that Danilo died of Asphyxia by strangulation, thus, the burden was shifted to petitioner to prove that Danilo committed suicide. However, petitioner failed to do so since its evidence consisted merely of a photocopy of the fax transmission of the medical report of Dr. Hameed; and such report cannot be verified as to its genuineness and due execution in our jurisdiction. Therefore, as between the independent report of the NBI and the mere photocopy of the alleged medical report of Dr. Hameed, the former therefore prevailed and should be given full credence.

The CA did not also give much credence to the written report dated September 21, 1994 of Danilo's fellow crew members

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[12] *Id.* at 86-103.

[13] *Id.* at 105-111; Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring; Docketed as NLRC NCR CA No. 012186-97.

[14] *Id.* at 120.

since the circumstances stated in the report did not at all prove that Danilo committed suicide.

The CA brushed aside petitioner's claim that respondent failed to prove that he is related to Danilo. It found that petitioner had admitted in its Answer to the Complaint that respondent is a brother of Danilo; and that the issue that respondent is not related to Danilo was only raised for the first time in the CA.

Hence, this petition wherein petitioner raises the following assignment of errors, to wit:

THE HONORABLE COURT OF APPEALS GRIEVOUSLY [ERRED] WHEN IT TOTALLY DISREGARDED THE MEDICAL JURISPRUDENCE REPORT OF THE SAUDI ARABIAN DOCTOR WHO CONDUCTED AN ACTUAL EXAMINATION OF THE CADAVER AND OCULAR INSPECTION OF THE PLACE WHERE THE DECEASED WAS FOUND ON THE LAME [EXCUSE] THAT THE SAME WERE MERE PHOTOCOPIES OF THE FAX TRANSMISSIONS FROM THE PETITIONER'S FOREIGN PRINCIPAL.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT MADE A FACTUAL CONCLUSION THAT IS NOT BORNE OUT BY THE RECORD BUT GROUNDED ENTIRELY ON SPECULATIONS, SURMISES OR CONJECTURE.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE RESPONDENT IS THE BROTHER OF THE DECEASED DESPITE THE UTTER LACK OF BASIS TO SUBSTANTIATE THE RELATIONSHIP.[15]

Petitioner claims that Danilo's death is not compensable, since he committed suicide; that the photocopy of the facsimile transmission of the medical report of Dr. Hameed, which supported petitioner's claim, should have been admitted notwithstanding that the same was a mere photocopy since the original document is in a foreign country; and that administrative and quasi-judicial bodies like the NLRC are not bound by technical rules of procedure in the adjudication of cases. Petitioner

[15] *Id.* at 17-18.

argues that the written report dated September 21, 1994, signed by Danilo's fellow crew members, should have also been considered in the resolution of this case.

The main issue for resolution is whether Danilo committed suicide during the term of his employment contract which would exempt petitioner from paying Danilo's death compensation benefits to his beneficiaries.

In a petition for review on *certiorari*, our jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous.[16] We are not a trier of facts, and this applies with greater force in labor cases.[17] Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality.[18] They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.[19] We find these exceptions in this case.

The LA, the NLRC and the CA found that Danilo died of Asphyxia by strangulation based on the NBI post-mortem findings and certification issued by the medico-legal officer, Dr. Reyes. These three tribunals did not give credence to the evidence presented by petitioner proving that Danilo committed suicide, which evidence consisted of (1) a photocopy of the fax transmission of the medical report of Dr. Hameed, the Saudi Arabian doctor who immediately conducted an autopsy on Danilo's body upon his death; and (2) the written report of

[16] *Retuya v. Dumarpa*, G.R. No. 148848, August 5, 2003, 408 SCRA 315, 326.

[17] *Gerlach v. Reuters Limited, Phils.*, G.R. No. 148542, January 17, 2005, 448 SCRA 535, 545.

[18] *Colegio de San Juan de Letran-Calamba v. Villas*, 447 Phil. 692, 700 (2003).

[19] *Id.*

three fellow crew members of Danilo.

We reverse the ruling.

The three tribunals agreed to respondent's claim that the photocopy of a fax transmission of Dr. Hameed's medical report is unverifiable and unreliable; thus, did not give credence to the same. However, we find that respondent is estopped from raising its objection to such photocopy of medical report, since respondent even lifted portions in the report which would allegedly prove his claim of Danilo's death by strangulation. Notably, respondent would refer to portions of the medical report which suit his purpose but raises the report's authenticity and reliability since the conclusion was adverse to him.

Respondent cannot now claim that the medical report which was merely a translation of the original report in Arabic cannot be given legal effect, since respondent had referred to the same medical report to argue its case. It is settled that the LA and the NLRC are directed to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of substantial justice. [20]

Considering the foregoing, we find reversible error committed by the LA, the NLRC and the CA in discrediting Dr. Hameed's medical report for being a mere photocopy of a fax transmission. Again, we stress that proceedings before the NLRC are not covered by the technical rules of evidence and procedure as observed in the regular courts. Technical rules of evidence do not apply if the decision to grant the petition proceeds from an examination of its sufficiency as well as a careful look into the arguments contained in position papers and other documents.[21]

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[20] *Sasan Sr. v. NLRC*, G.R. No. 176240, October 17, 2008, 569 SCRA 670, 688.

[21] *See Furusawa Rubber Philippines, Inc. v. Secretary of Labor and Employment*, G.R. No. 121241, December 10, 1997, 282 SCRA 635, 642.

We give credence to Dr. Hameed's medical report establishing that Danilo committed suicide by hanging himself. Dr. Hameed conducted the autopsy on Danilo's remains immediately after the latter's death. He saw first-hand the condition of Danilo's body, which upon his examination led him to conclude that Danilo died by hanging himself. His report was comprehensive and more detailed. He, likewise, noted that there were no signs of violence or resistance, or any external injuries except a very slight and artificial injury of nearly 5 cms among the toes of Danilo's right leg.[22]

Petitioner also presented as its evidence the written report of Danilo's fellow crew members to prove that Danilo's cabin door was locked when he was found hanging in his wardrobe. The report stated that they (Chief Mate Marcial Lauron, Jr., AB Jaime Aguinaldo and Oiler Allan P. Sarabia) forced open the cabin door of Danilo by taking out the screws on the door; that the door was locked since the key was inserted in the keyhole inside the room; that upon opening the door, they found the room empty but when they looked at the locker, they saw Danilo hanging with a strap on his neck in a kneeling position.[23] This written report was not given credence by the CA holding that "no one can prevent a determined villain from entering the said room while the door was open when the deceased was inside; thus, after the villain strangled the victim to death, he slipped away, closed and locked the door."[24]

We find such finding as speculative. In Dr. Hameed's medical report, as well as Dr. Reyes' *post mortem* examination, both reports did not mention of any showing of signs that there was struggle on the part of Danilo to defend himself from an intruder. Both reports did not report any marks of violence in the other parts of Danilo's body. Thus, Dr. Hameed's medical report, corroborated by the written report of Danilo's fellow crew members that the door was locked from the inside when they

[22] *Rollo*, p. 57.

[23] *Id.* At 55.

[24] *Id.* at 44.

found Danilo hanging in his wardrobe, only shows that he committed suicide.

Under Part II, Section C, Nos. 1 and 6 of the POEA "Standard Employment Contract Governing the Employment of All Filipino Seamen on Board Ocean-Going Vessels,"[25] it is provided that:

1. In case of death of the seaman during the term of this Contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of U.S.$50,000.00 and an additional amount of U.S.$7,000.00 to each child under the age of twenty-one (21) but not exceeding four children at the exchange rate prevailing during the time of payment.[26]

xxx xxx xxx

6. No compensation shall be payable in respect of any injury, incapacity, disability or death resulting from a willful act on his own life by the seaman, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to him.[27]

In order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. The death of a seaman during the term of employment makes

[25] Approved in 1989 and subsequent revisions were made thereafter.

[26] Now Section 20 [A], No. 1, Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels which reads:

1. In case of death of the seafarer during the term of his contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

[27] Now Section 20 (D), Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels which also reads:

D. No compensation shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

the employer liable to his heirs for death compensation benefits.[28] This rule, however, is not absolute. The employer may be exempt from liability if it can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act.[29] Clearly, respondent's entitlement to any death benefit depends on whether petitioner's evidence suffices to prove that Danilo committed suicide, and the burden of proof rests on petitioner.[30]

We find that petitioner was able to prove that Danilo's death was attributable to his deliberate act of killing himself by committing suicide.

WHEREFORE, the petition is *GRANTED*. The Decision dated November 28, 2001 and the Resolution dated January 29, 2002 of the Court of Appeals are hereby *REVERSED* and *SET ASIDE*.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[28] *NFD International Manning Agents v. NLRC*, G.R. No. 116629, January 16, 1998, 284 SCRA 239, 247.

[29] *Id.*

[30] *Lapid v. NLRC*, G.R. No. 117518, April 29, 1999, 306 SCRA 349, 357.

SECOND DIVISION

[G.R. No. 152313. October 19, 2011]

REPUBLIC FLOUR MILLS CORPORATION, *petitioner, vs.* **FORBES FACTORS, INC., substituted by assignee-GLENCORE FAR EAST PHILIPPINES AG,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; LEGAL SUBROGATION; EXISTS WHERE THE PARTIES HAVE NO EXPRESS AGREEMENT ON THE RIGHT OF SUBROGATION; CASE AT BAR.— The facts are undisputed. The delay incurred by petitioner in discharging the cargoes from the vessels was due to its own fault. Its obligation to demurrage is established by the Contracts of Sale it executed, wherein it agreed to the conditions to provide all discharging facilities at its expense in order to effect the immediate discharge of cargo; and to place for its account all discharging costs, fees, taxes, duties and all other charges incurred due to the nature of the importation. Meanwhile, respondent unequivocally established that Richco charged to it the demurrage due from petitioner. Thus, at the moment that Richco debited the account of respondent, the latter is deemed to have subrogated to the rights of the former, who in turn, paid demurrage to the ship owner. It is therefore immaterial that respondent is not the ship owner, since it has been able to prove that it has stepped into the shoes of the creditor. xxx The case at bar is an example of legal subrogation, the petitioner and respondent having no express agreement on the right of subrogation. Thus, it is of no moment that the Contracts of Sale did not expressly state that demurrage shall be paid to respondent. By operation of law, respondent has become the real party-in-interest to pursue the payment of demurrage.

2. ID.; ID.; ID.; ID.; SUBROGATION; KINDS.— Subrogation is either "legal" or "conventional." Legal subrogation is an

equitable doctrine and arises by operation of the law, without any agreement to that effect executed between the parties; conventional subrogation rests on a contract, arising where "an agreement is made that the person paying the debt shall be subrogated to the rights and remedies of the original creditor."

3. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; MOTION FOR CONTINUANCE OR POSTPONEMENT; NOT A MATTER OF RIGHT.— [W]e have previously held in *Pepsi Cola Products Phil., Inc. v. Court of Appeals*, that a motion for continuance or postponement is not a matter of right. Rather, the motion is addressed to the sound discretion of the court, whose action thereon will not be disturbed by appellate courts in the absence of clear and manifest abuse of discretion, resulting in a denial of substantial justice.

4. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; AWARDED IN CASE AT BAR.— [W]e find that the award of exemplary damages is proper. Petitioner refused to honor the contract despite respondent's repeated demands and its proof of payment to Richco; and despite its repeated promise to settle its outstanding obligations in the span of almost five years. Petitioner indeed acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Because respondent was also forced to initiate the present Complaint, it was only proper that it was awarded attorney's fees. Lastly, the CA was correct in reducing the award of exemplary damages or attorney's fees, since neither is meant to enrich anyone.

APPEARANCES OF COUNSEL

Reloj Law Office for petitioner.

Albert R. Pacios for respondent.

D E C I S I O N

SERENO, *J.*:

Petitioner filed this present Petition for Review[1] under Rule 45 of the Rules of Court, seeking a reversal of the Court of Appeals Decision,[2] the dispositive portion of which states:

> WHEREFORE, premises considered, the Decision dated April 15, 1996 rendered by the Regional Trial Court of Makati City, Branch 60, is hereby **AFFIRMED**, with **MODIFICATIONS,** as follows:
>
> 1) The legal interest rate of six percent (6%) per annum should be computed from the date of the filing of the complaint which shall become twelve percent (12%) per annum from the time the judgment becomes final and executory until its satisfaction.
>
> 2) The award of ₱300,000.00 as exemplary damages is reduced to ₱50,000.00;
>
> 3) The award of ₱400,00.00 as attorney's fees is likewise reduced to ₱75,000.00;
>
> 4) The Decision is hereby affirmed in all other respects.
>
> SO ORDERED.

The case arose when petitioner refused to pay the demurrage being collected by respondent.

The facts are as follows:

In a contract dated 26 April 1983, respondent was appointed as the exclusive Philippine indent representative of Richco Rotterdam B.V. (Richco), a foreign corporation, in the sale of the latter's commodities. Under one of the terms of the contract, respondent was to assume the liabilities of all the Philippine buyers, should they fail to honor the commitments on the

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[1] *Rollo* at 8-30.

[2] *Id.* at 31-41. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Delilah Vidallon-Magtolis and Candido V. Rivera, concurring.

discharging operations of each vessel, including the payment of demurrage and other penalties. In such instances, Richco shall have the option to debit the account of respondent corresponding to the liabilities of the buyers, and respondent shall then be deemed to be subrogated to all the rights of Richco against these defaulting buyers.[3]

Sometime in 1987, petitioner purchased Canadian barley and soybean meal from Richco. The latter thereafter chartered four (4) vessels to transport the products to the Philippines. Each of the carrier bulk cargoes was covered by a Contract of Sale executed between respondent as the seller and duly authorized representative of Richco and petitioner as the buyer. The four contracts specifically referred to the charter party in determining demurrage or dispatch rate. The contract further provided that petitioner guarantees to settle any demurrage due within one (1) month from respondent's presentation of the statement.

Upon delivery of the barley and soybean meal, petitioner failed to discharge the cargoes from the four (4) vessels at the computed allowable period to do so. Thus, it incurred a demurrage amounting to a total of US$193,937.41.

On numerous occasions, on behalf of Richco, respondent demanded from petitioner the payment of the demurrage, to no avail. Consequently, on 20 October 1991, Richco sent a communication to respondent, informing it that the demurrage due from petitioner had been debited from the respondent's account.

Thereafter, on 12 February 1992, respondent filed with the Regional Trial Court (RTC), National Capital Judicial Region, Makati City, a Complaint for demurrage and damages against petitioner. Meanwhile, the latter raised the defense that the delay was due to respondent's inefficiency in unloading the cargo.

On 15 April 1996, after trial on the merits, the RTC rendered a Decision[4] holding petitioner liable to pay demurrage and damages to respondent, to wit:

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

[4] *Id.* at 46-62, penned by Judge Pedro N. Laggui.

34. WHEREFORE, the Court hereby renders judgment as follows:

34.1 The defendant REPUBLIC FLOUR MILLS CORPORATION is ordered to pay the plaintiff FORBES FACTORS, INC. the following:

34.1.1. US$193,937.41 or its Philippine PESO equivalent at the rate of exchange at the time of payment – As demurrage.

34.1.2 Six (6) percent of the amount in the preceding paragraph 34.1.1 – Per annum from October 29, 1991 until the said amount is fully paid – As damages.

34.1.3. ₱300,000.00 – As exemplary damages.

34.1.4. ₱ 400,000.00 – As attorney's fees.

34.2. The COUNTERCLAIM is DISMISSED; and

34.3. Cost is taxed against the defendant.

The RTC found that the delay in discharging the cargoes within the allowable period was due to petitioner's failure to provide enough barges on which to load the goods. It likewise found that petitioner in fact acknowledged that the latter had incurred demurrage when it alleged that the computation was bloated. Petitioner was thus liable to pay demurrage based on the sales contracts executed with respondent and on the contract executed between respondent and Richco.

Finally, the court ruled that respondent was entitled to damages from petitioner's "wanton, fraudulent, reckless, oppressive or malevolent" refusal to pay the latter's liabilities despite repeated demands.

Subsequently, petitioner appealed to the Court of Appeals (CA), alleging that respondent was not a real party-in-interest to bring the collection suit. Petitioner insisted that the payment of demurrage should be made to the owner of the vessels that transported the goods, and not to respondent who was merely the indent representative of Richco, the charterer of the vessel. In addition, petitioner claimed that it was denied due process when the RTC refused to reset the hearing for the presentation of Reynaldo Santos, petitioner's witness and export manager.

Finally, petitioner contested the RTC's award of exemplary damages and attorney's fees.

On 18 February 2002, the CA promulgated the assailed Decision. It upheld the validity of the Contracts of Sale and held that these had the force of law between the contracting parties and must be complied with in good faith. However, the appellate court modified the trial court's award of damages. It held that exemplary damages are not intended to enrich anyone, thus, reducing the amount from ₱300,000 to ₱50,000. It also found the award of attorney's fees to be excessive, and consequently reduced it from ₱400,000 to ₱75,000.

Hence this Petition.

Three issues are raised for the resolution by this Court. First, petitioner assails the right of respondent to demand payment of demurrage. Petitioner asserts that, by definition, demurrage is the sum fixed by the contract of carriage as remuneration to the ship owner for the detention of the vessel beyond the number of days allowed by the charter party.[5] Thus, since respondent is not the ship owner, it has no right to demand the payment of demurrage and has no personality to bring the claim against petitioner. Second, petitioner questions the propriety of the award of damages in favor of respondent. And third, the former insists that it was denied due process when the RTC denied its Motion to reset the hearing to present its witness.

We find the petition without merit.

The facts are undisputed. The delay incurred by petitioner in discharging the cargoes from the vessels was due to its own fault. Its obligation to demurrage is established by the Contracts of Sale it executed, wherein it agreed to the conditions to provide all discharging facilities at its expense in order to effect the immediate discharge of cargo; and to place for its account all discharging costs, fees, taxes, duties and all other charges incurred due to the nature of the importation.[6]

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[5] BLACK'S LAW DICTIONARY, revised 4th ed., 519 (1968).

[6] *Rollo*, pp. 51-53.

Meanwhile, respondent unequivocally established that Richco charged to it the demurrage due from petitioner. Thus, at the moment that Richco debited the account of respondent, the latter is deemed to have subrogated to the rights of the former, who in turn, paid demurrage to the ship owner. It is therefore immaterial that respondent is not the ship owner, since it has been able to prove that it has stepped into the shoes of the creditor.

Subrogation is either "legal" or "conventional." Legal subrogation is an equitable doctrine and arises by operation of the law, without any agreement to that effect executed between the parties; conventional subrogation rests on a contract, arising where "an agreement is made that the person paying the debt shall be subrogated to the rights and remedies of the original creditor."[7] The case at bar is an example of legal subrogation, the petitioner and respondent having no express agreement on the right of subrogation. Thus, it is of no moment that the Contracts of Sale did not expressly state that demurrage shall be paid to respondent. By operation of law, respondent has become the real party-in-interest to pursue the payment of demurrage. As aptly stated by the RTC:

> 19. True it is that demurrage is, as a rule, an amount payable to a shipowner by a charterer for the detention of the vessel beyond the period allowed for the loading or unloading or sailing. This however, does not mean that a party cannot stipulate with another who is not a shipowner, on demurrage. In this case, FORBES stipulated under the charter parties on demurrage with the shipowners. This stipulation could be the basis of the provisions on demurrage in the four (4) Contracts of Sale (Exhs. B, N, X, and CC) and contract between FORBES and RICHCO (Exh. A).
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> xxx xxx xxx
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> 20. RICHCO debited the US$193,937.41 from the accounts of FORBES as evidenced by Exh. OO. Hence, FORBES was subrogated to the right of RICHCO to collect the said amount from RFM pursuant to the contract between RICHCO and FORBES (Exh. A).

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[7] *Financial Sec. Assur., Inc. v. Stephens, Inc.* 500 F.3d 1276, 1287 (2007), citing *Gilbert v. Dunn* 218 Ga. 531, 128 S.E.2d 739 Ga. (1962).

21. Under Exh. A, FORBES guaranteed its "…buyers (sic) payment schedule…" Consequently, it was subrogated to the rights of RICHCO arising from the failure of RFM to pay its demurrage and FORBES paid for it. The subrogation was pursuant to Articles 1302 and 2067, New Civil Code, which read:

"Art. 1302. It is presumed that there is legal subrogation:

(1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;

(2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;

(3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share."

"Art. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid."

As we held in *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*:

…Subrogation has been referred to as the doctrine of substitution. It "is an arm of equity that may guide or even force one to pay a debt for which an obligation was incurred but which was in whole or in part paid by another" (83 C.J.S. 576, 678, note 16, citing *Fireman's Fund Indemnity Co. vs. State Compensation Insurance Fund*, 209 Pac. 2d 55).

"Subrogation is founded on principles of justice and equity, and its operation is governed by principles of equity. It rests on the principle that substantial justice should be attained regardless of form, that is, its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form"(83 C.J.S. 579- 80)[8]

[8] G.R. No. L-27427, 7 April 1976, 70 SCRA 323, 327-328.

Anent the second issue, we have previously held in *Pepsi Cola Products Phil., Inc. v. Court of Appeals*,[9] that a motion for continuance or postponement is not a matter of right. Rather, the motion is addressed to the sound discretion of the court, whose action thereon will not be disturbed by appellate courts in the absence of clear and manifest abuse of discretion, resulting in a denial of substantial justice.

On the last issue, we find that the award of exemplary damages is proper. Petitioner refused to honor the contract despite respondent's repeated demands and its proof of payment to Richco; and despite its repeated promise to settle its outstanding obligations in the span of almost five years. Petitioner indeed acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Because respondent was also forced to initiate the present Complaint, it was only proper that it was awarded attorney's fees. Lastly, the CA was correct in reducing the award of exemplary damages or attorney's fees, since neither is meant to enrich anyone.

WHEREFORE, in view of the foregoing, the assailed Decision of the Court of Appeals is hereby *AFFIRMED*. The present Petition is *DENIED.*

SO ORDERED.

Carpio (Chairperson), Brion, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[9] G.R. No. 122629, 2 December 1998, 299 SCRA 519, 525.

[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated October 3, 2011.

FIRST DIVISION

[G.R. No. 161360. October 19, 2011]

ESTRELLA TIONGCO YARED (Deceased) substituted by CARMEN M. TIONGCO a.k.a. CARMEN MATILDE B. TIONGCO, *petitioner, vs.* **JOSE B. TIONGCO and ANTONIO G. DORONILA, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; ACTION FOR RECONVEYANCE BASED ON IMPLIED OR CONSTRUCTIVE TRUST; MUST PRESCRIBE IN TEN YEARS FROM THE ISSUANCE OF THE TORRENS TITLE OVER THE PROPERTY; EXCEPTION.— In a long line of cases decided by this Court, we ruled that an action for reconveyance based on implied or constructive trust must perforce prescribe in ten (10) years from the issuance of the Torrens title over the property. However, there is an exception to this rule. In the case of *Heirs of Pomposa Saludares v. Court of Appeals*, the Court reiterating the ruling in *Millena v. Court of Appeals*, held that there is but one instance when prescription cannot be invoked in an action for reconveyance, that is, when the plaintiff is in possession of the land to be reconveyed. In *Heirs of Pomposa Saludares*, this Court explained that the Court in a series of cases, has permitted the filing of an action for reconveyance despite the lapse of more than ten (10) years from the issuance of title to the land and declared that said action, when based on fraud, is imprescriptible as long as the land has not passed to an innocent buyer for value. But in all those cases, the common factual backdrop was that the registered owners were never in possession of the disputed property. The exception was based on the theory that registration proceedings could not be used as a shield for fraud or for enriching a person at the expense of another. In *Alfredo v. Borras*, the Court ruled that prescription does not run against the plaintiff in actual possession of the disputed land because such plaintiff has a right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right. His undisturbed possession gives him the continuing

right to seek the aid of a court of equity to determine the nature of the adverse claim of a third party and its effect on his title. The Court held that where the plaintiff in an action for reconveyance remains in possession of the subject land, the action for reconveyance becomes in effect an action to quiet title to property, which is not subject to prescription.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; INNOCENT PURCHASER FOR VALUE; DEFINED.— In the case of Sandoval v. Court of Appeals, the Court defined an innocent purchaser for value as one who buys property of another, without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim or interest of some other persons in the property. He is one who buys the property with the belief that the person from whom he receives the thing was the owner and could convey title to the property. A purchaser cannot close his eyes to facts which should put a reasonable man on his guard and still claim that he acted in good faith.

3. ID.; LAND REGISTRATION; TORRENS TITLE; EVERY PERSON DEALING WITH A PROPERTY REGISTERED UNDER THE TORRENS TITLE NEED NOT INQUIRE FURTHER BUT ONLY HAS TO RELY ON THE TITLE; EXCEPTION.— And while it is settled that every person dealing with a property registered under the Torrens title need not inquire further but only has to rely on the title, this rule has an exception. The exception is when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has some knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith and hence does not merit the protection of the law.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jose B. Tiongco for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us on appeal by way of a petition for review on *certiorari* under Rule 45 is the Court of Appeals (CA) August 28, 2003 Decision[1] which dismissed petitioner Estrella Tiongco Yared's appeal and affirmed the Decision[2] of the Regional Trial Court (RTC), Branch 26, of Iloilo City, dismissing petitioner's complaint for annulment of affidavit of adjudication, deeds of sale and Transfer Certificates of Title (TCTs), reconveyance and damages. Also assailed is the appellate court's November 27, 2003 Resolution[3] denying petitioner's motion for reconsideration.

The factual antecedents, as culled from the records, follow:

Matilde, Jose, Vicente, and Felipe, all surnamed Tiongco, were born to Atanacio and Maria Luis Tiongco. Together they were known as the Heirs of Maria Luis de Tiongco.

The present dispute involves three parcels of land namely, Lots 3244, 3246 and 1404, all located in Iloilo City. Lots 3244 and 1404 used to be covered by Original Certificates of Title (OCTs) Nos. 484 and 1482, respectively, in the names of Matilde (wife of Vicente Rodriguez), Jose (married to Carmen Sonora), Vicente (married to Ursula Casador), and Felipe (married to Sabina Montelibano), each in ¼ undivided share, while Lot 3246

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[1] *Rollo*, pp. 83-92 . Penned by Associate Justice Roberto A. Barrios with Associate Justices Rebecca De Guia-Salvador and Jose C. Reyes, Jr. concurring.

[2] *Id.* at 93-103. Penned by Judge Ricardo M. Ilarde.

[3] *Id.* at 105-106.

used to be covered by OCT No. 368 in the name of "Heirs of Maria Luis de Tiongco."[4]

While all of the Heirs of Maria Luis de Tiongco have died, they were survived by their children and descendants. Among the legitimate children of Jose were petitioner and Carmelo Tiongco, the father of respondent Jose B. Tiongco.[5]

Sometime in 1965, petitioner built her house on Lot 1404[6] and sustained herself by collecting rentals from the tenants of Lots 3244 and 3246. In 1968, petitioner, as one of the heirs of Jose, filed an adverse claim affecting all the rights, interest and participation of her deceased father on the disputed lots, but the adverse claim was annotated only on OCT No. 484 and OCT No. 1482, respectively covering Lots 3244 and 1404.[7]

In 1983, respondent Jose prohibited petitioner from collecting rentals from the tenants of Lots 3244 and 3246. In December 1983, respondent Jose filed a suit for recovery of possession with preliminary injunction against several tenants of Lots 3244 and 3246 wherein he obtained a judgment in his favor.[8] Respondent Jose also filed a case for unlawful detainer with damages against petitioner as she was staying on Lot 1404. While the RTC, Branch 33, of Iloilo City ruled in respondent Jose's favor, the CA reversed the RTC's decision and ruled in favor of petitioner.[9] As such, respondent Jose never took possession of the properties.

In 1988, when petitioner inquired at the Office of the Register of Deeds of Iloilo City, she discovered that respondent Jose had already executed an Affidavit of Adjudication[10] dated

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[4] Records, pp. 11-13.

[5] *Rollo*, p. 84.

[6] *Id.* at 86.

[7] *Id.* at 54, 86.

[8] *Id.* at 85-87.

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

[10] *Id.* at 117-118.

April 17, 1974, declaring that he is the only surviving heir of the registered owners and adjudicating unto himself Lots 3244, 3246 and 1404. Consequently, the OCTs of the aforementioned lots were cancelled, and in place thereof, the Register of Deeds of Iloilo City issued TCT No. T-37195 for Lot 3244, TCT No. T-4665 for Lot 3246, and TCT No. T-37193 for Lot 1404, all in the name of respondent Jose.[11]

Based on the records with the Register of Deeds, it also appears that on May 10, 1974, the same day when the TCTs covering Lots 3244 and 1404 were issued, respondent Jose sold the said lots to Catalino Torre. TCT Nos. T-37195 and T-37193 were thus cancelled and TCT Nos. T-37196 and T-37194 were issued in the name of Catalino Torre.[12]

Similarly, the records of the Register of Deeds showed that Lot 3246 was likewise disposed of by respondent Jose. On March 30, 1979, or barely two days after obtaining TCT No. T-4665, respondent Jose sold Lot 3246 to respondent Antonio G. Doronila, Jr. who was issued TCT No. T-4666 which cancelled TCT No. T-4665. Catalino Torre also sold Lots 3244 and 1404 on the same date to Doronila who was issued the corresponding new TCTs.[13] However, just a few days later, or on April 2, 1979, Doronila sold Lot 1404 back to respondent Jose. Lots 3244 and 3246 were also sold back to respondent on January 17, 1980.[14]

On October 2, 1990, petitioner filed a complaint before the court *a quo* against her nephew respondent Jose and respondent Antonio G. Doronila, Jr. Petitioner argued that respondent Jose knowingly and wilfully made untruthful statements in the Affidavit of Adjudication because he knew that there were still other living heirs entitled to the said properties.[15] Petitioner claimed that

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[11] *Id.* at 84-85, 87; records, pp. 28-30.

[12] *Id.* at 85; id at 31-34.

[13] *Id.*; *id* at 36-39.

[14] *Id.* at 56.

[15] *Id.* at 87.

the affidavit was null and void *ab initio* and as such, it did not transmit or convey any right of the original owners of the properties. Any transfer whatsoever is perforce likewise null and void.[16] Moreover, the petitioner averred that since respondent Jose executed said documents through fraud, bad faith, illegal manipulation and misrepresentation, Lots 3244 and 1404 should be reconveyed to its original registered owners and Lot 3246 to the heirs of Maria Luis de Tiongco subject to subsequent partition among the heirs.[17] Petitioner also posited that granting for the sake of argument that the affidavit of adjudication was simply voidable, respondent Jose became a trustee by constructive trust of the property for the benefit of the petitioner.[18]

Respondent Jose, for his part, argued that the petitioner's father, Jose, was not an heir of Maria Luis de Tiongco but an heir of Maria Cresencia de Loiz *y* Gonzalez *vda. De* Tiongco. Respondent Jose claimed that he was the only legitimate son and that while it was true that he has two other siblings, he refused to acknowledge them because they are illegitimate.[19] Respondent Jose denied that the series of sales of the properties was fraudulent. He claimed that Lot 3244 was bought by the City of Iloilo from its own auction sale for tax delinquency and was merely resold to him. Respondent Jose averred that he has been paying real property taxes on the said properties for more than ten (10) years and that petitioner collected rentals from Lots 3244 and 3246 only because he allowed her.[20]

After trial, the Iloilo City RTC ruled in favor of respondent Jose. The court *a quo* ruled that prescription has set in since the complaint was filed only on October 2, 1990 or some sixteen (16) years after respondent Jose caused to be registered the affidavit of adjudication on May 10, 1974.[21]

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[16] *Id.*

[17] *Id.* at 87-88.

[18] *Id.* at 71.

[19] *Id.* at 88.

[20] *Id.*

[21] *Id.* at 101.

Aggrieved, petitioner appealed to the CA[22] which, however, sustained the trial court's ruling. The CA agreed with the trial court that an action for reconveyance can indeed be barred by prescription. According to the CA, when an action for reconveyance is based on fraud, it must be filed within four years from discovery of the fraud, and such discovery is deemed to have taken place from the issuance of the original certificate of title. On the other hand, an action for reconveyance based on an implied or constructive trust prescribes in ten (10) years from the date of issuance of the original certificate of title or transfer certificate of title. For the rule is that the registration of an instrument in the Office of the Register of Deeds constitutes constructive notice to the whole world and therefore the discovery of fraud is deemed to have taken place at the time of registration.[23]

Petitioner filed a motion for reconsideration of the above ruling, but the CA as aforesaid, denied petitioner's motion. Hence, the present petition for review on *certiorari*.

Petitioner raised the following arguments in the petition, to wit:

A. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT THAT THE AFFIDAVIT OF ADJUDICATION EXECUTED BY RESPONDENT JOSE B. TIONGCO, WHO IS A LAWYER AND IS AWARE OF ITS NULLITY, IS MERELY VOIDABLE; ON THE CONTRARY, SAID DOCUMENT IS A COMPLETE NULLITY BECAUSE RESPONDENT JOSE B. TIONGCO HAS MALICIOUSLY AND IN BAD FAITH ADJUDICATED IN FAVOR OF HIMSELF THE PROPERTIES IN QUESTION OVER WHICH HE, AS A LAWYER, KNOWS HE HAS NO RIGHTS WHATSOEVER AND HE ALSO KNOWS HAS BEEN IN POSSESSION OF THE PETITIONER AND HER PREDECESSORS-IN-INTEREST UNTIL THE PRESENT.

B. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DISMISSAL OF PETITIONER'S

[22] *Id.* at 89.

[23] *Id.* at 90-91.

COMPLAINT BY THE LOWER COURT ON THE GROUND OF PRESCRIPTION BECAUSE THE RESPONDENT JOSE B. TIONGCO'S AFFIDAVIT OF ADJUDICATION, BEING A TOTAL NULLITY, THE ACTION TO DECLARE SUCH NULLITY AND OF THOSE SUBSEQUENT TRANSACTIONS ARISING FROM SAID ADJUDICATION DOES NOT PRESCRIBE, ESPECIALLY BECAUSE IN THIS CASE THE PETITIONER AND HER PREDECESSORS-IN-INTEREST HAVE ALWAYS BEEN IN POSSESSION OF THE LOTS IN QUESTION AND RESPONDENT JOSE B. TIONGCO HAS NEVER BEEN IN POSSESSION THEREOF.[24]

C. FURTHER, EVEN IF *ARGUENDO*, THE AFFIDAVIT OF ADJUDICATION IS VOIDABLE, THE HONORABLE COURT OF APPEALS STILL ERRED IN AFFIRMING THE DISMISSAL OF THE COMPLAINT BY THE LOWER COURT ON THE GROUND OF PRESCRIPTION BECAUSE THE RESPONDENT, JOSE B. TIONGCO, BEING A LAWYER AND BEING AWARE OF PETITIONER'S OWNERSHIP OF THE LOTS IN QUESTION, THE SAID AFFIDAVIT OF ADJUDICATION MAKES THE RESPONDENT AN IMPLIED TRUSTEE THEREOF FOR THE PETITIONER AND THE ACTION FOR RECONVEYANCE BASED ON TRUST DOES NOT PRESCRIBE SO LONG AS THE BENEFICIARY LIKE THE PETITIONER HAS BEEN IN ACTUAL PHYSICAL POSSESSION OF THE PROPERTY SUBJECT THEREOF, AS HELD IN THE CASE OF *VDA. DE CABRERA VS. COURT OF APPEALS* (267 SCRA 339).[25]

The only issue in this case is who has a better right over the properties.

The petition is meritorious.

The Court agrees with the CA's disquisition that an action for reconveyance can indeed be barred by prescription. In a long line of cases decided by this Court, we ruled that an action for reconveyance based on implied or constructive trust must

[24] *Id.* at 62-63.

[25] *Id.* at 68-69.

perforce prescribe in ten (10) years from the issuance of the Torrens title over the property.[26]

However, there is an exception to this rule. In the case of *Heirs of Pomposa Saludares v. Court of Appeals*,[27] the Court reiterating the ruling in *Millena v. Court of Appeals*,[28] held that there is but one instance when prescription cannot be invoked in an action for reconveyance, that is, when the plaintiff is in possession of the land to be reconveyed. In *Heirs of Pomposa Saludares*,[29] this Court explained that the Court in a series of cases,[30] has permitted the filing of an action for reconveyance despite the lapse of more than ten (10) years from the issuance of title to the land and declared that said action, when based on fraud, is imprescriptible as long as the land has not passed to an innocent buyer for value. But in all those cases, the common factual backdrop was that the registered owners were never in possession of the disputed property. The exception was based on the theory that registration proceedings could not be used as a shield for fraud or for enriching a person at the expense of another.

In *Alfredo v. Borras*,[31] the Court ruled that prescription does not run against the plaintiff in actual possession of the disputed land because such plaintiff has a right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right. His undisturbed possession gives him the continuing right to seek the aid of a court of equity to determine the nature of the adverse claim of a third party and its effect

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[26] *Amerol v. Bagumbaran*, G.R. No. L-33261, September 30, 1987, 154 SCRA 396, 406-407; *Bautista v. Bautista*, G.R No.160556, August 3, 2007, 529 SCRA 187, 192.

[27] G.R. No. 128254, January 16, 2004, 420 SCRA 51, 57.

[28] G.R. No. 127797, January 31, 2000, 324 SCRA 126, 132.

[29] *Supra* note 27 at 58.

[30] *Rodriguez v. Director of Lands*, 31 Phil. 272 (1915); *Zarate v. Director of Lands*, 34 Phil. 416 (1916); *Amerol v. Bagumbaran*, *supra* note 26; *Caro v. Court of Appeals*, G.R. No. 76148, December 20, 1989, 180 SCRA 401.

[31] G.R. No. 144225, June 17, 2003, 404 SCRA 145, 166.

on his title. The Court held that where the plaintiff in an action for reconveyance remains in possession of the subject land, the action for reconveyance becomes in effect an action to quiet title to property, which is not subject to prescription.

The Court reiterated such rule in the case of *Vda. de Cabrera v. Court of Appeals*,[32] wherein we ruled that the imprescriptibility of an action for reconveyance based on implied or constructive trust applies only when the plaintiff or the person enforcing the trust is not in possession of the property. In effect, the action for reconveyance is an action to quiet the property title, which does not prescribe.

Similarly, in the case of *David v. Malay*[33] the Court held that there was no doubt about the fact that an action for reconveyance based on an implied trust ordinarily prescribes in ten (10) years. This rule assumes, however, that there is an actual need to initiate that action, for when the right of the true and real owner is recognized, expressly or implicitly such as when he remains undisturbed in his possession, the statute of limitation would yet be irrelevant. An action for reconveyance, if nonetheless brought, would be in the nature of a suit for quieting of title, or its equivalent, an action that is imprescriptible. In that case, the Court reiterated the ruling in *Faja v. Court of Appeals*[34] which we quote:

> x x x There is settled jurisprudence that one who is in actual possession of a piece of land claiming to be owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession. No better situation can be conceived at the moment for Us to apply this rule on equity than that of herein petitioners whose mother, Felipa Faja,

[32] G.R. No. 108547, February 3, 1997, 267 SCRA 339, 353.

[33] G.R. No. 132644, November 19, 1999, 318 SCRA 711, 720.

[34] G.R. No. L-45045, February 28, 1977, 75 SCRA 441, 446.

was in possession of the litigated property for no less than 30 years and was suddenly confronted with a claim that the land she had been occupying and cultivating all these years, was titled in the name of a third person. We hold that in such a situation the right to quiet title to the property, to seek its reconveyance and annul any certificate of title covering it, accrued only from the time the one in possession was made aware of a claim adverse to his own, and it is only then that the statutory period of prescription commences to run against such possessor.

In this case, petitioner's possession was disturbed in 1983 when respondent Jose filed a case for recovery of possession.[35] The RTC of Iloilo City ruled in respondent Jose's favor but the CA on November 28, 1991, during the pendency of the present controversy with the court *a quo*, ruled in favor of petitioner.[36] Petitioner never lost possession of the said properties, and as such, she is in a position to file the complaint with the court *a quo* to protect her rights and clear whatever doubts has been cast on her title by the issuance of TCTs in respondent Jose's name.

The Court further observes that the circuitous sale transactions of these properties from respondent Jose to Catalino Torre, then to Antonio Doronila, Jr., and back again to respondent Jose were quite unusual. However, this successive transfers of title from one hand to another could not cleanse the illegality of respondent Jose's act of adjudicating to himself all of the disputed properties so as to entitle him to the protection of the law as a buyer in good faith. Respondent Jose himself admitted that there exists other heirs of the registered owners in the OCTs. Even the RTC found that "[t]hese allegations contained in the Affidavit of Adjudication executed by defendant Jose B. Tiongco are false because defendant Jose B. Tiongco is not the only surviving heir of Jose Tiongco, Matilde Tiongco, Vicente Tiongco and Felipe Tiongco as the latters have other children and grandchildren who are also their surviving heirs."[37]

[35] *Rollo*, p. 86.

[36] *Id.* at 55.

[37] *Id.* at 96.

In the case of *Sandoval v. Court of Appeals*,[38] the Court defined an innocent purchaser for value as one who buys property of another, without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of some other persons in the property. He is one who buys the property with the belief that the person from whom he receives the thing was the owner and could convey title to the property. A purchaser can not close his eyes to facts which should put a reasonable man on his guard and still claim that he acted in good faith.

And while it is settled that every person dealing with a property registered under the Torrens title need not inquire further but only has to rely on the title, this rule has an exception. The exception is when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has some knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith and hence does not merit the protection of the law.[39]

In this case, when the subject properties were sold to Catalino Torre and subsequently to Doronila, respondent Jose was not in possession of the said properties. Such fact should have put the vendees on guard and should have inquired on the interest of the respondent Jose regarding the subject properties.[40] But

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[38] G.R. No. 106657, August 1, 1996, 260 SCRA 283, 296-297.

[39] *David v. Malay*, *supra* note 33 at 722.

[40] Vide: *Heirs of Trinidad De Leon Vda. de Roxas v. Court of Appeals*, G.R. No. 138660, February 5, 2004, 422 SCRA 101, 117, citing *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 129471, April 28, 2000, 331 SCRA 267, 291.

regardless of such defect on transfer to third persons, the properties again reverted back to respondent Jose. Respondent Jose cannot claim lack of knowledge of the defects surrounding the cancellation of the OCTs over the properties and benefit from his fraudulent actions. The subsequent sale of the properties to Catalino Torre and Doronila will not cure the nullity of the certificates of title obtained by respondent Jose on the basis of the false and fraudulent Affidavit of Adjudication.

WHEREFORE, the petition for review on *certiorari* is *GRANTED*. The August 28, 2003 Decision and November 27, 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 44794 are hereby *REVERSED and SET ASIDE*. The Register of Deeds of Iloilo City is ordered to *RESTORE* Original Certificates of Title Nos. 484, 1482, and 368, respectively covering Lots 3244, 1404 and 3246, under the name/s of the registered original owners thereof.

Furthermore, respondent Atty. Jose B. Tiongco is *ORDERED* to *SHOW CAUSE*, within ten (10) days from notice hereof, why he should not be sanctioned as a member of the bar for executing the April 17, 1974 Affidavit of Adjudication and registering the same with the Register of Deeds.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Del Castillo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 168932. October 19, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHARLIE BUTIONG,** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; THE DATE OF THE RAPE IS NOT AN ELEMENT OF RAPE.— The CA fully debunked the argument on the exact date of the rape not being established by simply quoting from AAA's testimony that the rape had occurred on October 7, 1998. We need to emphasize, however, that the date of rape need not be precisely proved considering that date is not an element of rape.

2. ID.; ID.; THE BASIC ELEMENT THEREOF IS CARNAL KNOWLEDGE OR SEXUAL INTERCOURSE; CARNAL KNOWLEDGE, DEFINED.— Nor did the absence of spermatozoa from the genitalia of AAA negate or disprove the rape. The basic element of rape is carnal knowledge or sexual intercourse, not ejaculation. Carnal knowledge is defined as "the act of a man having sexual bodily connections with a woman." This explains why the slightest penetration of the female genitalia consummates the rape. As such, a mere touching of the external genitalia by the penis capable of consummating the sexual act already constitutes consummated rape.

3. ID.; ID.; DULY PROVEN WHEN THE VICTIM'S RECOLLECTION ON THE RAPE IS CORROBORATED BY THE RESULTS OF THE MEDICO-LEGAL EXAMINATION; CASE AT BAR.— That AAA's recollection on the rape was corroborated by the results of the medico-legal examination was sufficient proof of the consummation of rape. We have ruled that rape can be established by the sole testimony of the victim that is credible and untainted with serious uncertainty. With more reason is this true when the medical findings supported the testimony of the victim, like herein.

4. ID.; ID.; NATURE.— Rape is essentially a crime committed through force or intimidation, that is, *against the will of the female*. It is also committed without force or intimidation when carnal knowledge of a female is alleged and shown to be *without her consent*. This understanding of the commission of rape has been prevalent in both the common law and the statutory law systems.

5. ID.; ID.; FORCE OR INTIMIDATION; PROOF THEREOF IS NOT NECESSARY IN RAPE OF A MENTAL RETARDATE.— Carnal knowledge of a mental retardate is rape under paragraph 1 of Article 266-A of the *Revised Penal Code*, as amended by Republic Act No. 8353 because a mental retardate is not capable of giving her consent to a sexual act. Proof of force or intimidation is not necessary, it being sufficient for the State to establish, *one*, the sexual congress between the accused and the victim, and, *two*, the mental retardation of the victim. It should no longer be debatable that rape of a mental retardate falls under paragraph 1(b) of Article 266-A [x x x] because the provision refers to a rape of a female "deprived of reason," a phrase that refers to mental abnormality, deficiency or retardation.

6. ID.; ID.; CARNAL KNOWLEDGE OF A FEMALE RETARDATE WITH THE MENTAL AGE BELOW TWELVE YEARS OF AGE IS CONSIDERED RAPE OF A WOMAN DEPRIVED OF REASON.— Considering the findings of psychologist de Guzman to the effect that AAA had the metal age of six- to seven-year old, an age equated with imbecility under the x x x classification, her mental age was even lower than that of a *borderline mental deficiency* within the context of that term as characterized in *People v. Dalandas* x x x. As such, Butiong's carnal knowledge of AAA amounted to rape of a person deprived of reason. The ability of the female to give rational consent to carnal intercourse determines if carnal knowledge of a mental retardate like AAA is rape. Indeed, the Court has consistently considered carnal knowledge of a female mental retardate with the mental age below 12 years of age as rape of a woman deprived of reason. As the Court aptly stated in *People v. Manlapaz*, where the victim was a 13-year old girl with the mentality of a five-year-old, that ability to give rational consent was not present x x x.

7. ID.; ID.; THE RAPE VICTIM'S DEFICIENT MENTAL CONDITION IS SUFFICIENTLY ESTABLISHED IN CASE AT BAR.— [T]he State's witnesses sufficiently explained the psychological tests conducted to establish AAA's mental retardation with the mentality of a six- or seven-year-old. The trial judge himself reached a conclusion on AAA's mentality from his close personal observation of her as a witness in court, noting that she manifested a difficulty in responding to the questions especially those bearing on her being sexually abused. The trial judge's observation to the effect that she had no notion of the wrong that had been done to her was validated by the clinical findings. As such, the totality of the evidence presented by the State established beyond reasonable doubt AAA's deficient mental condition.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Alampay Gatmaitan & Alampay for accused-Appellant.

D E C I S I O N

BERSAMIN, *J.*:

This case involves a man who had sexual intercourse with a woman who, although 29 years of age, was a mental retardate with the mentality of a six- to seven-year old.

The man, Charlie Butiong, seeks the review and reversal of the judgment promulgated on May 18, 2005,[1] whereby the Court of Appeals (CA) affirmed his conviction for rape handed down by the Regional Trial Court (RTC), Branch 258, in Parañaque City, for which he was imposed *reclusion perpetua*. He insists that the State did not duly establish that the woman had been a mental retardate.

[1] *Rollo*, pp. 3-17; penned by Associate Justice Fernanda Lampas-Peralta, with Associate Justice Ruben T. Reyes (later Presiding Justice and Member of the Court, since retired) and Associate Justice Josefina Guevara-Salonga concurring.

The records show that Butiong had been arraigned and tried under an information that alleged:

xxx xxx xxx

That on or about the 7th day of October 1998, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant [AAA], a mental retardate, against her will and consent.

CONTRARY TO LAW.[2]

Antecedents

In the evening of October 7, 1998, AAA,[3] then a 29-year-old mental retardate, was invited by Butiong, her long-time neighbor, to go over to his house because he would give her something. AAA obliged. He locked the door as soon as she had stepped inside his house, and then took off his shorts and the shorts of AAA. He led her to the sofa, where he had carnal knowledge of her. AAA remembered that she then felt pain in her abdomen and became angry at him for what he had done.[4]

Upon reaching home, AAA forthwith told her older sister what had happened. Her sister brought AAA to the police station,[5] and later on to the National Bureau of Investigation (NBI), where AAA underwent a medico-legal examination by Dr. Armie M. Soreta-Umil. The medico-legal examination revealed that AAA's hymen was intact but "distensible and its orifice wide (2.5 cms. in diameter) as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing

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[2] Original records, p. 1.

[3] Pursuant to Republic Act No. 9262 (*The Anti-Violence Against Women and Their Children Act of 2004*), and its implementing rules, the real names of the victims, as well the names of their immediate family or household members, are withheld herein and, in lieu thereof, fictitious initials are used to represent them, to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] TSN dated August 2, 2001, pp. 7-12.

[5] *Id.*, pp. 15-16.

any genital injury."[6] Noticing AAA's disorientation and incoherence, Dr. Soreta-Umil endorsed her to the NBI Psychiatric Section for evaluation.[7] AAA also underwent a series of psychological tests at the National Mental Hospital. The tests included the Raven's Progressive Matrices Test, Bender Visual Motor Gestalt Test, and Draw a Person Test. A Rorschach Psycho-Diagnostic Test was not used because AAA was not able to answer.[8] Another test, the Sack's Sentence Completion Test, was not used because of AAA's inability to comply with the instructions.[9] The results of the psychological tests showed that she had a mild level of mental retardation, and that her mental age was that of a child aged from six to seven years; she was unaware of what went on around her and was interested only in gratifying her own needs.[10]

The Defense presented only one witness in the person of Dr. Natividad Dayan, whom it offered as an expert psychologist. She concluded that the Raven's Progressive Matrices Test and the Bender Visual Motor Gestalt Test administered on AAA were unreliable for determining the existence of mental retardation. She based her conclusion on James Morizon's *DSM-4 Made Easy: The Clinician's Guide for Diagnosis*, and Jay Siskin's *Coping With Psychiatric and Psychological Testimony*.[11] According to her, an individually administered intelligence test, like the Stamp Intelligence Scale or the Weschler Adult Intelligence Scale, as well as projective techniques, like the Rorschach Psychodiagnostic Test and the Thematic Perception Test, should have been instead administered to appropriately determine AAA's mental age.[12]

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[6] Original records, p. 291.

[7] TSN dated December 11, 2001, p. 12.

[8] Exhibits D, E, F, F-1 and G, at original records, pp. 280-284.

[9] TSN dated May 3, 2001, pp. 13-16.

[10] Original records, p. 272.

[11] TSN dated September 24, 2002, pp. 7-8.

[12] *Id.*, p. 12.

Ruling of the RTC

The RTC rendered judgment finding Butiong guilty of rape, *viz*:

> WHEREFORE, the prosecution having been able to prove the guilt of the accused CHARLIE BUTIONG beyond reasonable doubt of the crime of simple RAPE defined and punishable under Art. 266-A par. 1 in relation to Art. 266-B par. 1 of the Revised Penal Code as amended by R.A. 8353, accused CHARLIE BUTIONG is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*.
>
> Pursuant to the existing jurisprudence, accused CHARLIE BUTIONG is further ordered to indemnify the private complainant, AAA, the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as and by way of exemplary damages.
>
> No pronouncement as to costs.
>
> SO ORDERED.[13]

The RTC noted that nothing in Dr. Dayan's testimony on the unreliability of the tests administered on AAA would invalidate the findings of psychologist Nimia de Guzman and Dr. Diana de Castro, both of the National Center for Mental Health, to the effect that AAA had mild level retardation with a mental age of a six- to seven-year old person; and that such findings were admissible and had more than sufficiently complied with the required historical and physical examination for determining AAA's mental condition. The trial judge himself held,[14] based on his personal observation of AAA as a witness in court, that she was a retardate who could narrate what had transpired albeit with some difficulty about how she had been sexually abused. He considered AAA as a competent witness whose behavior and appearance manifested no possibility for her to concoct a story of her defloration at the hands of the accused.

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[13] CA *Rollo*, p. 99.

[14] Judge Raul De Leon.

Ruling of the CA

Butiong appealed, but the CA affirmed the conviction on May 18, 2005,[15] to wit:

> In sum, the Court sees no cogent reason to depart from the well-entrenched doctrine that the trial court's assessment of the credibility of witnesses is accorded great respect because of its opportunity to hear their testimonies and observe their demeanor and manner of testifying. Absent any showing that the trial court overlooked or misappreciated some facts or circumstances of weight and substance which would affect the result of the case, the Court sees no reason to alter the findings of the trial court.
>
> WHEREFORE, the appealed Decision dated February 24, 2003 is affirmed *in toto*.
>
> SO ORDERED.

The CA considered the State's evidence sufficient to support the conclusion that AAA was mentally retarded. It concluded that the State's expert witness psychologist de Guzman had not only interviewed AAA and a relative of AAA but had also administered a series of tests on AAA upon which to base her findings about AAA's mental condition; that the results of the psychiatric examination done by Dr. de Castro, as well as the trial judge's personal observation that AAA was a mental retardate supported the findings of psychologist de Guzman; and that AAA could not legally give her consent to the sexual act, as held in *People v. Asturias*,[16] because the clinical findings showed her mentality to be at par with that of a six- or seven-year-old.

The CA rejected Butiong's argument that rape was not established because no semen had been taken from AAA, stressing that the fact of rape depended not on the presence of spermatozoa but on the fact of unlawful penetration of the female genitalia by the male organ, which the State amply proved.

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[15] *Rollo*, pp. 3-17.

[16] G.R. No. 61126, January 31, 1985, 134 SCRA 405.

Issues

In this appeal, Butiong submits that:

I

THE TRIAL COURT ERRED IN RULING THAT PROOF OF THE DATE OF THE COMMISSION OF THE OFFENSE IS NOT NECESSARY IN ORDER TO CONVICT THE ACCUSED-APPELLANT.

II

THE TRIAL COURT ERRED IN FINDING THAT THE OFFENDED PARTY IS A MENTAL RETARDATE.

III

THE TRIAL COURT ERRED IN RULING THAT A MENTAL RETARDATE IS IN THE SAME CLASS AS A WOMAN DEPRIVED OF REASON OR OTHERWISE UNCONSCIOUS.

Anent the first assigned error, Butiong contends that the State did not establish rape because there was no evidence showing the exact date when the rape occurred. Under the second assigned error, he disputes the RTC's conclusion that AAA was a mental retardate by focusing on the inconclusiveness of the findings of psychologist de Guzman brought about by her failure to ascertain AAA's personal history and by her computing AAA's mental age upon inaccurate and unverified information. He notes that two other physicians who had examined AAA, one from the NBI and the other from the National Center for Mental Health, were not presented as witnesses. He insists on his innocence, and emphasizes the testimony of Dr. Dayan on the unreliability of the tests administered on AAA. He maintains that the unreliability of the tests administered on AAA for determining the presence of mental retardation should be appreciated in his favor in accordance with *People v. Cartuano, Jr.*,[17] which required that a diagnosis of mental retardation should be made after a thorough evaluation based on history, and physical and laboratory examinations by a clinician. Lastly, he posits that the State did

[17] G.R. No. 112457-58, March 29, 1996, 255 SCRA 403.

not establish the elements of rape, considering that a mental retardate qualified neither as a "woman deprived of reason" nor as "a woman under twelve years of age" as provided under Article 266-A par. 1(b) nor of par. 1(d) of the *Revised Penal Code*.

Ruling

We affirm the conviction.

I

Exact date of rape and absence of spermatozoa from victim's genitalia are not elements of rape

Butiong argues that the State did not duly establish the fact of rape because the exact date of the incident was indeterminate, and because no spermatozoa was found in AAA's genital organ.

The argument deserves no consideration.

The CA fully debunked the argument on the exact date of the rape not being established by simply quoting from AAA's testimony that the rape had occurred on October 7, 1998.[18] We need to emphasize, however, that the date of the rape need not be precisely proved considering that date is not an element of rape.[19]

Nor did the absence of spermatozoa from the genitalia of AAA negate or disprove the rape.[20] The basic element of rape is carnal knowledge or sexual intercourse, not ejaculation.[21]

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[18] *Supra*, note 1, p. 7, citing TSN of August 2, 2001, p. 121.

[19] *People v. Macabata*, G.R. Nos. 150493-95, October 23, 2003, 414 SCRA 260, 268-269; *People v. Taperla*, G.R. No. 142860, January 16, 2003, 395 SCRA 310, 315; *People v. Alicante*, G.R. Nos. 127026-27, May 31, 2000, 332 SCRA 440, 464-465.

[20] *People v. Abulencia*, G.R. No. 138403, August 22, 2001, 363 SCRA 496, 508; *People v. Lacaba*, G.R. No. 130591, November 17, 1999, 318 SCRA 301, 314; *People v. Magana*, G.R. No. 105673, July 26, 1996, 259 SCRA 380, 401.

[21] *People v. Freta*, G.R. No. 134451-52, March 14, 2001, 354 SCRA 385, 392; *People v. Masalihit*, G.R. No. 124329, December 14, 1998, 300

Carnal knowledge is defined as "the act of a man having sexual bodily connections with a woman."[22] This explains why the slightest penetration of the female genitalia consummates the rape. As such, a mere touching of the external genitalia by the penis capable of consummating the sexual act already constitutes consummated rape.[23] *People v. Campuhan*[24] has aimed to remove any confusion as to the extent of "touching" in rape:

> ***[T]ouching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the *labias*, which are required to be "touched" by the penis, are by their natural *situs* or location beneath the *mons pubis* or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or the *labia minora* of the *pudendum* constitutes consummated rape.**

The *pudendum* or *vulva* is the collective term for the female genital organs that are visible in the perineal area, *e.g.*, *mons pubis, labia majora, labia minora*, the hymen, the clitoris, the vaginal orifice, *etc*. The *mons pubis* is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the *labia majora* or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the *labia majora* is the *labia minora*. Jurisprudence dictates that the *labia majora* must be entered for rape to be consummated, and not merely for the

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SCRA 147, 155; *People v. Flores, Jr.*, G.R. No.128823-24, December 27, 2002, 394 SCRA 325, 333.

[22] *Black's Law Dictionary* 193 (5th ed., 1979).

[23] *People v. Jalosjos*, G.R. Nos. 132875-876, November 16, 2001, 369 SCRA 179, 198.

[24] G.R. No. 129433, March 30, 2000, 329 SCRA 270.

penis to stroke the surface of the female organ. Thus, **a grazing of the surface of the female organ or touching the *mons pubis* of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e.*, touching of either *labia* of the *pudendum* by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness**.[25] [emphasis supplied]

That AAA's recollection on the rape was corroborated by the results of the medico-legal examination was sufficient proof of the consummation of rape. We have ruled that rape can be established by the sole testimony of the victim that is credible and untainted with serious uncertainty.[26] With more reason is this true when the medical findings supported the testimony of the victim,[27] like herein.

II

Rape was committed because AAA was a mental retardate

One of Butiong's contentions is that having sexual intercourse with AAA, a mental retardate, did not amount to a rape, because it could not be considered as carnal knowledge of a woman deprived of reason or of a female under twelve years of age as provided under Article 266-A of the *Revised Penal Code*, as amended.

The contention cannot be sustained.

Rape is essentially a crime committed through force or intimidation, that is, *against the will of the female*. It is also committed without force or intimidation when carnal knowledge

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[25] *Id.*, pp. 280-282.

[26] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 115.

[27] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448; *People v. Ramirez*, G.R. No. 136848, November 29, 2001, 371 SCRA 143, 149; *People v. Apilo*, G.R. No. 101213-14, October 28, 1996, 263 SCRA 582, 598.

of a female is alleged and shown to be *without her consent*. This understanding of the commission of rape has been prevalent in both the common law and the statutory law systems. As *Corpus Juris Secundum* has summed up:[28]

At common law rape could be committed only where the unlawful carnal knowledge of a female was had without her consent or against her will; lack of consent was an essential element of the offense; and there can be no rape in the common-law sense without the element of lack of consent. Under the statutes punishing the offense, an essential element of the crime of rape is that the act was committed without the consent of the female, or, as it is otherwise expressed, against her will. The act of sexual intercourse is against the female's will or without her consent when, for any cause, she is not in a position to exercise any judgment about the matter.

Carnal knowledge of the female with her consent is not rape, provided she is above the age of consent or is capable in the eyes of the law of giving consent. Thus, mere copulation, with the woman passively acquiescent, does not constitute rape. The female must not at any time consent; her consent, given at any time prior to penetration, however reluctantly given, or if accompanied with mere verbal protests and refusals, prevents the act from being rape, provided the consent is willing and free of initial coercion. Thus, where a man takes hold of a woman against her will and she afterward consents to intercourse before the act is committed, his act is not rape. However, where the female consents, but then withdraws her consent before penetration, and the act is accomplished by force, it is rape; and where a woman offers to allow a man to have intercourse with her on certain conditions and he refuses to comply with the conditions, but accomplishes the act without her consent, he is guilty of rape. [emphasis supplied]

In his commentary on the *Revised Penal Code*,[29] Justice Aquino discusses the concept of committing rape against the female's will or without her consent, to wit:

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[28] 75 CJS, *Rape*, § 11, pp. 473-474.

[29] III Aquino, *The Revised Penal Code*, 1988 Edition, Central Lawbook Supply, Inc., Quezon City, pp. 393-394.

In rape committed by means of duress, the victim's will is nullified or destroyed. Hence, the necessity of proving real and constant resistance on the part of the woman to establish that the act was committed against her will. On the other hand, in the rape of a woman deprived of reason or unconscious, the victim has no will. **The absence of will determines the existence of the rape. Such lack of will may exist not only when the victim is unconscious or totally deprived of reason, but also when she is suffering some mental deficiency impairing her reason or free will. In that case, it is not necessary that she should offer real opposition or constant resistance to the sexual intercourse. Carnal knowledge of a woman so weak in intellect as to be incapable of legal consent constitutes rape. Where the offended woman was feeble-minded, sickly and almost an idiot, sexual intercourse with her is rape. Her failure to offer resistance to the act did not mean consent for she was incapable of giving any rational consent**.

The deprivation of reason need not be complete. Mental abnormality or deficiency is enough. Cohabitation with a feebleminded, idiotic woman is rape. Sexual intercourse with an insane woman was considered rape. But a deafmute is not necessarily deprived of reason. This circumstance must be proven. Intercourse with a deafmute is not rape of a woman deprived of reason, in the absence of proof that she is an imbecile. Viada says that the rape under par. 2 may be committed when the offended woman is deprived of reason due to any cause such as when she is asleep, or due to lethargy produced by sickness or narcotics administered to her by the accused. xxx [emphasis supplied]

Butiong was arraigned, tried and convicted of the crime of rape as defined and penalized under paragraph 1, Article 266-A, in relation to paragraph 1, Article 266-B of the *Revised Penal Code,* as amended, under an amended information that plainly averred that AAA was a "mental retardate." The insertion of the phrase in the amended information was significant, because the phrase put him on sufficient notice that the victim "was not in full possession of her normal reasoning faculty."[30] The phrase further specifically indicated which of the four modes of

[30] *People v. Manlapaz*, G.R. No. L-41819, February 28, 1979, 88 SCRA 704, 713.

committing the crime of rape as provided in paragraph 1, Article 266-A of the *Revised Penal Code*, as amended, applied in his case, namely:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under 12 years of age, or is demented, even though none of the circumstances first mentioned is present.

Yet, Butiong's contention is that his case did not come under any of the four modes due to carnal knowledge of a mental retardate not being either carnal knowledge of a female deprived of reason or otherwise unconscious, or of a female under 12 years of age or demented.

The contention is unwarranted.

Article 266-A of the *Revised Penal Code*, as amended by Republic Act No. 8353, provides:

Article 266-A. *Rape; When And How Committed*. □ Rape is committed –

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by

inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person.

Carnal knowledge of a mental retardate is rape under paragraph 1 of Article 266-A of the *Revised Penal Code*, as amended by Republic Act No. 8353 because a mental retardate is not capable of giving her consent to a sexual act. Proof of force or intimidation is not necessary, it being sufficient for the State to establish, *one*, the sexual congress between the accused and the victim, and, *two*, the mental retardation of the victim.[31] It should no longer be debatable that rape of a mental retardate falls under paragraph 1, b), of Article 266-A, *supra*, because the provision refers to a rape of a female "deprived of reason," a phrase that refers to mental abnormality, deficiency or retardation.[32]

Who, then, is a mental retardate within the context of the phrase "deprived of reason" used in the *Revised Penal Code*?

In *People v. Dalandas*,[33] the Court renders the following exposition on mental retardation and its various levels, *viz*:

Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests. It manifests itself in impaired adaptation to the daily demands of the individual's own social environment. Commonly, a mental retardate exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity.

Although "mental retardation" is often used interchangeably with "mental deficiency," the latter term is usually reserved for those without recognizable brain pathology. The degrees of mental

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[31] *People v. Magabo*, G.R. N o. 139471, January 23, 2001, 350 SCRA 126, 131-132.

[32] *Id.*, (footnote 10), citing *People v. Reyes*, 315 SCRA 563, 577; *People v. Andaya*, G.R. No. 126545, April 21, 1999, 306 SCRA 202; *People v. Guerrero*, 242 SCRA 606; and *People v. Nguyen Dinh Nhan*, 200 SCRA 292.

[33] G.R. No. 140209, December 27, 2002, 394 SCRA 433.

retardation according to their level of intellectual function are illustrated, thus:

Mental Retardation

LEVEL	DESCRIPTION TERM	INTELLIGENCE QUOTIENT (IQ RANGE)
I	Profound	Below 20
II	Severe	20-35
III	Moderate	36-52
IV	Mild	53-68
	xxx xxx	xxx

The traditional but now obsolescent terms applied to those degrees of mental retardation were (a) *idiot,* having an IQ of 0 to 19, and a maximum intellectual factor in adult life equivalent to that of the average two-year old child; (b) *imbecile* by an IQ of 20 to 49 and a maximum intellectual function in adult life equivalent to that of the average seven-year old child; *moron* or *feebleminded,* having an IQ of 50 to 69 and a maximum intellectual function in adult life equivalent to that of the average twelve-year old child. Psychiatrists and psychologists apply the term "borderline" intelligence to those with IQ between 70 to 89. In *People vs. Palma,* we ruled that a person is guilty of rape when he had sexual intercourse with a female who was suffering from a "borderline mental deficiency." [emphasis supplied]

Considering the findings of psychologist de Guzman to the effect that AAA had the mental age of a six- to seven-year old, an age equated with imbecility under the previous classification, her mental age was even lower than that of a *borderline mental deficiency* within the context of that term as characterized in *People v. Dalandas, supra*.[34] As such, Butiong's carnal knowledge of AAA amounted to rape of a person deprived of reason.

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[34] See *People v. Miranda*, G.R. No. 176064, August 7, 2007, 529 SCRA 399, where the Court, citing *People v. Dalandas*, affirmed the rape conviction because the victim, 13 years in age, suffered from *borderline mental deficiency* (*i.e.*, her mentality was that of a four- to six-year old person

The ability of the female to give rational consent to carnal intercourse determines if carnal knowledge of a mental retardate like AAA is rape. Indeed, the Court has consistently considered carnal knowledge of a female mental retardate with the mental age below 12 years of age as rape of a woman deprived of reason.[35] As the Court aptly stated in *People v. Manlapaz*,[36] where the victim was a 13-year old girl with the mentality of a five-year-old, that ability to give rational consent was not present, *viz*:

> **Sexual intercourse with a woman who is deprived of reason or with a girl who is below twelve years of age is rape because she is incapable of giving rational consent to the carnal intercourse.** ***"Las mujeres privadas de razon, enajenadas, idiotas, imbeciles, son incapaces por su estado mental de apreciar la ofensa que el culpable infiere a su honestidad y, por tanto, incapaces de consentir. Pero no es condicion precisa que la carencia de razon sea completa, basta la abnormalidad o deficiencia mental que solo la disminuye, sin embargo, la jurisprudence es discordante"*** *(II Cuello Calon, Derecho Penal, 14th Ed., 1975, pp. 538-9).*
>
> *"Comete violacion el que yace mujer que no tiene normalmente desarrolladas sus facultades mentales (19 nov. 1930); aqui esta comprendido el yacimiento con debiles o retrasados mentales (11 mayo 1932, 25 feb. 1948, 27 sept. 1951); constituye este delito el coito con una niña de 15 años enferma de epilepsia genuina que carece de capacidad para conocer el valor de sus actos (2 marzo 1953); el yacimiento con oligofrenicas (mentally deficient persons) 28 abril, 24 octubre, 1956, 19 feb. 1958); xxx"* (*ibid*., note 3).

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with an IQ of only 40); her mental retardation, the Court held, was equivalent to imbecility "in traditional parlance."

[35] *People v. Pagsanjan*, G.R. 139694, December 27, 2002, 394 SCRA 414, 424-425; *People v. Itdang*, G.R. No. 136393, October 18, 2000, 343 SCRA 624, 633-634; *People v. Dizon*, G.R. Nos. 126044-45, July 2, 1999, 309 SCRA 669, 677-678; *People v. Andaya*, G.R. No. 126545, April 21, 1999, 306 SCRA 202, 214-215; *People v. Moreno*, G.R. No. 126921, August 28, 1998, 294 SCRA 728, 739-740; *People v. Estares*, G.R. No. 121878, December 5, 1997, 282 SCRA 524, 533-534.

[36] G.R. No. L-41819, February 28, 1979, 88 SCRA 704.

The same rule prevails in American jurisprudence. "There can be no question but that a copulation with a woman known to be mentally incapable of giving even an imperfect consent is rape" (*State vs. Jewett*, 192 At. 7).

"An accused is guilty of the crime of rape when it is established that he had sexual intercourse with a female who was mentally incapable of validly consenting to or opposing the carnal act" (65 Am Jur 2nd 766 citing *State vs. Prokosch*, 152 Minn. 86, 187 NW 971; *Cokeley vs. State*, 87 Tex. Crim. 256, 220 SW 1099; 31 ALR 3rd 1227, sec. 3).

"In this species of rape neither force upon the part of a man nor resistance upon the part of a woman forms an element of the crime. If, by reason of any mental weakness, she is incapable of legally consenting, resistance is not expected any more than it is in the case of one who has been drugged to unconsciousness, or robbed of judgment by intoxicants. Nor will an apparent consent in such a case avail any more than in the case of a child who may actually consent, but who by law is conclusively held incapable of legal consent. Whether the woman possessed mental capacity sufficient to give legal consent must, saving in exceptional cases, remain a question of fact xxx. It need but be said that legal consent presupposes an intelligence capable of understanding the act, its nature, and possible consequences. This degree of intelligence may exist with an impaired and weakened intellect, or it may not" (*People vs. Boggs*, 290 Pac. 618 citing *People vs. Griffin*, 49 Pac. 711 and *People vs. Peery*, 146 Pac. 44). [emphasis supplied]

III
People v. Cartuano was not applicable

To boost his challenge to the finding that AAA was a mental retardate, Butiong cites *People v. Cartuano*,[37] a case where the Court ruled that a diagnosis of mental retardation required a thorough evaluation of the history of the victim, and held that a physical and laboratory examination by a clinician was necessary. He insists that the findings of the psychologist and the physicians who had examined AAA fell short of the requirements set in *People v. Cartuano*, considering that

[37] *Supra*, note 17.

psychologist de Guzman did not try to locate the biological parents of AAA for the purpose of ascertaining her personal history, and did not base her findings on reliable data.

Butiong's reliance on *People v. Cartuano* does not advance his cause.

People v. Cartuano applies only to cases where there is a dearth of medical records to sustain a finding of mental retardation. Indeed, the Court has clarified so in *People v. Delos Santos,*[38] declaring that the records in *People v. Cartuano* were wanting in clinical, laboratory, and psychometric support to sustain a finding that the victim had been suffering from mental retardation. It is noted that in *People v. Delos Santos,* the Court upheld the finding that the victim had been mentally retarded by an examining psychiatrist who had been able to identify the tests administered to the victim and to sufficiently explain the results of the tests to the trial court.[39]

In direct contrast to *People v. Cartuano,* this case did not lack clinical findings on the mentality of the victim.

Moreover, as clarified in *People v. Dalandas*,[40] *People v. Cartuano* does not preclude the presentation by the State of proof *other than clinical evidence* to establish the mental retardation of the victim. For sure, the courts are not entirely dependent on the results of clinical examinations in establishing mental retardation. In *People v. Almacin*,[41] for instance, the Court took into consideration the fact that the victim was illiterate and unschooled in concluding that she was mentally incapable of assenting to or dissenting from the sexual intercourse.[42] Also,

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[38] G.R. No. 141128, August 30, 2001, 364 SCRA 142. See also *People v. Cabingas*, G.R. No. 79679, March 28, 2000, 329 SCRA 21.

[39] *Id.*

[40] *Supra*, note 33, at p. 441.

[41] G.R. No. 113253, February 19, 1999, 303 SCRA 399.

[42] *Id.*, p. 410.

in *People v. Dumanon*,[43] the Court concurred in the trial court's observation and conclusion that the victim was a mental retardate based on her physical appearance and on her difficulty to understand and answer the questions during her testimony.[44]

Here, the State's witnesses sufficiently explained the psychological tests conducted to establish AAA's mental retardation with the mentality of a six- or seven-year-old. The trial judge himself reached a conclusion on AAA's mentality from his close personal observation of her as a witness in court, noting that she manifested a difficulty in responding to the questions, especially those bearing on her being sexually abused.[45] The trial judge's observation to the effect that she had no notion of the wrong that had been done to her was validated by the clinical findings. As such, the totality of the evidence presented by the State established beyond reasonable doubt AAA's deficient mental condition.

IV
Presumption of innocence was overcome by sufficient evidence of guilt

Notable is that Butiong did not testify. He offered neither alibi nor denial despite the strong charge of rape brought against him. His defense was purposely limited to his submission, through Dr. Dayan, that AAA had not been established to be a mental retardate. Thereby, he did not refute that he had carnal knowledge of AAA. Having earlier demonstrated the futility of Dr. Dayan's discounting of the State's evidence of AAA's mental retardation, we can justifiably consider the presumption of innocence in favor of Butiong as overcome.

Still, even if he had asserted alibi and denial, his guilt for the rape of AAA would not be reversed in the face of AAA's unwavering testimony and of her very positive and firm

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[43] G.R. No. 123096, December 18, 2000, 348 SCRA 461.

[44] *Id.*, pp. 471-472.

[45] CA *Rollo*, p. 26.

identification of him as the man who had undressed her and sexually gratified himself off her.[46] He could no longer hide behind the protective shield of his presumed innocence, but should have come forward with credible and strong evidence of his lack of authorship of the crime. Considering that the burden of the evidence had shifted to him but he did not discharge his burden at all, there is no other outcome except to affirm his guilt beyond reasonable doubt.

WHEREFORE, the Court *AFFIRMS* the decision promulgated on May 18, 2005 in CA-GR CR HC No. 00862.

The accused shall pay the costs of suit.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 172196. October 19, 2011]

ADELAIDA MENESES (deceased), substituted by her heir MARILYN M. CARBONEL-GARCIA, *petitioner, vs.* **ROSARIO G. VENTUROZO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE JURISDICTION OF THE SUPREME COURT OVER

[46] See *People v. Abella,* G.R. No. 177295, January 6, 2010, 610 SCRA 19, 36-37.

APPEALED CASES FROM THE COURT OF APPEALS IS LIMITED TO THE REVIEW AND REVISION OF ERRORS OF LAW; EXCEPTION.— The rule is that the jurisdiction of the Court over appealed cases from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. Thus, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. However, this rule admits exceptions, such as when the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court like in this case.

2. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; NOTARIZED DOCUMENTS; A DEFECTIVE NOTARIZATION WILL STRIP THE DOCUMENT OF ITS PUBLIC CHARACTER AND REDUCE IT TO A PRIVATE INSTRUMENT.— The necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article 1358 of the Civil Code, is only for convenience; it is not essential for validity or enforceability. As notarized documents, Deeds of Absolute Sale carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular. A defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence. In this case, it should be pointed out that contrary to the finding of the Court of Appeals, the Deed of Sale dated June 20, 1966 did not comply with the formalities required by law, specifically Act No. 496, otherwise known as *The Land Registration Act*, which took effect on January 1, 1903 x x x. In the Deed of

Absolute Sale dated June 20, 1966, the Notary Public signed his name as one of the two witnesses to the execution of the said deed; hence, there was actually only one witness thereto. Moreover, the residence certificate of petitioner was issued to petitioner and then it was given to the Notary Public the day *after* the execution of the deed of sale and notarization; hence, the number of petitioner's residence certificate and the date of issuance (June 21, 1966) thereof was written on the Deed of Absolute Sale by the Notary Public on June 21, 1966, after the execution and notarization of the said deed on June 20, 1966. Considering the defect in the notarization, the Deed of Absolute Sale dated June 20, 1966 cannot be considered a public document, but only a private document, and the evidentiary standard of its validity shall be based on preponderance of evidence.

3. **ID.; ID.; ID.; ID.; PROOF OF PRIVATE DOCUMENT; DUE EXECUTION AND AUTHENTICITY, HOW PROVED.—** Section 20, Rule 132 of the Rules of Court provides that before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker. In regard to the genuineness of petitioner's signature appearing on the Deed of Absolute Sale dated June 20, 1966, the Court agrees with the trial court that her signature therein is very much different from her specimen signatures and those appearing in the pleadings of other cases filed against her, even considering the difference of 17 years when the specimen signatures were made. Hence, the Court rules that petitioner's signature on the Deed of Absolute Sale dated June 20, 1966 is a forgery.

4. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURTS THEREON DESERVE A HIGH DEGREE OF RESPECT.—** It is a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect. Having observed the deportment of witnesses during the trial, the trial judge is in a better position to determine the issue of credibility.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Cesar M. Cariño for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Decision dated October 27, 2005 in CA-G.R. CV No. 78217 and its Resolution dated April 5, 2006, denying petitioner's motion for reconsideration.

The Court of Appeals' Decision reversed and set aside the Decision of the Regional Trial Court (RTC) of Dagupan City, Branch 40 in Civil Case No. D-9040, as the appellate court declared respondent Rosario G. Venturozo the owner of the land in dispute, and ordered petitioner Adelaida Meneses to vacate and surrender her possession thereof to respondent.

The facts are as follows:

On June 8, 1988, plaintiff Rosario G. Venturozo, respondent herein, filed a Complaint[2] for "ownership, possession x x x and damages" in the Regional Trial Court (RTC) of Dagupan City against defendant Adelaida Meneses, petitioner herein, alleging that she (plaintiff) is the absolute owner of an untitled coconut land, containing an area of 2,109 square meters, situated at Embarcadero, Mangaldan, Pangasinan, and declared under Tax Declaration No. 239. Plaintiff alleged that she purchased the property from the spouses Basilio de Guzman and Crescencia Abad on January 31, 1973 as evidenced by a Deed of Absolute Sale,[3] and that the vendors, in turn, purchased the property from

[1] Under Rule 45 of the Rules of Court.

[2] Docketed as Civil Case No. D-9040, records, p. 1.

[3] Exhibit "B", folder of exhibits, p. 2.

defendant as evidenced by a Deed of Absolute Sale[4] dated June 20, 1966. Plaintiff alleged that she has been in possession of the land until May 1983 when defendant with some armed men grabbed possession of the land and refused to vacate despite repeated demands prompting her to engage the services of counsel. Plaintiff prayed that after preliminary hearing, a writ of preliminary mandatory injunction be issued; and that after hearing, a decision be rendered declaring her as the owner of the property in dispute, ordering defendant to vacate the property in question and to pay her ₱5,000.00 as attorney's fees; ₱1,000.00 as litigation expenses; ₱10,000.00 as damages and to pay the costs of suit.

In her Answer,[5] defendant Adelaida Meneses stated that plaintiff is the daughter of Basilio de Guzman, the vendee in the Deed of Absolute Sale dated June 20, 1966 that was purportedly executed by her (defendant) covering the subject property. Defendant alleged that she never signed any Deed of Absolute Sale dated June 20, 1966, and that the said deed is a forgery. Defendant also alleged that she never appeared before any notary public, and she did not obtain a residence certificate; hence, her alleged sale of the subject property to Basilio de Guzman is null and void *ab initio*. Consequently, the Deed of Absolute Sale dated January 31, 1973, executed by Basilio de Guzman in favor of plaintiff, covering the subject property, is likewise null and void. Defendant stated that she acquired the subject property from her deceased father and she has been in possession of the land for more than 30 years in the concept of owner. Plaintiff's allegation that she (defendant) forcibly took possession of the land is a falsehood. Defendant stated that this is the fourth case the plaintiff filed against her concerning the land in question.

In her Counterclaim, defendant stated that in view of the nullity of the falsified Deed of Absolute Sale of the subject property, and the fact that plaintiff and her father Basilio de

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[4] Exhibit "A", *id.* at 1.

[5] Records, p. 12.

Guzman had never been in actual possession of the property, plaintiff is under legal obligation to execute a deed of reconveyance over the said property in her favor.

The issue before the trial court was whether the sale made by defendant Adelaida Meneses in favor of plaintiff's father, Basilio de Guzman, was valid.[6]

On July 18, 1991, the RTC of Dagupan City, Branch 40 (trial court) rendered a Decision in favor of defendant Adelaida Meneses. The dispositive portion of the Decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1) Declaring the Deed of Absolute and Definite Sale dated June 20, 1966 (Exhibit "B") and the Deed of Absolute and Definite Sale dated January 31, 1973 (Exhibit "A") *null and void ab initio*;
>
> 2) Declaring the defendant Adelaida Meneses as the owner of the property in question;
>
> 3) Ordering the plaintiff Rosario G. Venturozo to execute a Deed of Reconveyance in favor of the defendant Adelaida Meneses over the property in question described in paragraph 2 of the complaint;
>
> 4) Ordering the plaintiff to pay to the defendant ₱10,000.00 as damages; and ₱1,000.00, as litigation expenses.
>
> SO ORDERED.[7]

The trial court found that defendant Adelaida Meneses inherited the land in dispute from her father, Domingo Meneses; that she did not sell her property to Basilio de Guzman in 1966; and that the signature of Adelaida Meneses on the Deed of Absolute Sale dated June 20, 1966 is a forgery. The trial court stated that the signature of Adelaida Meneses, as appearing on the Deed of Absolute Sale dated June 20, 1966, is very much different from her specimen signatures and those appearing in the records

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[6] Pre-Trial Order, *id.* at 18.

[7] *Rollo*, pp. 60-61.

of Civil Case No. 1096 in the Municipal Trial Court of Mangaldan. It held that since there was no valid transfer of the property by Adelaida Meneses to Basilio de Guzman, the conveyance of the same property in 1973 by Basilio de Guzman to his daughter, plaintiff Rosario G. Venturozo, was also invalid. The trial court stated that the claim of plaintiff Rosario G. Venturozo, that her parents, Spouses Basilio and Crescencia de Guzman, purchased from defendant Adelaida Meneses the subject property in 1966, is negated by defendant's continued possession of the land and she gathered the products therefrom.

Plaintiff appealed the decision of the trial court to the Court of Appeals.

On October 27, 2005, the Court of Appeals rendered a Decision reversing the decision of the trial court. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, the appealed decision of the Regional Trial Court of Dagupan City (Branch 40) is REVERSED and SET ASIDE and a new one rendered declaring plaintiff-appellant the owner of the subject land and ordering defendant-appellee to vacate and surrender possession thereof to the former.[8]

The Court of Appeals stated that appellee Adelaida Meneses failed to prove by clear and convincing evidence that her signature on the Deed of Absolute Sale dated June 20, 1966 was a forgery. Instead, she admitted on direct examination that her signature on the Deed of Absolute Sale was genuine, thus:

> Q. I am showing to you Exhibit "6" and Exhibit "A" for the plaintiff a Deed of Absolute Sale o[f] Real Property of one (1) Adelaida Meneses in favor of Basilio de Guzman. Will you examine this if you know this Deed of Absolute Sale?
>
> A. I do not know this document, sir.
>
> Q. There is a signature over the name of the vendor Adelaida Meneses which was previously marked as Exhibit "6-a" and

[8] *Id.* at 83.

> Exhibit "A-1" for the plaintiff, will you examine this signature, if do you (sic) know this signature?
>
> A. **This is my signature, sir**.[9]

According to the Court of Appeals, such admission is binding on her, there being no showing that it was made through palpable mistake or that no such admission was made.[10]

The Court of Appeals also stated that mere variance of signatures cannot be considered as conclusive proof that the same were forged, as forgery cannot be presumed.[11] Appellee Adelaida Meneses should have produced specimen signatures appearing on documents executed in or about the year 1966 for a better comparison and analysis.[12]

The Court of Appeals held that a notarized document, like the questioned Deed of Absolute Sale dated June 20, 1966, has in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld.[13] Moreover, Atty. Abelardo G. Biala — the notary public before whom the questioned Deed of Sale was acknowledged — testified and confirmed its genuineness and due execution, particularly the signature in question. The appellate court stated that as against appellee Adelaida Meneses' version, Atty. Biala's testimony, that appellee appeared before him and acknowledged that the questioned deed was her free and voluntary act, is more credible. The testimony of a notary public enjoys greater credence than that of an ordinary witness.[14]

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[9] TSN, October 23, 1989, p. 14. (Emphasis supplied.)

[10] Rules of Court, Rule 129, Sec. 4.

[11] Citing *Veloso v. Court of Appeals*, 329 Phil. 398, 406 (1996).

[12] Citing *Causapin v. Court of Appeals*, G.R. No. 107432, July 4, 1994, 233 SCRA 615, 624.

[13] Citing *Bernardo v. Court of Appeals*, 387 Phil. 736, 746 (2000).

[14] Citing *Sales v. Court of Appeals*, G.R. No. L-40145, July 29, 1992, 211 SCRA 858, 865.

The Court of Appeals held that appellee Adelaida Meneses failed to present clear and convincing evidence to overcome the evidentiary force of the questioned Deed of Absolute Sale dated June 1966, which appears on its face to have been executed with all the formalities required by law.

Adelaida Meneses' motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution[15] dated April 5, 2006.

Hence, Adelaida Meneses, substituted by her heir, filed this petition raising this lone issue:

I

WHETHER THE DECISION OF THE COURT OF APPEALS, WHICH REVERSED THE DECISION OF THE REGIONAL TRIAL COURT, IS IN KEEPING WITH BOTH LAW AND JURISPRUDENCE.[16]

Petitioner contends that her statement, made during the course of her testimony in the trial court, was taken out of context by respondent to be used merely as an argumentative point. The examining lawyer used the words, "Do you know this signature?" *viz.*:

Q. I am showing to you Exhibit "6" and Exhibit "A" for the plaintiff a Deed of Absolute Sale o[f] Real Property of one (1) Adelaida Meneses in favor of Basilio de Guzman. Will you examine this if you know this Deed of Absolute Sale?

A. I do not know this document, sir.

Q. There is a signature over the name of the vendor Adelaida Meneses which was previously marked as Exhibit "6-a" and Exhibit "A-1" for the plaintiff**, will you examine this signature, if do you (sic) know this signature**?

A. **This is my signature, sir**.[17]

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[15] *Rollo*, p. 89.

[16] *Id.* at 17.

[17] TSN, October 23, 1989, p. 14. (Emphasis supplied.)

Petitioner contends that in the above-quoted transcript of stenographic notes, she was merely asked if she was cognizant of such a signature as hers or whether the signature appearing on the questioned document was similar to that of her signature, and not if she was the one who indeed affixed such signature on the said deed of sale.

She avers that the general rule that a judicial admission is conclusive upon the party invoking it and does not require proof admits of two exceptions: (1) when it is shown that the admission was made through palpable mistake; and (2) when it is shown that no such admission was in fact made. The latter exception allows one to contradict an admission by denying that he made such an admission. For instance, if a party invokes an "admission" by an adverse party, but cites the admission "out of context," then the one making the admission may show that he made no such admission, or that his admission was taken out of context.[18] This may be interpreted as to mean not in the sense in which the admission is made to appear.[19]

Petitioner also contends that a comparison of the signature on the Deed of Absolute Sale dated June 20, 1966 and her specimen signatures, as well as her genuine signature on pleadings, were made by the trial court, and it ruled that her signature on the Deed of Absolute Sale dated June 20, 1966 was a forgery. She submits that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect,[20] and the appellate court should have given weight to the trial court's findings that her signature on the said Deed of Absolute Sale was a forgery.

The petition is meritorious.

The rule is that the jurisdiction of the Court over appealed cases from the Court of Appeals is limited to the review and

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[18] Citing *Atilo III v. Court of Appeals*, 334 Phil. 546, 552 (1997).

[19] *Id.*

[20] Citing *People v. Binad Sy Chua*, 444 Phil. 757, 766 (2003).

revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive.[21] Thus, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[22] However, this rule admits exceptions,[23] such as when the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court[24] like in this case.

The necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article 1358 of the Civil Code,[25] is only for convenience; it is not essential for validity or enforceability.[26] As notarized documents, Deeds of Absolute Sale carry evidentiary weight conferred upon them with respect to their due execution[27] and

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[21] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1167-1168 (1997).

[22] *Id.* at 1168.

[23] *Id.*

[24] *Bernales v. Heirs of Julian Sambaan*, G.R. No. 163271, January 15, 2010, 610 SCRA 90.

[25] Civil Code, Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405.

[26] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, February 10, 2006, 482 SCRA 164, 180.

[27] Rules of Court, Rule 132.

SEC. 19. *Classes of documents*.—For purposes of their presentation in evidence, documents are either public or private.

Public documents are:

xxx xxx xxx

(b) Documents acknowledged before a notary public except last wills and testaments; x x x x

xxx xxx xxx

SEC. 23. *Public documents as evidence*. — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public

enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity.[28] The presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular.[29] A defective notarization will strip the document of its public character and reduce it to a private instrument.[30] Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.[31]

In this case, it should be pointed out that contrary to the finding of the Court of Appeals, the Deed of Sale dated June 20, 1966 did not comply with the formalities required by law, specifically Act No. 496,[32] otherwise known as *The Land Registration Act*, which took effect on January 1, 1903, as Section 127 of the Act provides:

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documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

xxx xxx xxx

SEC. 30. *Proof of notarial documents*. — Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgement being *prima facie* evidence of the execution of the instrument of document involved.

[28] *Dizon v. Tuazon*, G.R. No. 172167, July 9, 2008, 557 SCRA 487, 494.

[29] *Dela Rama v. Papa*, G.R. No. 142309, January 30, 2009, 577 SCRA 233, 244.

[30] *Fuentes v. Roca*, G.R. No. 178902, April 21, 2010, 618 SCRA 702, 709.

[31] *Dela Rama v. Papa, supra* note 29, at 244-245.

[32] Entitled AN ACT TO PROVIDE FOR THE ADJUDICATION AND REGISTRATION OF TITLES TO LANDS IN THE PHILIPPINE ISLANDS.

FORMS

Section 127. Deeds, **conveyances**, mortgages, leases, releases, and discharges affecting lands, **whether registered under this Act or unregistered**, **shall be sufficient in law when made substantially in accordance with the following forms**, **and shall be as effective to convey**, encumber, lease, release, discharge, **or bind the lands** as though made in accordance with the more prolix form heretofore in use: ***Provided,*** **That every such instrument shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the instrument as witnesses to the execution thereof**, **and shall be acknowledged** to be his or their free act and deed by the person or persons executing the same, **before the judge of a court of record or clerk of a court of record, or a notary public, or a justice of the peace, who shall certify to such acknowledgment** x x x.[33]

In the Deed of Absolute Sale dated June 20, 1966, the Notary Public signed his name as one of the two witnesses to the execution of the said deed; hence, there was actually only one witness thereto. Moreover, the residence certificate of petitioner was issued to petitioner and then it was given to the Notary Public the day *after* the execution of the deed of sale and notarization; hence, the number of petitioner's residence certificate and the date of issuance (June 21, 1966) thereof was written on the Deed of Absolute Sale by the Notary Public on June 21, 1966, after the execution and notarization of the said deed on June 20, 1966.[34] Considering the defect in the notarization, the Deed of Absolute Sale dated June 20, 1966 cannot be considered a public document, but only a private document,[35] and the evidentiary standard of its validity shall be based on preponderance of evidence.

Section 20, Rule 132 of the Rules of Court provides that before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved

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[33] Emphasis supplied.

[34] TSN, July 18, 1989, pp. 10-12.

[35] *Fuentes v. Roca, supra* note 30, at 709.

either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker.

In regard to the genuineness of petitioner's signature appearing on the Deed of Absolute Sale dated June 20, 1966,[36] the Court agrees with the trial court that her signature therein is very much different from her specimen signatures[37] and those appearing in the pleadings[38] of other cases filed against her, even considering the difference of 17 years when the specimen signatures were made. Hence, the Court rules that petitioner's signature on the Deed of Absolute Sale dated June 20, 1966 is a forgery.

The Court agrees with petitioner that her admission was taken out of context, considering that in her Answer[39] to the Complaint, she stated that the alleged Deed of Sale purportedly executed by her in favor of Basilio de Guzman is a forgery; that she never signed the said Deed of Sale; that she did not appear personally before the Notary Public; and that she did not secure the residence certificate mentioned in the said Deed of Sale. She also testified that she never sold her land to Basilio de Guzman;[40] that she never met the Notary Public, Attorney Abelardo Biala,[41] and that she did not meet Basilio de Guzman on June 20, 1966.[42] The trial court found petitioner and her testimony to be credible, and declared the Deed of Sale dated June 20, 1966 null and void *ab initio*. These circumstances negate the said admission.

The Court finds the Notary Public's testimony self-serving and unreliable, because although he testified that petitioner was the one who submitted her residence certificate to him on

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[36] Exhibit "B", folder of exhibits, p. 2.

[37] Exhibit "8", *id.*

[38] Exhibits "3", "3-F-1", "7", "7-F-1", *id.*

[39] Records, p. 12.

[40] TSN, October 23, 1989, pp. 14-16, 21-23.

[41] *Id.* at 13, 15.

[42] *Id.* at 15.

June 21, 1966,[43] the next day after the Deed of Absolute Sale was executed on June 20, 1966, Crescencia de Guzman, respondent's mother, testified that she and her husband got the residence certificate from petitioner and gave it to the Notary Public on June 21, 1966.[44] Thus, it is doubtful whether the Notary Public really knew the identity of the vendor who signed the Deed of Absolute Sale[45] dated June 20, 1966.

The Court notes that the trial court found petitioner and her testimony to be credible. It is a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect.[46] Having observed the deportment of witnesses during the trial, the trial judge is in a better position to determine the issue of credibility.[47]

In fine, the preponderance of evidence is with petitioner.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals' Decision dated October 27, 2005 and its Resolution dated April 5, 2006 in CA-G.R. CV No. 78217 are *REVERSED* and *SET ASIDE*, and the Decision of the Regional Trial Court of Dagupan City, Branch 40 in Civil Case No. D-9040 is hereby *REINSTATED*.

No costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[43] TSN, July 18, 1989, pp. 8-9.

[44] TSN, December 19, 1988, pp. 15-18.

[45] Exhibit "A", folder of exhibits, p. 1.

[46] *Espano v. Court of Appeals*, G.R. No. 120431, April 1, 1998, 288 SCRA 558, 563.

[47] *Id.*

THIRD DIVISION

[G.R. No. 172777. October 19, 2011]

BENJAMIN B. BANGAYAN, JR., *petitioner, vs.* **SALLY GO BANGAYAN,** *respondent.*

[G.R. No. 172792. October 19, 2011]

RESALLY DE ASIS DELFIN, *petitioner, vs.* **SALLY GO BANGAYAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, THE ACQUITTAL OF THE ACCUSED OR THE DISMISSAL OF THE CASE AGAINST HIM CAN ONLY BE APPEALED BY THE SOLICITOR GENERAL, ACTING ON BEHALF OF THE STATE.— It has been consistently held that in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned. x x x A perusal of the petition for *certiorari* filed by Sally Go before the CA discloses that she sought reconsideration of the criminal aspect of the case. Specifically, she prayed for the reversal of the trial court's order granting petitioners' demurrer to evidence and the conduct of a full blown trial of the criminal case. Nowhere in her petition did she even briefly discuss the civil liability of petitioners. It is apparent that her only desire was to appeal the dismissal of the criminal case against the petitioners. Because bigamy is a criminal offense, only the OSG is authorized to prosecute the case on appeal. Thus, Sally Go did not have the requisite legal standing to appeal the acquittal of the petitioners.

2. ID.; ID.; TRIAL; DEMURRER TO EVIDENCE; AN ORDER GRANTING THE DEMURRER TO EVIDENCE AND ACQUITTING THE ACCUSED ON THE GROUND OF

INSUFFICIENCY OF EVIDENCE CANNOT BE REVIEWED AS IT WILL PLACE THE ACCUSED IN DOUBLE JEOPARDY.— A demurrer to evidence is filed after the prosecution has rested its case and the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the court finds that the evidence is not sufficient and grants the demurrer to evidence, such dismissal of the case is one on merits, which is equivalent to the acquittal of the accused. Well-established is the rule that the Court cannot review an order granting the demurrer to evidence and acquitting the accused on the ground of insufficiency of evidence because to do so will place the accused in double jeopardy.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT AGAINST DOUBLE JEOPARDY; ELEMENTS.— Double jeopardy attaches if the following elements are present: (1) a valid complaint or information; (2) a court of competent jurisdiction; (3) the defendant had pleaded to the charge; and (4) the defendant was acquitted, or convicted or the case against him was dismissed or otherwise terminated without his express consent.

4. ID.; ID.; ID.; ID.; ID.; DISMISSAL ON MOTION OF THE ACCUSED, WHEN CONSIDERED FINAL.— [J]urisprudence allows for certain exceptions when the dismissal is considered final even if it was made on motion of the accused, to wit: (1) Where the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal. (2) Where the dismissal is made, also on motion of the accused, because of the denial of his right to a speedy trial which is in effect a failure to prosecute.

5. ID.; ID.; ID.; ID.; ID.; WHEN CANNOT BE INVOKED.— The only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case against the accused or where the trial was a sham. For

instance, there is no double jeopardy (1) where the trial court prematurely terminated the presentation of the prosecution's evidence and forthwith dismissed the information for insufficiency of evidence; and (2) where the case was dismissed at a time when the case was not ready for trial and adjudication.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DEMURRER TO EVIDENCE; AN ACQUITTAL BY VIRTUE THEREOF MAY BE SUBJECT TO REVIEW ONLY BY A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.— [A]n acquittal by virtue of a demurrer to evidence is not appealable because it will place the accused in double jeopardy. However, it may be subject to review only by a petition for *certiorari* under Rule 65 of the Rules of Court showing that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process.

7. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED.— Grave abuse of discretion has been defined as that capricious or whimsical exercise of judgment which is tantamount to lack of jurisdiction. "The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." The party questioning the acquittal of an accused should be able to clearly establish that the trial court blatantly abused its discretion such that it was deprived of its authority to dispense justice.

8. ID.; ID.; JUDGMENTS; FOR A DECISION OF THE TRIAL COURT TO BE DECLARED NULL AND VOID FOR LACK OF DUE PROCESS, IT MUST BE SHOWN THAT A PARTY WAS DEPRIVED OF HIS OPPORTUNITY TO BE HEARD.— Jurisprudence dictates that in order for a decision of the trial court to be declared null and void for lack of due process, it must be shown that a party was deprived of his opportunity to be heard. Sally Go cannot deny that she was given ample opportunity to present her witnesses and her evidence against petitioners. Thus, her claim that she was denied due process is unavailing.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner in G.R. No. 172792.
Marissa V. Manalo for petitioner in G.R. No. 172777.
Mauricio Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

These are consolidated petitions for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the March 14, 2006 Decision[1] and the May 22, 2006 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 83704 entitled "*Sally Go-Bangayan v. Hon. Luisito C. Sardillo*, in his capacity as Presiding Judge of RTC-Caloocan City, Branch 126, Benjamin B. Bangayan, Jr. and Resally de Asis Delfin."

The Facts

This case stemmed from a complaint-affidavit filed by respondent Sally Go-Bangayan *(Sally Go)* accusing petitioners Benjamin Bangayan, Jr. *(Benjamin, Jr.)* and Resally de Asis Delfin *(Resally)* of having committed the crime of bigamy.[3]

On March 7, 1982, Benjamin, Jr. married Sally Go in Pasig City and they had two children.[4] Later, Sally Go learned that Benjamin, Jr. had taken Resally as his concubine whom he subsequently married on January 5, 2001 under the false name, "Benjamin Z. Sojayco."[5] Benjamin, Jr. fathered two children with Resally. Furthermore, Sally Go discovered that on September

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[1] *Rollo* (G.R. No. 172777), pp. 29-37. Penned by Associate Justice Eliezer R. De los Santos and concurred in by Associate Justice Jose C. Reyes, Jr. and Associate Justice Arturo G. Tayag.

[2] *Id.* at 38-40.

[3] *Id.* at 30.

[4] *Id.*

[5] *Id.* at 30, 291.

10, 1973, Benjamin, Jr. also married a certain Azucena Alegre *(Azucena)* in Caloocan City.

The City Prosecutor of Caloocan City conducted a preliminary investigation and thereafter issued a Resolution dated June 5, 2002 recommending the filing of an information for bigamy against Benjamin, Jr. and Resally for having contracted a marriage despite knowing fully well that he was still legally married to Sally Go.[6] The information was duly filed on November 15, 2002 and was raffled to the Regional Trial Court of Caloocan City, Branch 126 (*RTC*) where it was docketed as Criminal Case No. C-66783.[7]

After the arraignment, during which petitioners both pleaded not guilty to the charge against them, the prosecution presented and offered its evidence.[8] On September 8, 2003, Benjamin, Jr. and Resally separately filed their respective motions for leave to file a demurrer to evidence.[9] This was granted by the RTC in its Order dated September 29, 2003.[10]

On October 20, 2003, Benjamin, Jr. filed his Demurrer to Evidence, praying that the criminal case for bigamy against him be dismissed for failure of the prosecution to present sufficient evidence of his guilt.[11] His plea was anchored on two main arguments: (1) he was not legally married to Sally Go because of the existence of his prior marriage to Azucena; and (2) the prosecution was unable to show that he and the "Benjamin Z. Sojayco Jr.," who married Resally, were one and the same person.[12]

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[6] *Id.* at 30.

[7] *Id.* at 55.

[8] *Id.* at 32.

[9] *Id.* at 73-77.

[10] *Id.* at 89-90.

[11] *Id.* at 91-110.

[12] *Id.* at 98, 101.

In its December 3, 2003 Order,[13] the RTC dismissed the criminal case against Benjamin, Jr. and Resally for insufficiency of evidence.[14] It reasoned out that the prosecution failed to prove beyond reasonable doubt that Benjamin, Jr. used the fictitious name, Benjamin Z. Sojayco Jr., in contracting his marriage with Resally.[15] Corollarily, Resally cannot be convicted of bigamy because the prosecution failed to establish that Resally married Benjamin, Jr.[16]

Aggrieved, Sally Go elevated the case to the CA via a petition for *certiorari*. On March 14, 2006, the CA promulgated its Decision[17] granting her petition and ordering the remand of the case to the RTC for further proceedings. The CA held that the following pieces of evidence presented by the prosecution were sufficient to deny the demurrer to evidence: (1) the existence of three marriages of Benjamin, Jr. to Azucena, Sally Go and Resally; (2) the letters and love notes from Resally to Benjamin, Jr.; (3) the admission of Benjamin, Jr. as regards his marriage to Sally Go and Azucena; and (4) Benjamin, Jr.'s admission that he and Resally were in some kind of a relationship.[18] The CA further stated that Benjamin, Jr. was mistaken in claiming that he could not be guilty of bigamy because his marriage to Sally Go was null and void in light of the fact that he was already married to Azucena. A judicial declaration of nullity was required in order for him to be able to use the nullity of his marriage as a defense in a bigamy charge.[19]

Petitioners' motions for reconsideration were both denied by the CA in a Resolution dated May 22, 2006.[20]

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[13] *Id.* at 127-136; penned by RTC Judge Luisito C. Sardillo.

[14] *Id.*

[15] *Id.* at 134.

[16] *Id.* at 135.

[17] *Id.* at 29-37.

[18] *Id.* at 34-35.

[19] *Id.* at 36.

[20] *Id.* at 38-40.

Hence, these petitions.

The Issues

Petitioner Benjamin, Jr. raises the following issues:

1. Whether or not the Honorable Court of Appeals in a *certiorari* proceedings may inquire into the factual matters presented by the parties in the lower court, without violating the constitutional right of herein petitioner (as accused in the lower court) against double jeopardy as enshrined in Section 21, Article III of the 1987 Constitution.

2. Whether or not the order of the trial court that granted the Demurrer to Evidence filed by the petitioners as accused therein was issued with grave abuse of discretion that is tantamount to lack of jurisdiction or excess of jurisdiction as to warrant the grant of the relief as prayed for in the Petition for *Certiorari* filed by respondent Sally [Go-Bangayan].

3. Whether or not the prosecution was indeed denied due process when the trial court allegedly ignored the existence [of the] pieces of evidence presented by the prosecution.[21]

On the other hand, petitioner Resally poses the following questions:

1. Whether or not the Honorable Court of Appeals committed serious errors of law in giving due course to the petition for *certiorari* notwithstanding the lack of legal standing of the herein respondent (petitioner therein) as the said petition was filed without the prior conformity and/or imprimatur of the Office of the Solicitor General, or even the City Prosecutor's Office of Caloocan City

2. Whether or not the Honorable Court of Appeals committed serious errors of law in ordering the further proceedings of the case as it would violate the right of the accused against double jeopardy.[22]

Essentially, the issues which must be resolved by this Court are:

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[21] *Id.* at 272.

[22] *Id.* (G.R. No. 172792), at 176-177.

1. Whether Sally Go had the legal standing to file a petition for *certiorari* before the CA despite the lack of consent of either the Office of the Solicitor General or the Office of the City Prosecutor *(OCP)* of Caloocan.

2. Whether petitioners' right against double jeopardy was violated by the CA when it reversed the December 3, 2003 RTC Order dismissing the criminal case against them.

The Court's Ruling

The Court finds merit in the petitions.

Only the OSG, and not the private offended party, has the authority to question the order granting the demurrer to evidence in a criminal case.

Petitioner Resally argues that Sally Go had no personality to file the petition for *certiorari* before the CA because the case against them (Resally and Benjamin, Jr.) is criminal in nature. It being so, only the OSG or the OCP of Caloocan may question the RTC Order dismissing the case against them.[23] Respondent's intervention as the offended party in the prosecution of the criminal case is only limited to the enforcement of the civil liability.[24]

Sally Go counters that as the offended party, she has an interest in the maintenance of the criminal prosecution against petitioners and quotes *Merciales v. Court of Appeals*[25] to support her position: "The right of offended parties to appeal an order of the trial court which deprives them of due process has always been recognized, the only limitation being that they cannot appeal any adverse ruling if to do so would place the accused in double jeopardy." Moreover, the OSG and the OCP had impliedly

[23] *Id.* at 177.

[24] *Id.* at 180.

[25] 429 Phil. 70 (2002).

consented to the filing of the petition before the CA because they did not interpose any objection.[26]

This Court leans toward Resally's contention that Sally Go had no personality to file the petition for *certiorari* before the CA. It has been consistently held that in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State.[27] The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.[28] As explained in the case of *People v. Santiago*:[29]

> **It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability.** Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. **If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal.** The private offended party or complainant may not take such appeal. However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.

In a special civil action for *certiorari* filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition

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[26] *Rollo* (G.R. No. 172777), p. 294.

[27] *Metropolitan Bank and Trust Company v. Veridiano II*, 412 Phil. 795, 804 (2001).

[28] *Rodriguez v. Gadiane*, G.R. No. 152903, July 17, 2006, 495 SCRA 368, 372.

[29] *People v. Santiago*, 255 Phil. 851, 861-862 (1989), citing *People v. Ruiz*, 171 Phil. 400 (1978); *People v. Court of Appeals*, 181 Phil. 160 (1979); *The City Fiscal of Tacloban v. Hon. Pedro M. Espina*, 248 Phil. 843 (1988); *Republic v. Partisala*, 203 Phil. 750 (1982), *Padilla v. Court of Appeals*, 214 Phil. 492 (1984), and *People v. Jalandoni*, 216 Phil. 424 (1984).

may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in name of said complainant. [Emphases Supplied]

A perusal of the petition for certiorari filed by Sally Go before the CA discloses that she sought reconsideration of the criminal aspect of the case. Specifically, she prayed for the reversal of the trial court's order granting petitioners' demurrer to evidence and the conduct of a full blown trial of the criminal case. Nowhere in her petition did she even briefly discuss the civil liability of petitioners. It is apparent that her only desire was to appeal the dismissal of the criminal case against the petitioners. Because bigamy is a criminal offense, only the OSG is authorized to prosecute the case on appeal. Thus, Sally Go did not have the requisite legal standing to appeal the acquittal of the petitioners.

Sally Go was mistaken in her reading of the ruling in *Merciales*. *First*, in the said case, the OSG joined the cause of the petitioner, thereby meeting the requirement that criminal actions be prosecuted under the direction and control of the public prosecutor.[30] *Second*, the acquittal of the accused was done without due process and was declared null and void because of the nonfeasance on the part of the public prosecutor and the trial court.[31] There being no valid acquittal, the accused therein could not invoke the protection of double jeopardy.

In this case, however, neither the Solicitor General nor the City Prosecutor of Caloocan City joined the cause of Sally Go, much less consented to the filing of a petition for *certiorari* with the appellate court. Furthermore, she cannot claim to have been denied due process because the records show that the trial court heard all the evidence against the accused and that the

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[30] *Merciales v. Court of Appeals*, *supra* note 25 at 77.

[31] *Id.* at 78-80.

prosecution had formally offered the evidence before the court granted the demurrer to evidence. Thus, the petitioners' acquittal was valid, entitling them to invoke their right against double jeopardy.

Double jeopardy had already set-in

Petitioners contend that the December 3, 2003 Order of dismissal issued by the RTC on the ground of insufficiency of evidence is a judgment of acquittal. The prosecution is, thus, barred from appealing the RTC Order because to allow such an appeal would violate petitioners' right against double jeopardy.[32] They insist that the CA erred in ordering the remand of the case to the lower court for further proceedings because it disregarded the constitutional proscription on the prosecution of the accused for the same offense.[33]

On the other hand, Sally Go counters that the petitioners cannot invoke their right against double jeopardy because the RTC decision acquitting them was issued with grave abuse of discretion, rendering the same null and void.[34]

A demurrer to evidence is filed after the prosecution has rested its case and the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the court finds that the evidence is not sufficient and grants the demurrer to evidence, such dismissal of the case is one on the merits, which is equivalent to the acquittal of the accused.[35] Well-established is the rule that the Court cannot review an order granting the demurrer to evidence and acquitting the accused

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[32] *Rollo* (G.R. No. 172792), p. 185.

[33] *Id.* (G.R. No. 172777), p. 283.

[34] *Id.* at 302.

[35] *Dayap v. Sendiong*, G.R. No. 177960, January 29, 2009, 577 SCRA 134, 147, citing *People v. Sandiganbayan*, 448 Phil. 293, 310 (2004), citing *People v. City Court of Silay*, 165 Phil. 847 (1976).

on the ground of insufficiency of evidence because to do so will place the accused in double jeopardy.[36]

The right of the accused against double jeopardy is protected by no less than the Bill of Rights (Article III) contained in the 1987 Constitution, to wit:

> Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Double jeopardy attaches if the following elements are present: (1) a valid complaint or information; (2) a court of competent jurisdiction; (3) the defendant had pleaded to the charge; and (4) the defendant was acquitted, or convicted or the case against him was dismissed or otherwise terminated without his express consent.[37] However, jurisprudence allows for certain exceptions when the dismissal is considered final even if it was made on motion of the accused, to wit:

> (1) Where the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal.
>
> (2) Where the dismissal is made, also on motion of the accused, because of the denial of his right to a speedy trial which is in effect a failure to prosecute.[38]

The only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make

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[36] *People v. Bans*, G.R. No. 104147, December 8, 1994, 239 SCRA 48, 55.

[37] *Paulin v. Gimenez*, G.R. No. 103323, January 21, 1993, 217 SCRA 386, 389, citing *People v. Obsania*, 132 Phil. 782 (1968) and *Caes v. IAC*, 258-A Phil. 620 (1989).

[38] *Id.* at 392, citing *Caes v. IAC*, 258-A Phil. 620, 628 (1989).

its case against the accused or where the trial was a sham.[39] For instance, there is no double jeopardy (1) where the trial court prematurely terminated the presentation of the prosecution's evidence and forthwith dismissed the information for insufficiency of evidence;[40] and (2) where the case was dismissed at a time when the case was not ready for trial and adjudication.[41]

In this case, all four elements of double jeopardy are doubtless present. A valid information for the crime of bigamy was filed against the petitioners, resulting in the institution of a criminal case against them before the proper court. They pleaded not guilty to the charges against them and subsequently, the case was dismissed after the prosecution had rested its case. Therefore, the CA erred in reversing the trial court's order dismissing the case against the petitioners because it placed them in double jeopardy.

As previously discussed, an acquittal by virtue of a demurrer to evidence is not appealable because it will place the accused in double jeopardy. However, it may be subject to review only by a petition for *certiorari* under Rule 65 of the Rules of Court showing that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process.[42]

Grave abuse of discretion has been defined as that capricious or whimsical exercise of judgment which is tantamount to lack of jurisdiction. "The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an

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[39] *People v. Laguio*, G.R. No. 128587, March 16, 2007, 518 SCRA 393, 409.

[40] *Supra* note 37, citing *Saldana v. Court of Appeals*, G.R. No. 88889, October 11, 1990, 190 SCRA 396.

[41] *Id.*, citing *People v. Pamittan*, G.R. No. L-25033, October 31, 1969, 30 SCRA 98.

[42] *Supra* note 35, citing *People v. Uy*, 508 Phil. 637 (2005).

arbitrary and despotic manner by reason of passion and hostility."[43] The party questioning the acquittal of an accused should be able to clearly establish that the trial court blatantly abused its discretion such that it was deprived of its authority to dispense justice.[44]

The CA determined that the trial court committed grave abuse of discretion in ignoring the evidence presented by the prosecution and granting petitioners' demurrer to evidence on the ground that the prosecution failed to establish by sufficient evidence the existence of the crime.[45] An examination of the decision of the trial court, however, yields the conclusion that there was no grave abuse of discretion on its part. Even if the trial court had incorrectly overlooked the evidence against the petitioners, it only committed an error of judgment, and not one of jurisdiction, which could not be rectified by a petition for certiorari because double jeopardy had already set in.[46]

As regards Sally Go's assertion that she had been denied due process, an evaluation of the records of the case proves that nothing can be further from the truth. Jurisprudence dictates that in order for a decision of the trial court to be declared null and void for lack of due process, it must be shown that a party was deprived of his opportunity to be heard.[47] Sally Go cannot deny that she was given ample opportunity to present her witnesses and her evidence against petitioners. Thus, her claim that she was denied due process is unavailing.

WHEREFORE, the petitions are *GRANTED*. The March 14, 2006 Decision and the May 22, 2006 Resolution of the Court

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[43] *People v. Tan*, G.R. No. 167526, July 26, 2010, 625 SCRA 388, 397 citing *People v. Court of Appeals*, 368 Phil. 169, 180 (1999).

[44] *Sanvicente v. People*, 441 Phil. 139, 148 (2002) citing *People v. Sandiganbayan, et al.*, 426 Phil. 453 (2002), citing *People v. Court of Appeals*, G.R. No. 128986, June 21, 1999, 308 SCRA 687.

[45] *Rollo* (G.R. No. 172777), p. 36.

[46] *People v. Sandiganbayan*, G.R. No. 174504, March 21, 2011.

[47] *Palu-ay v. Court of Appeals*, 355 Phil. 94, 102 (1998).

of Appeals are *REVERSED* and *SET ASIDE*. The December 3, 2003 Order of the Regional Trial Court, Branch 126, Caloocan City, in Criminal Case No. C-66783, granting the Demurrer to Evidence of petitioners Benjamin B. Bangayan, Jr. and Resally de Asis Delfin and dismissing the case against them is hereby *REINSTATED*.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 174631. October 19, 2011]

JHORIZALDY UY, *petitioner, vs.* **CENTRO CERAMICA CORPORATION and/or RAMONITA Y. SY and MILAGROS U. GARCIA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS; CONFLICTING RULINGS.—** As a general rule, only questions of law may be allowed in a petition for review on *certiorari*. Considering, however, that the Labor Arbiter's findings were reversed by the NLRC, whose Decision was in turn overturned by the CA, reinstating the Labor Arbiter's Decision, it behooves the Court to reexamine the records and resolve the conflicting rulings.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; MUST HAVE A CLEAR BASIS.—** [R]espondents terminated petitioner first and only

belatedly sent him written notices of the charge against him. Fairness requires that dismissal, being the ultimate penalty that can be meted out to an employee, must have a clear basis. Any ambiguity in the ground for the termination of an employee should be interpreted against the employer, who ordained such ground in the first place.

3. ID.; ID.; RESIGNATION; BELIED BY THE IMMEDIATE FILING OF COMPLAINT FOR ILLEGAL DISMISSAL.— Resignation is defined as "the voluntary act of employees who are compelled by personal reasons to disassociate themselves from their employment. It must be done with the intention of relinquishing an office, accompanied by the act of abandonment." In this case, the evidence on record suggests that petitioner did not resign; he was orally dismissed by Sy. It is this lack of clear, valid and legal cause, not to mention due process, that made his dismissal illegal, warranting reinstatement and the award of backwages. Moreover, the filing of a complaint for illegal dismissal just three weeks later is difficult to reconcile with voluntary resignation. Had petitioner intended to voluntarily relinquish his employment after being unceremoniously dismissed by no less than the company president, he would not have sought redress from the NLRC and vigorously pursued this case against the respondents.

4. ID.; ID.; IN CASE OF DOUBT, LABOR LAWS INTERPRETED IN FAVOR OF WORKINGMAN.— When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers it a case of illegal dismissal. Furthermore, Article 4 of the Labor Code expresses the basic principle that all doubts in the interpretation and implementation of the Labor Code should be interpreted in favor of the workingman. This principle has been extended by jurisprudence to cover doubts in the evidence presented by the employer and the employee. Thus we have held that if the evidence presented by the employer and the employee are in equipoise, the scales of justice must be tilted in favor of the latter. Accordingly, the NLRC's finding of illegal dismissal must be upheld.

5. ID.; ID.; ILLEGAL DISMISSAL; BACK WAGES AND SEPARATION PAY AS ALTERNATIVE TO

REINSTATEMENT, PROPER UNDER THE DOCTRINE OF STRAINED RELATIONS.— Under the doctrine of strained relations, the payment of separation pay has been considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. Under the facts established, petitioner is entitled to the payment of full back wages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the date of his dismissal on February 19, 2002 up to the *finality of this decision,* and separation pay in lieu of reinstatement equivalent to *one month* salary for every year of service, computed from the time of his engagement by respondents on March 21, 1999 up to the finality of this decision.

APPEARANCES OF COUNSEL

Delos Reyes Martinez Irog Braga & Associates for petitioner.
Gimenez Ureta Gimenes and Associates for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 assailing the Decision[1] dated April 21, 2006 and Resolution[2] dated September 7, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 88061. The CA annulled and set aside the Decision[3] dated July 29, 2004 rendered by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 035557-03 which reversed the Labor Arbiter's ruling that petitioner was not illegally dismissed.

Factual Antecedents

Petitioner Jhorizaldy Uy was hired by respondent Centro Ceramica Corporation as full-time sales executive on March 21,

[1] *Rollo,* pp. 31-41. Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Renato C. Dacudao and Arcangelita Romilla Lontok concurring.

[2] *Id.* at 43.

[3] CA *rollo,* pp. 37-44.

1999 under probationary employment for six months. He became a regular employee on May 1, 2000 with monthly salary of ₱7,000.00 and ₱1,500.00 transportation allowance, plus commission.

On March 18, 2002, petitioner filed a complaint for illegal dismissal against the respondent company, its President Ramonita Y. Sy (Sy) and Vice-President Milagros Uy-Garcia (Garcia).

Petitioner alleged that his predicament began when former VP Garcia was rehired by respondent company in the last quarter of 2001. Certain incidents involving longtime clients led to a strained working relationship between him and Garcia. On February 19, 2002 after their weekly sales meeting, he was informed by his superior, Sales Supervisor Richard Agcaoili, that he (petitioner) was to assume a new position in the marketing department, to which he replied that he will think it over. His friends had warned him to be careful saying "*mainit ka kay Ms. Garcia*." That same day, he was summoned by Sy and Garcia for a closed-door meeting during which Sy informed him of the termination of his services due to "insubordination" and advised him to turn over his samples and files immediately. Sy even commented that "*member ka pa naman ng [S]ingles for [C]hrist pero napakatigas naman ng ulo mo*." On February 21, 2002, he was summoned again by Sy but prior to this he was already informed by Agcaoili that the spouses Sy will give him all that is due to him plus goodwill money to settle everything. However, during his meeting with Sy, he asked for his termination paper and thereupon Sy told him that "If that's what you want I will give it to you". She added that "*pag-isipan mo ang gagawin mo dahil kilala mo naman kami we are powerful.*"[4]

Petitioner further narrated that on February 22, 2002, he turned over company samples, accounts and receivables to Agcaoili. Thereafter, he did not report for work anymore. But on March 6, 2002, an employee of respondent company presented to him at his apartment the following memorandum:

[4] *Id.* at 89-90.

MEMO OF NOTICE OF CHARGES

MEMORANDUM:

TO: JHORIZALDY B. UY
FROM: RAMONITA Y. SY
RE: FAILURE TO MEET QUOTA FOR SALES EXECUTIVE
DATE: February 21, 2002

Records show that you have failed to meet the quota for sales executives, set for the period from 1999 to 2001 in violation of your contract of employment.

In view of the foregoing, please explain in writing within twenty [-]four (24) hours from receipt hereof, why the company should not terminate your contract of employment.[5]

He did not receive said memo because it was not written on the company stationery and besides he had already been dismissed. As to his alleged low output, he was surprised considering that last January 2002, he was informed by Agcaoili that management was satisfied with his performance and he ranked second to the top performer, Edwin I. Hirang. By that time, all of the sales people of the company could not meet the ₱1.5 Million sales quota, so respondents are clearly zeroing in on him.

Finally, on March 13, 2002, respondents sent him another memo, which reads:

MEMO OF NOTICE OF CHARGES

INTER-OFFICE MEMORANDUM NO. 2:

TO: JHORIZALDY B. UY
THRU: RICHARD B. AGCAOILI
FROM: RAMONITA Y. SY
RE: NOTICE OF CHARGE OF ABSENCE WITHOUT LEAVE
DATE: March 13, 2002

Records show that since February 22, 2002, to date, you have failed to report for work, without informing your employer of the reason therefor and without securing proper leave in violation of your contract

[5] *Id.* at 73.

of employment and existing company rules and regulations. Further, you have refused to receive any of your monetary entitlements such as salary, commission and other amounts due to you despite notice that the same are available to you for payment.

Further, to this date, you have not submitted any explanation in writing in response to our Memo dated February 21, 2002, requiring you to explain your failure to meet your quota as Sales Executive.

In view of the foregoing, please explain in writing twenty four (24) hours from receipt hereof, why the company should not terminate your contract of employment for serious violations of your employment contract as indicated above.[6]

He referred the above letter to his counsel who sent the following letter-reply:

MS. RAMONITA Y. SY
Centro Ceramica Corporation
225 EDSA, East Greenhills
Mandaluyong City

We are writing you in behalf of Mr. Jhorizaldy B. Uy who used to be a Sales Executive of your firm.

On February 19, 2002, you informed him that from Sales Executive he was to assume a new position in the marketing department. He refused and when he later said that "*pag-iisipan ko pa*" you charged him with insubordination. Your Ms. Nita Garcia even lamented in this wise "single (for Christ) *ka pa naman*." Right then you terminated his services and was directed to turn over everything that he had which was company owned and it was on February 22, 2002 that the turn over was made.

On or about March 6, 2002 an employee of your company saw him in his apartment giving him a memorandum to explain his alleged failure to meet the quota as Sales Executive. He admits with c[a]ndor that he did not receive the said memorandum because it was written not on the company stationary. Just the same the contents of the said letter has bec[o]me irrelevant because he has been already dismissed as of February 19, 2002 and as regards the low output he says that all of the sales people could not meet the quota and why

[6] *Id.* at 74.

zero in on him.

Then on Mach 13, 2002 you sent him a memorandum to explain in writing within twenty four (24) hours why he should not be dismissed for his alleged absence without leave.

You must have been advised by someone that your dismissal of Mr. Uy on February 19, 2002 is doubly illegal, *i.e.*, for lack of due process and sufficient cause and the March 13, 2002 memorandum is to make up for such lapse so that if Mr. Uy files a case of illegal dismissal, you can conveniently say that he violated his contract of employment and that he was on absence without leave. Nice move, but it may not be nice later on.

xxx xxx xxx[7]

For his illegal termination, petitioner asserted that he is entitled to his unpaid commission, tax refund, back wages and reinstatement.

On the other hand, respondents denied dismissing petitioner. They countered that petitioner's poor sales performance did not improve even after he was regularized. On February 18, 2002, management met with the Sales Group on a per agent basis to discuss sales performance, possible salary realignment and revamp of the Sales Group. Agcaoili relayed to petitioner the poor assessment of his sales performance and the possibility that he will be transferred to another department although there was yet no official decision on the matter. Petitioner then told Agcaoili that he was aware of the problem and his possible termination, prompting the latter to convince the former to consider voluntarily resigning from the company rather than be terminated. The next day, February 19, 2002, petitioner talked anew to Agcaoili and informed the latter that he will just resign from the company and sought an appointment with Sy. When petitioner inquired how much he will get if he will resign, Sy advised him that he would get salaries and commissions to which he is legally entitled; hence, for items sold and already delivered, he will be receiving the commission in full, but for those sold but yet to be delivered, as per company policy, he

[7] *Id.* at 102.

will receive the commissions only upon delivery of the items. Upon hearing this, petitioner suddenly got mad and said that if that is the case, the company president should just terminate him and walked out. Petitioner was given a chance, through the two memos issued to him, to explain his failure to meet the prescribed sales quota and his failure to report for work without informing the company of the reason therefor. But he never submitted his explanations to his violations of the contract of employment, and abandoned his job which is another ground for terminating his employment. While it would appear that petitioner aimed to secure his alleged money claims from the respondents, this does not justify abandonment of his work as respondents never had the intention of terminating his services. Respondents maintained that petitioner voluntarily left his workplace and refused to report for work as in fact he indicated to his sales supervisor that he will just resign; however, he never submitted a letter of resignation.[8]

Respondents also denied the claims of petitioner regarding an alleged souring of his relations with Garcia, as in fact it was petitioner who clearly had a personal grudge against her and not the other way around. The alleged incidents with client actually showed it was petitioner who was discourteous and abusive. There was likewise no reason for respondent Sy to say they were powerful because petitioner did not at all threaten to sue or do something to their prejudice. To refute petitioner's unfounded allegations, respondents presented the affidavits of the following: (1) co-employee Rommel Azarraga who admitted he was the person who warned petitioner to be careful and told him "*mainit ka kay Mrs. Garcia*" and explained that he only made such statement in order to scare petitioner and convince him to change his attitude; the truth is that Mrs. Garcia had not spoken to him about harbouring any ill feelings towards petitioner and neither does he know of any incident or circumstance which may give rise to such ill feeling of Mrs. Garcia towards petitioner; (2) Richard Agcaoili who corroborated the respondents' claims, denying that petitioner was terminated due to insubordination;

[8] *Id.* at 76-79, 82.

he further denied having told petitioner that management was satisfied with his performance, the truth being that while petitioner may have ranked second to the top performer, there was actually only two remaining senior sales agents while the rest have more or less six months experience; considering the number of years of his service to the company, petitioner should have improved as against other agents most of whom were newly-hired and still under probation; and (3) Arnulfo Merecido, respondent company's employee (warehouse helper) who claimed that he had a fistfight with petitioner sometime in June 2000 which arose from the latter's insulting remarks regarding his family.[9]

Labor Arbiter's Ruling

In his decision[10] dated April 8, 2003, Labor Arbiter Elias H. Salinas dismissed petitioner's complaint on the basis of his finding that it was petitioner who opted not to report for work since February 22, 2002, after offering to resign (as told to his supervisor) because he could not accept his possible transfer to another department.

NLRC's Ruling

Petitioner appealed to the NLRC which reversed the Labor Arbiter's ruling. The NLRC found that the dismissal of petitioner was made under questionable circumstances, thus giving weight to petitioner's assertion that he was being singled out notwithstanding that all sales personnel similarly could not meet the ₱1.5 million monthly sales quota. Such finding is reinforced by the fact that no sanction was imposed on petitioner or any other employee for the supposed failure to meet the quota, thereby creating the impression that the situation was tolerated by the respondents. The NLRC thus decreed:

WHEREFORE, premises considered, the Decision dated April 8, 2003 is set aside and reversed. A new one is entered finding complainant to have been illegally dismissed and thus entitled to

[9] *Id.* at 69-70, 133-138, 149-151, 161.

[10] *Id.* at 103-111.

reinstatement with backwages. Respondent Centro Ceramica Corporation is hereby ordered to pay complainant his backwages reckoned from the date of his dismissal on February 19, 2002 up to the date of the promulgation of this decision. As reinstatement is no longer feasible, complainant should instead be paid separation pay equivalent to one half (½) month pay for every year of service. In addition, respondents company should pay complainant his unpaid commission in the amount of ₱16,581.00.

All other claims are dismissed for lack of merit.

SO ORDERED.[11]

Court of Appeals Ruling

Respondents elevated the case to the CA which reversed the NLRC and dismissed petitioner's complaint. According to the CA, petitioner by his own account had admitted that it was he who asked for his dismissal when he narrated that during his meeting with Sy, he had asked for his termination paper and she threatened to do so if that was what he wanted. It also noted the affidavit of Agcaoili who attested that petitioner was merely informed of the decision to transfer him to another department, which is not denied by the petitioner; said witness also said that the turnover of company documents and files was voluntary on the part of petitioner who expressed desire to resign from the company. Another statement considered by the CA is that made by witness Azarraga who explained that he only mentioned the name of Ms. Garcia to petitioner when he warned the latter to be careful, simply because she is a member of the Couples for Christ who may have an influence over petitioner who is a member of the Singles for Christ. As to the memos sent by the company to petitioner's residence, this shows that it has not yet terminated the employment of petitioner. Thus, the CA held that the evidence on record supports the Labor Arbiter's finding that petitioner "informally severed" the employment relationship as manifested by his voluntary transfer of his accountabilities to his supervisor and thereafter his act of not reporting for work anymore.

[11] *Id.* at 43.

Petitioner's motion for reconsideration having been denied, the present petition was filed in this Court.

Issue

The sole issue to be addressed is whether petitioner was dismissed by the respondents or voluntarily severed his employment by abandoning his job.

Arguments of the Parties

Petitioner assails the CA's misappreciation of the facts, completely relying on respondents' allegations particularly on what transpired during the meeting with respondents Sy and Garcia, of which the appellate court made a "twisted" interpretation of their conversation. Hence, instead of decreeing petitioner's illegal termination based on Sy's verbal dismissal without just cause and due process, the CA proceeded to conclude that petitioner voluntarily and informally severed his relation with the company. As to the affidavit of Agcaoili, his statement that he merely informed petitioner of the decision to transfer him to another department is of no moment because what matters is the action of Sy who dismissed petitioner outright. Moreover, Agcaoili, being under the employ of respondents, would logically be biased and he would naturally tend to protect the company by his statements regarding petitioner's case. On the other hand, Azarraga's confusing and inconsistent statements only confirmed that Garcia indeed had a grudge against petitioner, as he could not give a rational explanation for warning petitioner to be careful with Garcia.

Petitioner further contends that his act of turning over his accountabilities to his supervisor cannot be considered voluntary on his part as it was done by him knowing that he was already terminated and upon the specific instructions of Sy and Garcia. The CA therefore erred in relying on the unbelievable submission of respondents that such transfer of company documents and samples was indicative of petitioner's desire to resign. It failed to see that petitioner's reaction to his impending transfer to another department ("*pag-iisipan ko pa*") was due to his not

coming to terms with Garcia and aware of the warning earlier given by his friends. Under this scenario, the animosity between petitioner and Garcia was evident such that Garcia eventually prevailed upon Sy to terminate petitioner's services. Unfortunately, it was on the very same day that petitioner was verbally terminated by Sy on the ground of insubordination and ordered to immediately turn over his files and samples. It was on February 21, 2002 that Agcaoili told petitioner that the company will give him all that is due him plus goodwill money, and in a meeting with Sy he had asked for his termination paper because he was in fact already terminated on February 19, 2002 but she responded by saying that if that was what he wanted she will give it to him and even threatened him to think because respondents are powerful.

In their Comment, respondents assert that the CA committed no reversible error in concluding that petitioner was not illegally terminated. They stress that the evidence clearly established that petitioner was not dismissed but required merely to explain why he failed to report for work after meeting the company president. As to petitioner's act of turning over his accountabilities, respondents argue that this cannot be considered proof of his illegal dismissal because it was done voluntarily in line with his proposed resignation. Respondent company was about to conduct its investigation on petitioner who went AWOL since February 19, 2002 but then he refused to accept the memos sent to him, thus confirming categorically that respondents were investigating his failure to report for work and giving him all the opportunity to explain his absence.

The Court's Ruling

We grant the petition.

As a general rule, only questions of law may be allowed in a petition for review on *certiorari*.[12] Considering, however, that the Labor Arbiter's findings were reversed by the NLRC, whose Decision was in turn overturned by the CA, reinstating the Labor

[12] Sec. 1, Rule 45 of the Rules of Court.

Arbiter's Decision, it behooves the Court to reexamine the records and resolve the conflicting rulings.[13]

Scrutinizing the records, we find that the NLRC's finding of illegal dismissal is supported by the totality of evidence and more consistent with logic and ordinary human experience than the common finding of the CA and Labor Arbiter that petitioner informally severed his employment relationship with the company. It hardly convinces us that after declining his supposed transfer to another department as per the information relayed to him by his supervisor, petitioner would readily turn over his files and samples unless something critical indeed took place in his subsequent closed-door meeting with Sy and Garcia. As correctly pointed out by petitioner, it is irrelevant whether or not he had earlier inquired from his supervisor what he will receive if he offers instead to resign upon being told of his impending transfer, for what matters is the action of Sy on his employment status. If ever petitioner momentarily contemplated resignation and such was the impression he conveyed in his talk with his supervisor prior to the meeting with Sy, such is borne by circumstances indicating Garcia's antagonism towards petitioner. In any event, whether such perception of a strained working relationship with Garcia was mistaken or not is beside the point. The crucial factor is the verbal order directly given by Sy, the company president, for petitioner to immediately turn over his accountabilities. Notably, Sy got irked when petitioner asked for his termination paper. Petitioner apparently wanted to ascertain whether such summary dismissal was official, and it was well within his right to demand that he be furnished with a written notice in order to apprise him of the real ground for his termination.

Contrary to respondents' theory that petitioner's act of turning over the company files and samples is proof of his voluntary informal resignation rather than of the summary dismissal effected

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[13] *Dansart Security Force & Allied Services Company v. Bagoy,* G.R. No. 168495, July 2, 2010, 622 SCRA 694, 699, citing *Cabalen Management Co., Inc. v. Quiambao,* G.R. No. 169494, March 14, 2007, 518 SCRA 342, 348-349.

by management, no other plausible explanation can be made of such immediate turn over except that petitioner directly confirmed from the company president herself that he was already being dismissed. The subsequent memos sent to petitioner's residence after he did not anymore report for work only reinforce the conclusion that the belated written notice of the charge against him – his alleged failure to meet the prescribed sales quota – was an afterthought on the part of respondents who may have realized that they failed to observe due process in terminating him. That respondents would still require a written explanation for petitioner's poor sales performance *after* the latter already complied with Sy's directive to turn over all his accountabilities is simply inconsistent with their claim that petitioner offered to resign and voluntarily relinquished possession of company files and samples when told of his impending transfer. In other words, petitioner was not given any opportunity to defend himself from whatever charges hurled by management against him, such as poor sales performance as relayed to him by his supervisor, when Sy unceremoniously terminated him which must have shocked him considering that his supervisor earlier advised that he would just be transferred to another department. Under this scenario, petitioner's decision not to report for work anymore was perfectly understandable, as the sensible reaction of an employee fired by no less than the company president. It was indeed a classic case of dismissal without just cause and due process, which is proscribed under our labor laws.

As to the affidavits submitted by the respondents, these are at best self-serving having been executed by employees beholden to their employer and which evidence by themselves did not refute petitioner's main cause of action — the fact of his summary dismissal on February 19, 2002. Respondents' effort to present the case as one of an erring employee about to be investigated for poor sales performance must likewise fail. The NLRC duly noted the discriminatory treatment accorded to petitioner when it declared that there is no evidence at all that other sales personnel who failed to meet the prescribed sales quota were similarly reprimanded or penalized. Incidentally, the question may be

asked if petitioner whose performance was assessed by management as "poor" yet admittedly ranked second to the top sales agent of the company, why was it that no evidence was submitted by respondents to show the comparative sales performance of all sales agents? Given the strained working relationship with Garcia, or at least a perception of such gap on the part of petitioner, the latter could not have been properly informed of the actual ground for his dismissal. But more importantly, respondents terminated petitioner first and only belatedly sent him written notices of the charge against him. Fairness requires that dismissal, being the ultimate penalty that can be meted out to an employee, must have a clear basis. Any ambiguity in the ground for the termination of an employee should be interpreted against the employer, who ordained such ground in the first place.[14]

Resignation is defined as "the voluntary act of employees who are compelled by personal reasons to disassociate themselves from their employment. It must be done with the intention of relinquishing an office, accompanied by the act of abandonment."[15] In this case, the evidence on record suggests that petitioner did not resign; he was orally dismissed by Sy. It is this lack of clear, valid and legal cause, not to mention due process, that made his dismissal illegal, warranting reinstatement and the award of backwages.[16] Moreover, the filing of a complaint for illegal dismissal just three weeks later is difficult to reconcile with voluntary resignation. Had petitioner intended to voluntarily relinquish his employment after being unceremoniously dismissed by no less than the company president, he would not have sought redress from the NLRC and vigorously pursued this case against

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[14] *Pascua v. NLRC (Third Division)*, G.R. No. 123518, March 13, 1998, 287 SCRA 554, 571, citing *Pantranco North Express, Inc. v. NLRC,* G.R. No. 114333, January 24, 1996, 252 SCRA 237, 243-244.

[15] *Fungo v. Lourdes School of Mandaluyong*, G.R. No. 152531, July 27, 2007, 528 SCRA 248, 256.

[16] *Pascua v. NLRC (Third Division)*, *supra* note 14 at 574; Art. 279, Labor Code of the Philippines.

the respondents.[17]

When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers it a case of illegal dismissal. Furthermore, Article 4 of the Labor Code expresses the basic principle that all doubts in the interpretation and implementation of the Labor Code should be interpreted in favor of the workingman. This principle has been extended by jurisprudence to cover doubts in the evidence presented by the employer and the employee.[18] Thus we have held that if the evidence presented by the employer and the employee are in equipoise, the scales of justice must be tilted in favor of the latter.[19] Accordingly, the NLRC's finding of illegal dismissal must be upheld.

However, the award of back wages and separation pay in lieu of reinstatement should be modified. Under the doctrine of strained relations, the payment of separation pay has been considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[20] Under the facts established, petitioner is entitled to the payment of full back wages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the date of his dismissal on February 19, 2002 up to the *finality of this decision*, and separation pay in lieu of reinstatement equivalent to *one month* salary for every year of service, computed from the time of his

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[17] *Casa Cebuana Incorporada v. Leuterio,* G.R. No. 176040, September 4, 2009, 598 SCRA 355, 366.

[18] *Peñaflor v. Outdoor Clothing Manufacturing Corporation,* G.R. No. 177114, January 21, 2010, 610 SCRA 497, 512, citing *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals,* 494 Phil. 697, 728 (2005).

[19] *Mobile Protective & Detective Agency v. Ompad,* G.R. No. 159195, May 9, 2005, 458 SCRA 308, 323, citing *Asuncion v. National Labor Relations Commission,* G.R. No. 129329, July 31, 2011, 362 SCRA 56, 68.

[20] *Century Canning Corporation v. Ramil,* G.R. No. 171630, August 9, 2010, 627 SCRA 192, 206.

engagement by respondents on March 21, 1999 up to the finality of this decision.[21]

WHEREFORE, the petition for review on *certiorari* is *GRANTED.* The Decision dated April 21, 2006 and Resolution dated September 7, 2006 of the Court of Appeals in CA-G.R. SP No. 88061 are *SET ASIDE.* The Decision dated July 29, 2004 of the National Labor Relations Commission in NLRC NCR CA No. 035557-03 is *REINSTATED* and *AFFIRMED WITH MODIFICATIONS* in that in addition to the unpaid commission of ₱16,581.00, respondent Centro Ceramica Corporation is hereby ordered to pay petitioner Jhorizaldy Uy his full back wages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the date of his dismissal on February 19, 2002 up to the finality of this decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of his engagement by respondent corporation on March 21, 1999 up to the finality of this decision.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *del Castillo, JJ.,* concur.

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[21] *Id.,* citing *Eastern Telecommunications Phils., Inc. v. Diamse,* G.R. No. 169299, June 16, 2006, 491 SCRA 239, 251.

THIRD DIVISION

[G.R. No. 175497. October 19, 2011]

MARY JOY ANNE GUSTILO and BONIFACIO M. PEÑA, *petitioners, vs.* **JOSE VICENTE GUSTILO III and TERESITA YOUNG also known as TITA SY YOUNG,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; POSSESSION; AS ALLEGATIONS IN COMPLAINT IS PRINCIPALLY ONE FOR RECOVERY OF POSSESSION, THE PARTY WHO CAN PROVE PRIOR POSSESSION CAN RECOVER POSSESSION AND BE ENTITLED TO REMAIN ON THE PROPERTY UNTIL LAWFULLY EJECTED BY A PERSON WITH BETTER RIGHT.— It is a basic rule that jurisdiction over the subject matter is determined by the allegations in the complaint. It can be gleaned from Mary Joy's allegations in her complaint that her case is principally one for recovery of possession. Immediately upon the execution of the MOA in 1993, Mary Joy took possession of Hacienda Imelda, through her mother, and started planting sugarcane on it. In 1997 Young, with the use of force, took over the property with the farm equipment and implements. Despite several demands to vacate and surrender Hacienda Imelda, Young continued to cultivate and plant sugarcanes on the property up to 2002, and even entered into a new lease contract with Jose Vicente. It must be stated that regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by a strong hand, violence or terror. Thus, a party who can prove prior possession, can recover such possession even against the owner himself. Whatever may be the character of his prior possession, if he has in his favor priority in time, he is entitled to remain on the property until he is lawfully ejected by a person having a better right.

2. ID.; ID.; ID.; ISSUE OF OWNERSHIP RAISED IN AN ACTION TO RECOVER POSSESSION MAY BE PASSED

UPON TO DETERMINE WHO HAS RIGHT TO POSSESS, BUT ADJUDICATION THEREIN NOT FINAL AND TITLE TO PROPERTY MAY BE THE SUBJECT IN ANOTHER ACTION.— The Court has ruled in the past that an action to recover possession is a plenary action in an ordinary civil proceeding to determine the better and legal right to possess, independently of title. But where the parties raise the issue of ownership, as in this case, the courts may pass upon such issue to determine who between the parties has the right to possess the property. This adjudication, however, is not final and binding as regards the issue of ownership; it is merely for the purpose of resolving the issue of possession when it is inseparably connected to the issue of ownership. The adjudication on the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property. Also, any intra-corporate issues that may be involved in determining the real owner of the property may be threshed out in a separate proceeding in the proper commercial court.

APPEARANCES OF COUNSEL

Law Office of Mirano Mirano Mirano & Mirano for petitioners.

Depasucat Depasucat and Su Law Offices for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the proper characterization of a dispute between the president of a corporation and a stockholder, both heirs to the corporation's controlling shares of stock, over the lease of a property that the president agreed to assign to the stockholder as her inheritance.

The Facts and the Case

Petitioner Mary Joy Anne Gustilo and respondent Jose Vicente Gustilo III are heirs of their natural father, the late Atty. Armando Gustilo (they have different mothers), who owned several

properties and was, prior to his death, the president of A.G. Agro-Industrial Corporation (A.G. Agro) in Cadiz City, Negros Occidental. Petitioner Bonifacio Peña is Mary Joy's attorney-in-fact whom she authorized to exercise general control and supervision of her real properties.

On August 31, 1993, following their father's death, Mary Joy and Jose Vicente entered into a Memorandum of Agreement (MOA), adjudicating between themselves their father's properties. One of these was Hacienda Imelda which the MOA assigned to Mary Joy. As it happened, however, the *hacienda's* title remained in the name of A.G. Agro. Mary Joy immediately took possession of the land through Mila Barco, her mother and natural guardian, and planted sugarcane on it.

Over three years later or in 1997 Jose Vicente, as president of A.G. Agro, leased Hacienda Imelda and its farm implements to respondent Tita Sy Young for five agricultural crop years from 1997-1998 to 2001-2002. Being financially hard up, Mary Joy and her mother were pained to watch Young take over the land.

When the lease contract was about to expire, however, Mary Joy had her lawyer advise Young to surrender the land to her. But the latter refused to yield possession and continued to cultivate the same for sugarcane. This prompted Mary Joy to file an action against Jose Vicente and Young for recovery of possession of the *hacienda*, cancellation of the lease contract, and damages before the Regional Trial Court (RTC) of Cadiz City. Jose Vicente filed a motion to dismiss mainly on the ground that the Cadiz RTC had no jurisdiction to hear and decide intra-corporate disputes, the proper forum being a specially designated commercial court.

On June 15, 2004 the RTC granted Jose Vicente's motion and dismissed the complaint for lack of jurisdiction, without prejudice to its re-filing in the proper court. On August 11, 2006 the Court of Appeals (CA) affirmed the RTC decision, prompting Mary Joy to file the present petition.

The Issue Presented

The only issue presented in this case is whether or not Mary Joy's action presents an intra-corporate dispute that belongs to the jurisdiction of a specially designated commercial court.

The Ruling of the Court

It is a basic rule that jurisdiction over the subject matter is determined by the allegations in the complaint.[1] It can be gleaned from Mary Joy's allegations in her complaint that her case is principally one for recovery of possession. Immediately upon the execution of the MOA in 1993, Mary Joy took possession of Hacienda Imelda, through her mother, and started planting sugarcane on it. In 1997 Young, with the use of force, took over the property with the farm equipment and implements. Despite several demands to vacate and surrender Hacienda Imelda, Young continued to cultivate and plant sugarcanes on the property up to 2002, and even entered into a new lease contract with Jose Vicente. It must be stated that regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by a strong hand, violence or terror. Thus, a party who can prove prior possession, can recover such possession even against the owner himself. Whatever may be the character of his prior possession, if he has in his favor priority in time, he is entitled to remain on the property until he is lawfully ejected by a person having a better right.[2]

Here, Jose Vicente and Young mainly argued in their Motion to Dismiss that inasmuch as the subject property is in the name of A.G. Agro, the nature of the claim or controversy is one of intra-corporate. The Court has ruled in the past that an action to recover possession is a plenary action in an ordinary civil proceeding to determine the better and legal right to possess,

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[1] *Mendoza v. Germino*, G.R. No. 165676, November 22, 2010, 635 SCRA 537, 544.

[2] *German Management & Services, Inc. v. Court of Appeals*, 258 Phil. 289, 293 (1989).

independently of title.[3] But where the parties raise the issue of ownership, as in this case, the courts may pass upon such issue to determine who between the parties has the right to possess the property. This adjudication, however, is not final and binding as regards the issue of ownership; it is merely for the purpose of resolving the issue of possession when it is inseparably connected to the issue of ownership. The adjudication on the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property.[4] Also, any intra-corporate issues that may be involved in determining the real owner of the property may be threshed out in a separate proceeding in the proper commercial court.

WHEREFORE, the Court *GRANTS* the petition and *REVERSES* and *SETS ASIDE* the Decision of the Court of Appeals in CA-G.R. SP 85887 dated August 11, 2006. The Court likewise *ORDERS* Jose Vicente Gustilo III and Teresita Young to answer the complaint in Civil Case 723-C, Regional Trial Court Negros Occidental, Branch 60.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[3] *Bejar v. Caluag,* G.R. No. 171277, February 17, 2007, 516 SCRA 84, 90.

[4] *Urieta Vda. de Aguilar v. Alfaro,* G.R. No. 164402, July 5, 2010, 623 SCRA 130, 140-141.

FIRST DIVISION

[G.R. No. 176229. October 19, 2011]

HO WAI PANG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; INADMISSIBLE EVIDENCE TAKEN DURING INVESTIGATION WITHOUT INFORMING ACCUSED OF HIS RIGHTS, WITHOUT THE ASSISTANCE OF COMPETENT COUNSEL; APPLICATION ONLY TO CONFESSION AND ADMISSION OF ACCUSED AS AGAINST HIMSELF.— [P]etitioner takes issue on the fact that he was not assisted by a competent and independent lawyer during the custodial investigation. He claimed that he was not duly informed of his rights to remain silent and to have competent counsel of his choice. Hence, petitioner faults the CA in not excluding evidence taken during such investigation. While there is no dispute that petitioner was subjected to all the rituals of a custodial questioning by the customs authorities and the NBI in violation of his constitutional right under Section 12 of Article III of the Constitution, we must not, however, lose sight of the fact that what said constitutional provision prohibits as evidence are only confessions and admissions of the accused as against himself. Thus, in *Aquino v. Paiste*, the Court categorically ruled that "the infractions of the so-called Miranda rights render inadmissible 'only the extrajudicial confession or admission made during custodial investigation.' The admissibility of other evidence, provided they are relevant to the issue and [are] not otherwise excluded by law or rules, [are] not affected even if obtained or taken in the course of custodial investigation." x x x In determining the guilt of the petitioner and his co-accused, the trial court based its Decision on the testimonies of the prosecution witnesses and on the existence of the confiscated *shabu*. As the Court held in *People v. Buluran*, "[a]ny allegation of violation of rights during custodial investigation is relevant and material only to cases

in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction." Hence, petitioner's claim that the trial court erred in not excluding evidence taken during the custodial investigation deserves scant consideration.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DIRECT, POSITIVE AND CREDIBLE TESTIMONY THAT IS SUFFICIENT TO CONVICT NEEDS NO CORROBORATION.— [P]etitioner's conviction in the present case was on the strength of his having been caught *in flagrante delicto* transporting *shabu* into the country and not on the basis of any confession or admission. [T]he testimony of Cinco was found to be direct, positive and credible by the trial court, hence it need not be corroborated. Cinco witnessed the entire incident thus providing direct evidence as eyewitness to the very act of the commission of the crime. As the Court held in *People v. Dela Cruz*, "[n]o rule exists which requires a testimony to be corroborated to be adjudged credible. x x x Thus, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness despite the lack of corroboration, where such testimony is found positive and credible by the trial court. In such a case, the lone testimony is sufficient to produce a conviction."

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO CONFRONTATION; ESSENTIALLY A GUARANTEE THAT DEFENDANT MAY CROSS-EXAMINE WITNESS OF THE PROSECUTION.— As borne out by the records, petitioner did not register any objection to the presentation of the prosecution's evidence particularly on the testimony of Cinco despite the absence of an interpreter. Moreover, it has not been shown that the lack of an interpreter greatly prejudiced him. Still and all, the important thing is that petitioner, through counsel, was able to fully cross-examine Cinco and the other witnesses and test their credibility. The right to confrontation is essentially a guarantee that a defendant may cross-examine the witnesses of the prosecution. In *People v. Libo-on*, the Court held: The right to confrontation is one of the fundamental rights guaranteed by the Constitution to the person facing criminal prosecution who should know, in fairness, who his accusers are and must be given a chance to

cross-examine them on their charges. The chief purpose of the right of confrontation is to secure the opportunity for cross-examination, so that if the opportunity for cross-examination has been secured, the function and test of confrontation has also been accomplished, the confrontation being merely the dramatic preliminary to cross-examination.

4. CRIMINAL LAW; CONSPIRACY; ELUCIDATED.— "Conspiracy is [the] common design to commit a felony." "[C]onspiracy which determines criminal culpability need not entail a close personal association or at least an acquaintance between or among the participants to a crime." "It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design." "The assent of the minds may be and, from the secrecy of the crime, usually inferred from proof of facts and circumstances which, taken together, indicate that they are parts of some complete whole" as we ruled in *People v. Mateo, Jr.* Here, it can be deduced from petitioner and his co-accused's collective conduct, viewed in its totality, that there was a common design, concerted action and concurrence of sentiments in bringing about the crime committed.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY CONSIDERED IN ITS ENTIRETY WITHOUT INDICATION OF IMPROPER MOTIVE, ENTITLED TO FULL FAITH AND CREDIT. — Jurisprudence teaches that in assessing the credibility of a witness, his testimony must be considered in its entirety instead of in truncated parts. The technique in deciphering a testimony is not to consider only its isolated parts and anchor a conclusion on the basis of said parts. "In ascertaining the facts established by a witness, everything stated by him on direct, cross and redirect examinations must be calibrated and considered." Also, where there is nothing in the records which would show a motive or reason on the part of the witnesses to falsely implicate the accused, identification should be given full weight. Here, petitioner presented no evidence or anything to indicate that the principal witness for the prosecution, Cinco, was moved by any improper motive, hence her testimony is entitled to full faith and credit.

6. ID.; ID.; DENIAL; CANNOT PREVAIL AGAINST AFFIRMATIVE TESTIMONY AND ABSENCE OF CRIMINAL INTENT WILL NOT EXCUSE AN ACT THAT IS *MALUM PROHIBITUM*.— Petitioner tried to show that he was not aware of the *shabu* inside his luggage considering that his bag was provided by the travel agency. However, it bears stressing that the act of transporting a prohibited drug is a *malum prohibitum* because it is punished as an offense under a special law. As such, the mere commission of the act is what constitutes the offense punished and same suffices to validly charge and convict an individual caught committing the act so punished regardless of criminal intent. Moreover, beyond his bare denials, petitioner has not presented any plausible proof to successfully rebut the evidence for the prosecution. "It is basic that affirmative testimony of persons who are eyewitnesses of the events or facts asserted easily overrides negative testimony."

7. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL TRANSPORT OF *SHABU* INTO THE COUNTRY; PENALTY.— [A]t the time of the commission of the crime on September 6, 1991, Section 15 of R.A. No. 6425 was already amended by Presidential Decree No. 1683. The decree provided that for violation of said Section 15, the penalty of life imprisonment to death and a fine ranging from ₱20,000.00 to ₱30,000.00 shall be imposed. Subsequently, however, R.A. No. 7659 further introduced new amendments to Section 15, Article III and Section 20, Article IV of R.A. No. 6425, as amended. Under the new amendments, the penalty prescribed in Section 15 was changed from "life imprisonment to death and a fine ranging from ₱20,000.00 to ₱30,000.00" to "*reclusion perpetua* to death and a fine ranging from ₱500,000.00 to ₱10 million". On the other hand, Section 17 of R.A. No. 7659 amended Section 20, Article IV of R.A. No. 6425 in that the new penalty provided by the amendatory law shall be applied depending on the quantity of the dangerous drugs involved. The trial court, in this case, imposed on petitioner the penalty of *reclusion perpetua* under R.A. No. 7659 rather than life imprisonment ratiocinating that R.A. No. 7659 could be given retroactive application, it being more favorable to the petitioner in view of its having a less stricter punishment.

> x x x And, since "*reclusion perpetua* is a lighter penalty than life imprisonment, and considering the rule that criminal statutes with a favorable effect to the accused, have, as to him, a retroactive effect," the penalty imposed by the trial court upon petitioner is proper. Consequently, the Court sustains the penalty of imprisonment, which is *reclusion perpetua*, as well as the amount of fine imposed by the trial court upon petitioner, the same being more favorable to him.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioner.

The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Infraction of the rights of an accused during custodial investigation or the so-called Miranda Rights render inadmissible only the extrajudicial confession or admission made during such investigation.[1] "The admissibility of other evidence, provided they are relevant to the issue and is not otherwise excluded by law or rules, is not affected even if obtained or taken in the course of custodial investigation."[2]

Petitioner Ho Wai Pang (petitioner) in this present recourse assails the June 16, 2006 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01459 affirming the April 6, 1995 Decision[4] of the Regional Trial Court (RTC), Branch 118

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[1] *People v. Malimit*, 332 Phil. 190, 202 (1996).

[2] *Id.*

[3] CA *rollo*, pp. 329-350; penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Elvi John S. Asuncion and Japar B. Dimaampao.

[4] Records, pp. 567-575; penned by Judge Alfredo R. Enriquez.

of Pasay City in Criminal Case No. 91-1592, finding him and his co-accused, namely, Law Ka Wang, Chan Chit Yue,[5] Wu Hing Sum, Tin San Mao[6] and Kin San Ho[7] guilty beyond reasonable doubt for violation of Section 15, Article III[8] of Republic Act (R.A.) No. 6425 otherwise known as the Dangerous Drugs Act of 1972. Also assailed is the January 16, 2007 CA Resolution[9] denying the motion for reconsideration thereto.

Factual Antecedents

On September 6, 1991, at around 11:30 in the evening, United Arab Emirates Airlines Flight No. 068 from Hongkong arrived at the Ninoy Aquino International Airport (NAIA). Among the passengers were 13 Hongkong nationals who came to the Philippines as tourists. At the arrival area, the group leader Wong Kwok Wah (Sonny Wong) presented a Baggage Declaration Form to Customs Examiner Gilda L. Cinco (Cinco), who was then manning Lane 8 of the Express Lane. Cinco examined the baggages of each of the 13 passengers as their turn came up. From the first traveling bag, she saw few personal belongings such as used clothing, shoes and chocolate boxes which she pressed. When the second bag was examined, she noticed chocolate boxes which were almost of the same size as those in the first bag. Becoming suspicious, she took out four of the chocolate boxes and opened one of them. Instead of chocolates, what she saw inside was white crystalline substance contained in a white transparent plastic. Cinco thus immediately called the attention of her immediate superiors Duty Collector Alalo and Customs Appraiser Nora Sancho who advised her to call the Narcotics Command (NARCOM) and the police. Thereupon, she guided the tourists to the Intensive Counting Unit (ICU)

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[5] Also spelled as Chan Chit Sue in some parts of the records.

[6] Also referred to as Tin Sun Mao in some parts of the records.

[7] Also referred to as Ho Kin San in some parts of the records.

[8] Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.

[9] *Rollo*, pp. 90-91.

while bringing with her the four chocolate boxes earlier discovered.

At the ICU, Cinco called the tourists one after the other using the passenger manifest and further examined their bags. The bag of Law Ka Wang was first found to contain three chocolate boxes. Next was petitioner's bag which contains nothing except for personal effects. Cinco, however, recalled that two of the chocolate boxes earlier discovered at the express lane belong to him. Wu Hing Sum's bag followed and same yielded three chocolate boxes while the baggages of Ho Kin San, Chan Chit Yue and Tin San Mao each contained two or three similar chocolate boxes. All in all, 18 chocolate boxes were recovered from the baggages of the six accused.

NARCOM Agent Neowillie de Castro corroborated the relevant testimony of Cinco pertaining to the presence of the chocolate boxes. According to him, he conducted a test on the white crystalline substance contained in said chocolate boxes at the NAIA using the Mandelline Re-Agent Test.[10] The result of his examination[11] of the white crystalline substance yielded positive for methamphetamine hydrochloride or *shabu*. Thereafter, the chocolate boxes were bundled together with tape, placed inside a plastic bag and brought to the Inbond Section.

The following day, September 7, 1991, the 13 tourists were brought to the National Bureau of Investigation (NBI) for further questioning. The confiscated stuff were turned over to the Forensic Chemist who weighed and examined them. Findings show that its total weight is 31.1126 kilograms and that the representative samples were positive for methamphetamine hydrochloride.[12] Out of the 13 tourists, the NBI found evidence for violation of R.A. No. 6425 only as against petitioner and his five co-accused.

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[10] TSN, July 24, 1992, p. 34.

[11] Incident Report, Exhibit "N", records, p. 197.

[12] Exhibits "E" to "E-9"; *id.* at 189-B to 194.

Accordingly, six separate Informations all dated September 19, 1991 were filed against petitioner and his co-accused. These Informations were docketed as Criminal Case Nos. 91-1591 to 97. Subsequently, however, petitioner filed a Motion for Reinvestigation[13] which the trial court granted. The reinvestigation conducted gave way to a finding of conspiracy among the accused and this resulted to the filing of a single Amended Information[14] under Criminal Case No. 91-1592 and to the withdrawal of the other Informations.[15] The Amended Information reads:

That on or about September 6, 1991 in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did, then and there, willfully, unlawfully and feloniously carry and transport into the country without lawful authority, 31.112 kilograms, more or less, of *Methamphetamine Hydrochloride*, also popularly known as "*SHABU*", a regulated drug.

CONTRARY TO LAW.[16]

After pleading not guilty to the crime charged,[17] all the accused testified almost identically, invoking denial as their defense. They claimed that they have no knowledge about the transportation of illegal substance (*shabu*) taken from their traveling bags which were provided by the travel agency.

Ruling of the Regional Trial Court

On April 6, 1995, the RTC rendered a Decision[18] finding all the accused guilty of violating Section 15, Article III of R.A. No. 6425, as amended, the decretal portion of which reads:

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[13] *Id.* at 23-30.

[14] *Id.* at 68-69.

[15] See the RTC Order dated November 29, 1991, *id.* at 70.

[16] *Id.* at 68.

[17] *Supra* note 14.

[18] *Supra* note 4.

WHEREFORE, all the foregoing considered, the Court finds the accused LAW KA WANG, CHAN CHIT YUE, HO WAI PANG, WU HING SUM, TIN SUN MAO, AND KIN SAN HO (HO KIN SAN) guilty of Conspiracy in violating Section 15, Article III, Republic Act No. 6425, as amended for having conspired to transport into the Philippines 31.112 kilograms of methamp[h]etamine hydrochloride, locally known as *Shabu*, and they are hereby sentenced to suffer the PENALTY OF IMPRISONMENT OF SIX (6) [sic] *RECLUSION PERPETUA* AND TO PAY EACH (SIC) THE AMOUNT OF THIRTY (30) THOUSAND PESOS (₱30,000.00) each as FINE, the penalty of *reclusion perpetua* is being imposed pursuant to Republic Act No. 7659 considering its applicability to the accused though retroactively for having a less stricter penalty than that of life imprisonment provided in Republic Act No. 6425. The fine of ₱30,000.00 for each accused is imposed pursuant to R.A. No. 6425 it being more favorable to the accused [than] that provided in R.A. No. 7659 WITH IMMEDIATE DEPORTATION AFTER SERVICE OF SENTENCE. The penalty of death cannot be imposed since the offense was committed prior to the effectivity of R.A. No. 7659.

Let an *alias* warrant of arrest be issued against accused WONG KOK WAH @ SONNY WONG, CHAN TAK PIU, HO WAI LING AND INOCENCIA CHENG.

SO ORDERED.[19]

From this judgment, all the accused appealed to this Court where the case records were forwarded to per Order of the RTC dated May 10, 1995.[20] Later, all the accused except for petitioner, filed on separate dates their respective withdrawal of appeal.[21] This Court, after being satisfied that the withdrawing appellants were fully aware of the consequences of their action, granted the withdrawal of their respective appeals through a Resolution dated June 18, 1997.[22] Per Entry of Judgment,[23] said Resolution

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[19] Records, p. 575.

[20] *Id.* at 584.

[21] CA *rollo*, pp. 76-80, 83-85 and 95-97.

[22] *Rollo*, p. 116.

[23] *Id.* at 117.

became final and executory on July 7, 1997. Consequently, petitioner was the only one left to pursue his appeal.

Petitioner filed his Brief[24] on April 6, 1998 while the brief[25] for the respondent People of the Philippines was filed on August 27, 1998 through the Office of the Solicitor General (OSG). Per Resolution[26] dated August 30, 2004, this Court referred the appeal to the CA for proper disposition and determination pursuant to this Court's ruling in *People v. Mateo*.[27]

Ruling of the Court of Appeals

On June 16, 2006, the CA denied the appeal and affirmed the Decision of the RTC. While conceding that petitioner's constitutional right to counsel during the custodial investigation was indeed violated, it nevertheless went on to hold that there were other evidence sufficient to warrant his conviction. The CA also rebuked petitioner's claim that he was deprived of his constitutional and statutory right to confront the witnesses against him. The CA gave credence to the testimonies of the prosecution witnesses and quoted with favor the trial court's ratiocination regarding the existence of conspiracy among the accused.

Undeterred, petitioner filed a Motion for Reconsideration[28] which the CA denied in its Resolution[29] dated January 16, 2007.

Hence, this petition for review on *certiorari* anchored on the following grounds:

I

WHILE ACKNOWLEDGING THAT PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL AND STATUTORY

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[24] *Id.* at 128-200.

[25] *Id.* at 240-268.

[26] *Id.* at 304-305.

[27] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[28] CA *rollo*, pp. 356-373.

[29] *Supra* note 9.

RIGHTS UNDER CUSTODIAL INVESTIGATION BOTH BY THE CUSTOMS OFFICIALS AND BY THE NBI INVESTIGATORS, THE HONORABLE COURT OF APPEALS ERRED IN NOT EXCLUDING EVIDENCE TAKEN DURING THE CUSTODIAL INVESTIGATION.

II

THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING THAT PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO CONFRONT THE WITNESSES AGAINST HIM.

III

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THE PROSECUTION'S EVIDENCE FAILED TO ESTABLISH THE EXISTENCE OF A CONSPIRACY.

IV

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THE PROSECUTION FAILED TO PRESENT PROOF BEYOND REASONABLE DOUBT AS TO OVERTURN THE PRESUMPTION OF INNOCENCE ACCORDED TO PETITIONER BY THE CONSTITUTION.[30]

OUR RULING

The petition lacks merit.

Section 12, Article III of the Constitution prohibits as evidence only confessions and admissions of the accused as against himself.

Anent the error first assigned, petitioner takes issue on the fact that he was not assisted by a competent and independent lawyer during the custodial investigation. He claimed that he was not duly informed of his rights to remain silent and to have competent counsel of his choice. Hence, petitioner faults the CA in not excluding evidence taken during such investigation.

[30] *Rollo*, pp. 32-33.

While there is no dispute that petitioner was subjected to all the rituals of a custodial questioning by the customs authorities and the NBI in violation of his constitutional right under Section 12[31] of Article III of the Constitution, we must not, however, lose sight of the fact that what said constitutional provision prohibits as evidence are only confessions and admissions of the accused as against himself. Thus, in *Aquino v. Paiste*,[32] the Court categorically ruled that "the infractions of the so-called Miranda rights render inadmissible 'only the extrajudicial confession or admission made during custodial investigation.' The admissibility of other evidence, provided they are relevant to the issue and [are] not otherwise excluded by law or rules, [are] not affected even if obtained or taken in the course of custodial investigation."

In the case at bench, petitioner did not make any confession or admission during his custodial investigation. The prosecution did not present any extrajudicial confession extracted from him as evidence of his guilt. Moreover, no statement was taken from petitioner during his detention and subsequently used in evidence against him. Verily, in determining the guilt of the petitioner and his co-accused, the trial court based its Decision on the testimonies of the prosecution witnesses and on the existence

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[31] Constitution, Article III, Section 12 provides:

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

xxx xxx xxx

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

xxx xxx xxx

[32] G.R. No. 147782, June 25, 2008, 555 SCRA 255, 270, citing *People v. Malimit*, 332 Phil. 190 (1996).

of the confiscated *shabu*. As the Court held in *People v. Buluran*,[33] "[a]ny allegation of violation of rights during custodial investigation is relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction." Hence, petitioner's claim that the trial court erred in not excluding evidence taken during the custodial investigation deserves scant consideration.

Petitioner cannot take refuge in this Court's ruling in *People v. Wong Chuen Ming*[34] to exculpate himself from the crime charged. Though there are semblance in the facts, the case of *Ming* is not exactly on all fours with the present case. The disparity is clear from the evidence adduced upon which the trial courts in each case relied on in rendering their respective decisions. Apparently in *Ming*, the trial court, in convicting the accused, relied heavily on the signatures which they affixed on the boxes of Alpen Cereals and on the plastic bags. The Court construed the accused's act of affixing their signatures thereon as a tacit admission of the crime charged. And, since the accused were not informed of their Miranda rights when they affixed their signatures, the admission was declared inadmissible evidence for having been obtained in violation of their constitutional rights. In ruling against the accused, the trial court also gave credence to the sole testimony of the customs examiner whom it presumed to have performed his duties in regular manner. However, in reversing the judgment of conviction, the Court noted that said examiner's testimony was not corroborated by other prosecution witnesses.

On the other hand, petitioner's conviction in the present case was on the strength of his having been caught *in flagrante delicto* transporting *shabu* into the country and not on the basis of any confession or admission. Moreover, the testimony of Cinco was found to be direct, positive and credible by the trial court, hence it need not be corroborated. Cinco witnessed the entire

[33] 382 Phil. 364, 372 (2000).

[34] 326 Phil. 192 (1996).

incident thus providing direct evidence as eyewitness to the very act of the commission of the crime. As the Court held in *People v. Dela Cruz*,[35] "[n]o rule exists which requires a testimony to be corroborated to be adjudged credible. x x x Thus, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness despite the lack of corroboration, where such testimony is found positive and credible by the trial court. In such a case, the lone testimony is sufficient to produce a conviction."

Indeed, a ruling in one case cannot simply be bodily lifted and applied to another case when there are stark differences between the two cases. Cases must be decided based on their own unique facts and applicable law and jurisprudence.

Petitioner was not denied of his right to confrontation.

Turning now to the second assigned error, petitioner invokes the pertinent provision of Section 14(2) of Article III of the 1987 Philippine Constitution providing for the right to confrontation, *viz*:

> Section 14. x x x
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Petitioner asserts that he was deprived of his right to know and understand what the witnesses testified to. According to him, only a full understanding of what the witnesses would testify to would enable an accused to comprehend the evidence being

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[35] G.R. No. 175929, December 16, 2008, 574 SCRA 78, 90.

offered against him and to refute it by cross-examination or by his own countervailing evidence.

In refutation, the OSG countered that petitioner was given the opportunity to confront his accusers and/or the witnesses of the prosecution when his counsel cross-examined them. It is petitioner's call to hire an interpreter to understand the proceedings before him and if he could not do so, he should have manifested it before the court. At any rate, the OSG contends that petitioner was nevertheless able to cross-examine the prosecution witnesses and that such examination suffices as compliance with petitioner's right to confront the witnesses against him.

We agree with the OSG.

As borne out by the records, petitioner did not register any objection to the presentation of the prosecution's evidence particularly on the testimony of Cinco despite the absence of an interpreter. Moreover, it has not been shown that the lack of an interpreter greatly prejudiced him. Still and all, the important thing is that petitioner, through counsel, was able to fully cross-examine Cinco and the other witnesses and test their credibility. The right to confrontation is essentially a guarantee that a defendant may cross-examine the witnesses of the prosecution. In *People v. Libo-on*,[36] the Court held:

> The right to confrontation is one of the fundamental rights guaranteed by the Constitution to the person facing criminal prosecution who should know, in fairness, who his accusers are and must be given a chance to cross-examine them on their charges. The chief purpose of the right of confrontation is to secure the opportunity for cross-examination, so that if the opportunity for cross-examination has been secured, the function and test of confrontation has also been accomplished, the confrontation being merely the dramatic preliminary to cross-examination.

Under the circumstances obtaining, petitioner's constitutional right to confront the witnesses against him was not impaired.

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[36] 410 Phil. 378, 401-402 (2001).

Conspiracy among the accused was duly established.

Respecting the third assigned error, we uphold the trial court's finding of conspiracy which was quoted by the appellate court in its assailed Decision, and which we once again herein reproduce with approval:

> On the allegation of conspiracy, the Court finds [no] direct evidence to conclude conspiracy. However, just like in other cases where conspiracy is not usually established by direct evidence but by circumstantial evidence, the Court finds that there are enough circumstantial evidence which if taken together sufficiently prove conspiracy. First, it cannot be denied that the accused somehow have known each other prior to their [departure] in Hong Kong for Manila. Although Law Ka Wang denied having known any of the accused prior to the incident in NAIA, accused Ho Wai Pang identified him as the one who assisted him in the supposed tour in the Philippines to the extent of directly dealing with the travel agency and [that] Law Ka Wang was the one who received the personal things of Ho Wai Pang allegedly to be place[d] in a bag provided for by the travel agency. Accused Wu Hing Sum has been known to accused Ho Kin San for about two to three years as they used to work as cooks in a restaurant in Hong Kong. Accused Ho Wai Ling, who is still at large, is know[n] to accused Chan Chit Yue, Wu Hing Sum and Ho Kin San. These relationships in a way can lead to the presumption that they have the capability to enter into a conspiracy. Second, all the illegal substances confiscated from the six accused were contained in chocolate boxes of similar sizes and almost the same weight all contained in their luggages. The Court agrees with the finding of the trial prosecutor that under the given circumstances, the offense charged [c]ould have been perpetrated only through an elaborate and methodically planned conspiracy with all the accused assiduously cooperating and mutually helping each other in order to ensure its success.[37]

We find no cogent reason to reverse such findings.

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[37] CA *rollo*, p. 347.

"Conspiracy is [the] common design to commit a felony."[38] "[C]onspiracy which determines criminal culpability need not entail a close personal association or at least an acquaintance between or among the participants to a crime."[39] "It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design."[40] "The assent of the minds may be and, from the secrecy of the crime, usually inferred from proof of facts and circumstances which, taken together, indicate that they are parts of some complete whole" as we ruled in *People v. Mateo, Jr.*[41] Here, it can be deduced from petitioner and his co-accused's collective conduct, viewed in its totality, that there was a common design, concerted action and concurrence of sentiments in bringing about the crime committed.

Petitioner's guilt was proved beyond reasonable doubt.

Finally, petitioner asserts that the prosecution failed to prove his guilt beyond reasonable doubt. He makes capital on the contention that no chocolate boxes were found in his traveling bag when it was examined at the ICU. He claimed that it was his co-accused Sonny Wong who took charge in ascribing upon him the possession of the two chocolate boxes.

Petitioner's contentions fail to persuade.

True, when principal prosecution witness Cinco first testified on June 3, 1992, she declared that she did not see any chocolate boxes but only personal effects in petitioner's bag.[42] Nonetheless,

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[38] *People v. Miranda*, G.R. No. 93269, August 10, 1994, 235 SCRA 202, 214.

[39] *People v. Lagmay*, G.R. No. 67973, October 29, 1992, 215 SCRA 218, 225.

[40] *People v. Ponce*, 395 Phil. 563, 572 (2000).

[41] 258-A Phil. 886, 904 (1989).

[42] TSN, June 3, 1992, pp. 49-50.

she clarified in her succeeding testimony that she recalls taking the two chocolate boxes from petitioner's bag when they were still at the counter. This sufficiently explained why Cinco did not find any chocolate boxes from petitioner's bag when they were at the ICU.[43] To us, this slight clash in Cinco's statements neither dilute her credibility nor the veracity of her testimony.

The trial court's words on this matter when it resolved petitioner's Demurrer to Evidence in its Order[44] of February 16, 1993 is quite enlightening. Thus—

> In claiming that the evidences [sic] presented by the prosecution is insufficient to command conviction, the Demurrer went on to say that the testimony of Hilda Cinco is either conjectural or hearsay and definitely missed its mark in incriminating accused, Ho Wai Pang, because she even testified that she found nothing inside the hand-carried luggage of Ho Wai Pang (pp. 48-49, TSN, June 3, 1992). But that was when investigation was going on at the Intensive Counting Unit (ICU). However, the same Hilda Cinco later on testified that from the express lane in going to the ICU, after the discovery of *shabu*, she was already carrying with her four (4) chocolate boxes, two of [which] taken from the bag of Tin Sun Mau and the other two retrieved from the luggage of herein movant, Ho Wai Pang. Categorically, Cinco admitted it was the reason that at the ICU, Ho Wai Pang's bag was already empty (pp. 53-54, TSN, June 3, 1992), but she nonetheless recognized the bag and could recall the owner thereof, pointing to Ho Wai Pang. Such testimony is not hearsay evidence. They are facts from the personal perception of the witness and out of her personal knowledge. Neither is it conjectural.[45]

Jurisprudence teaches that in assessing the credibility of a witness, his testimony must be considered in its entirety instead of in truncated parts. The technique in deciphering a testimony is not to consider only its isolated parts and anchor a conclusion on the basis of said parts. "In ascertaining the facts established

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[43] *Id.* at 54.

[44] Records, pp. 316-317.

[45] *Id.* at 316.

by a witness, everything stated by him on direct, cross and redirect examinations must be calibrated and considered."[46] Also, where there is nothing in the records which would show a motive or reason on the part of the witnesses to falsely implicate the accused, identification should be given full weight. Here, petitioner presented no evidence or anything to indicate that the principal witness for the prosecution, Cinco, was moved by any improper motive, hence her testimony is entitled to full faith and credit.

Verily, the evidence adduced against petitioner is so overwhelming that this Court is convinced that his guilt has been established beyond reasonable doubt. Nothing else can speak so eloquently of his culpability than the unassailable fact that he was caught red-handed in the very act of transporting, along with his co-accused, *shabu* into the country. In stark contrast, the evidence for the defense consists mainly of denials.

Petitioner tried to show that he was not aware of the *shabu* inside his luggage considering that his bag was provided by the travel agency. However, it bears stressing that the act of transporting a prohibited drug is a *malum prohibitum* because it is punished as an offense under a special law. As such, the mere commission of the act is what constitutes the offense punished and same suffices to validly charge and convict an individual caught committing the act so punished regardless of criminal intent. Moreover, beyond his bare denials, petitioner has not presented any plausible proof to successfully rebut the evidence for the prosecution. "It is basic that affirmative testimony of persons who are eyewitnesses of the events or facts asserted easily overrides negative testimony."[47]

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[46] *Northwest Airlines, Inc. v. Chiong*, G.R. No. 155550, January 31, 2008, 543 SCRA 308, 324, citing *Leyson v. Lawa*, G.R. No. 150756, October 11, 2006, 504 SCRA 147, 161.

[47] *People v. Bartolome*, G.R. No. 129486, July 4, 2008, 557 SCRA 20, 30.

All told, we are convinced that the courts below committed no error in adjudging petitioner guilty of transporting methamphetamine hydrochloride or *shabu* into the country in violation of Section 15, Article III of R.A. No. 6425, as amended.

Penalty

As to the penalties imposed by the trial court and as affirmed by the appellate court, we find the same in accord with law and jurisprudence. It should be recalled that at the time of the commission of the crime on September 6, 1991, Section 15 of R.A. No. 6425 was already amended by Presidential Decree No. 1683.[48] The decree provided that for violation of said Section 15, the penalty of life imprisonment to death and a fine ranging from ₱20,000.00 to ₱30,000.00 shall be imposed. Subsequently, however, R.A. No. 7659[49] further introduced new amendments to Section 15, Article III and Section 20, Article IV of R.A. No. 6425, as amended. Under the new amendments, the penalty prescribed in Section 15 was changed from "life imprisonment to death and a fine ranging from ₱20,000.00 to ₱30,000.00" to "*reclusion perpetua* to death and a fine ranging from ₱500,000.00 to ₱10 million". On the other hand, Section 17 of R.A. No. 7659 amended Section 20, Article IV of R.A. No. 6425 in that the new penalty provided by the amendatory law shall be applied depending on the quantity of the dangerous drugs involved.

The trial court, in this case, imposed on petitioner the penalty of *reclusion perpetua* under R.A. No. 7659 rather than life

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[48] "AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 6425, AS AMENDED, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972 AND FOR OTHER PURPOSES"; took effect on March 14, 1980.

[49] "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose The Revised Penal Code, as Amended, Other Special Laws and for Other Purposes"; The Act was approved on December 13, 1993 and took effect on December 31, 1993.

imprisonment ratiocinating that R.A. No. 7659 could be given retroactive application, it being more favorable to the petitioner in view of its having a less stricter punishment.

We agree. In *People v. Doroja*,[50] we held:

> In *People v. Martin Simon* (G.R. No. 93028, 29 July 1994) this Court ruled (a) that the amendatory law, being more lenient and favorable to the accused than the original provisions of the Dangerous Drugs Act, should be accorded retroactive application, x x x.

And, since "*reclusion perpetua* is a lighter penalty than life imprisonment, and considering the rule that criminal statutes with a favorable effect to the accused, have, as to him, a retroactive effect",[51] the penalty imposed by the trial court upon petitioner is proper. Consequently, the Court sustains the penalty of imprisonment, which is *reclusion perpetua*, as well as the amount of fine imposed by the trial court upon petitioner, the same being more favorable to him.

WHEREFORE premises considered, the petition is *DENIED* and the assailed June 16, 2006 Decision and January 16, 2007 Resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 01459 are *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[50] G.R. No. 81002, August 11, 1994, 235 SCRA 238, 246.

[51] *People v. Jones*, 343 Phil. 865, 878 (1997).

FIRST DIVISION

[G.R. No. 176884. October 19, 2011]

CARMELITO N. VALENZONA, *petitioner, vs.* **FAIR SHIPPING CORPORATION and/or SEJIN LINES COMPANY LIMITED,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; PERMANENT DISABILITY DISTINGUISHED FROM PERMANENT TOTAL DISABILITY.— "Permanent disability refers to the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days." On the other hand, "[p]ermanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness."

2. ID.; OVERSEAS EMPLOYMENT; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS.— Petitioner's Employment Contract specifically provides that the same shall be deemed an "integral part of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels" otherwise known as the POEA Standard Employment Contract. Section 20(B) of the POEA Standard Employment Contract provides: B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS x x x x 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

3. ID.; ID.; SEAFARERS MAY AVAIL OF PROVISION ON PERMANENT TOTAL DISABILITY.— The Labor Code's provision on permanent total disability applies with equal force to seafarers. Article 192 (c) (1) of the Labor Code provides, *viz*; Art. 192. Permanent total disability. - x x x **(c)** The following disabilities shall be deemed **total and permanent:** (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules; x x x Thus, in *Quitoriano v. Jebsens Maritime, Inc.,* we held that: Thus, Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x Sec. 2 *Disability.* x x x **(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules. x x x**

4. ID.; ID.; ID.; PERMANENT TOTAL DISABILITY; ELUCIDATED. — In *Vicente v. ECC* (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195): x x x the test of whether or not an employee suffers from 'permanent total disability' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job for more than 120 days and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from 'permanent total disability' regardless of whether or not he loses the use of any part of his body. A total disability does not require that the employee be absolutely disabled or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom . On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days. Thus, in the very recent case of *Crystal Shipping, Inc. v. Natividad* we held: Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he lose[s] the use of any part of his body. x x x Total disability, on the other hand, means the disablement of an

employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.

5. ID.; ID.; ID.; ID.; CERTIFICATION THAT SEAFARER IS FIT TO WORK DOES NOT NECESSARILY MAKE HIM INELIGIBLE FOR PERMANENT TOTAL DISABILITY BENEFITS, AS LONG AS HE WAS UNABLE TO PERFORM HIS JOB FOR MORE THAN 120 DAYS; APPLICATION IN CASE AT BAR.— The company-designated physician's certification that petitioner is fit to work does not make him ineligible for permanent total disability benefits. x x x We find no merit in respondents' contention that the company-designated physician's assessment that petitioner is fit to work makes him ineligible to claim permanent disability benefits. This issue has already been raised, and rebuffed. [I]n United *Philippine Lines, Inc. v. Beseril*, this Court [held:] **But even in the absence of an official finding by the company-designated physicians that respondent is unfit for sea duty, respondent is deemed to have suffered permanent disability.** Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. x x x **That respondent was found to be 'fit to return to work' by Clinica Manila (where he underwent regular cardiac rehabilitation program and physical therapy from January 15 to May 28, 1998 under UPL's account) on September 22, 1998 or a few months after his rehabilitation <u>does not matter</u>**. x x x Here, x x x [i]t is undisputed that from the time petitioner was repatriated on October 8, 2001, he was unable to work for more than 120 days as he was only certified fit to work on April 25, 2002. Consequently, petitioner's disability is considered permanent and total. In fact, from his repatriation until the filing of his petition before this Court on March 21, 2007, or for more than five years, petitioner claims that he was unable to resume his job as a seaman which thus strongly indicates that his disability is permanent and total. Also, we

note that the certification was issued only after petitioner consulted a private physician (Dr. Mapapala) and after he formally demanded from the respondents, through his lawyer, the payment of his sickness allowance, disability benefits and attorney's fees.

6. ID.; ID.; ID.; DISABILITY ALLOWANCE IS $60,000 AS PROVIDED UNDER THE POEA STANDARD EMPLOYMENT CONTRACT.— [T]he POEA Standard Employment Contract particularly Section 20(B) (6) thereof provides, to wit: 6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. In turn, Section 32 provides that for an impediment considered as total and permanent, a disability allowance of US$60,000.00 (US$50,000.00 x 120%) is granted. Therefore, considering our earlier discussion finding petitioner's disability as permanent and total, he is then entitled to receive disability benefits of US$60,000.00.

7. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPER WHERE PARTY WAS FORCED TO LITIGATE TO PROTECT HIS RIGHT.— Petitioner alleges that he is entitled to attorney's fees pursuant to Article 2208 of the Civil Code because he was forced to litigate to recover his wages. x x x Circumstances show that he demanded from the respondents the payment of his disability benefits but the same went unheeded. Left with no other recourse, petitioner filed the instant case to recover what is rightfully his under the law. Plainly, he was "compelled to litigate due to respondent[s'] failure to satisfy his valid claim, [thus, he] is x x x entitled to attorney's fees of ten percent (10%) of the total award at its peso equivalent at the time of actual payment."

APPEARANCES OF COUNSEL

Constantino L. Reyes for petitioner.
Del Rosario & Del Rosario for repondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"Permanent disability refers to the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days."[1] On the other hand, "[p]ermanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness."[2]

This Petition for Review on *Certiorari* assails the January 17, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 96303 which dismissed the Petition for *Certiorari* filed by petitioner Carmelito N. Valenzona (petitioner). Also assailed is the February 28, 2007 Resolution[4] denying the motion for reconsideration.

Factual Antecedents

On May 5, 2001, respondent Fair Shipping Corporation, for and on behalf of its principal, respondent Sejin Lines Company Limited, hired petitioner as 2nd Assistant Engineer aboard its vessel M/V Morelos for a duration of nine months.[5] Before his

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[1] *Palisoc v. Easways Marine, Inc.*, G.R. No. 152273, September 11, 2007, 532 SCRA 585, 596-597.

[2] *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission*, 405 Phil. 487, 494 (2001).

[3] CA *rollo*, pp. 256-262; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison.

[4] *Id.* at 284-285.

[5] Contract of Employment, *id.* at 29.

embarkation on May 23, 2001,[6] he was declared medically "fit to work."[7]

However, while aboard the vessel on September 29, 2001, petitioner complained of chest pain.[8] He was thus brought to *Centro Medico Quirurgico Echauri* in Mexico where he was confined up to October 6, 2001 and diagnosed with "hypertensive crisis, high blood pressure."[9]

A day after his repatriation to the Philippines on October 8, 2001,[10] petitioner was examined by Dr. Nicomedes G. Cruz (Dr. Cruz), the company-designated physician who diagnosed his illness as hypertension.[11] Dr. Cruz continuously treated petitioner for six months, *i.e.*, from October 9, 2001 until April 25, 2002.[12]

On April 18, 2002, however, petitioner consulted another doctor, a certain Dr. Mapapala at the Jose Reyes Memorial Medical Center who diagnosed him with "Hypertensive Cardiovascular Disease".[13] Considering his prolonged sickness, petitioner, on April 18, 2002, through Atty. Anastacio P. Marcelo, wrote a letter[14] to respondents demanding payment of the balance of his sickness allowance and permanent disability benefits. However, same went unheeded.[15]

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[6] Petitioner's Position Paper, *id.* at 19. However, respondents averred that petitioner boarded the vessel on May 21, 2001; see Respondents' Position Paper, *id.* at 47.

[7] See Certification dated May 3, 2001 of Dr. Wilfredo Jose P. Arguelles, Jr., *id.* at 30.

[8] Petitioner's Position Paper, *id.* at 19-20.

[9] *Id.* at 37.

[10] Respondents' Position Paper, *id.* at 48.

[11] Respondents' Position Paper, *id.* at 48. See also Certifications of Dr. Nicomedes G. Cruz, *id.* at pp. 71 & 72.

[12] Respondents' Position Paper, *id.* at 48.

[13] *Id.* at 42.

[14] *Id.* at 44.

[15] Petitioner's Position Paper, *id.* at 20.

Thereafter, or on April 25, 2002, Dr. Cruz issued a certification declaring petitioner as fit to work.[16]

Unconvinced, on April 27, 2002, petitioner consulted Dr. Rodrigo F. Guanlao, an Internist-Cardiologist at the Philippine Heart Center who diagnosed him with "Ischemic heart disease, Hypertensive cardiovascular disease and congestive heart failure" and also declared him unfit to work in any capacity.[17]

Hence, petitioner filed a complaint for recovery of disability benefits, sickness allowance, attorney's fees and moral damages.[18]

Ruling of the Labor Arbiter

On January 31, 2003, the Labor Arbiter[19] rendered a Decision[20] the dispositive portion of which reads as follows:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered ordering the respondents *in solidum* to pay complainant in peso equivalent, the following amount:
>
> 1. ₱21,581.39 as the balance of his sickness allowance; and
> 2. US$809.00 his one (1) month pay as penalty.
>
> SO ORDERED.[21]

The Labor Arbiter awarded sickness allowance to petitioner equivalent to four months of his basic wage[22] pursuant to the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels[23] (or the

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[16] See Certification of Dr. Nicomedes G. Cruz dated April 25, 2002, *id.* at 72.

[17] *Id.* at 43.

[18] Petitioner's Position Paper, *id.* at 17.

[19] Labor Arbiter Melquiades Sol D. Del Rosario.

[20] CA *rollo*, pp. 146-156.

[21] *Id.* at 156.

[22] US$809.00; see Contract of Employment, *id.* at 29.

[23] Particularly Section 20B thereof; see Decision of the Labor Arbiter, *id.* at 150.

POEA's[24] Standard Employment Contract) and petitioner's Collective Bargaining Agreement (CBA).[25] Records however showed that petitioner already received partial payment of his sickness allowance, hence he is entitled only to the remaining balance of ₱21,581.39.[26]

Anent petitioner's claim for disability benefits, the Labor Arbiter opined that he is not entitled thereto because under the CBA, said benefits can be claimed only for disability resulting from accidents and not due to illness.[27] The Labor Arbiter also held that even under the POEA Standard Employment Contract, particularly Section 20, paragraph B thereof, petitioner is not entitled to disability benefits since he was declared fit to work by the company-designated physician. Corollarily, the Labor Arbiter found the assessment of Dr. Cruz deserving of more credence than the assessments of the private physicians consulted by petitioner because the former treated petitioner more extensively.[28] Nonetheless, the Labor Arbiter noted that respondents failed to deploy petitioner even after he was declared fit to work; thus, the respondents were ordered to pay petitioner his one-month salary as penalty therefor.[29]

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[24] Philippine Overseas Employment Administration.

[25] Petitioner is a union-member of AMOSUP (Associated Marine Officers and Seaman's Union of the Philippines) which had an existing Collective Bargaining Agreement with the Japan's Seaman's Union (JSU); see Decision of the Labor Arbiter, CA *rollo*, p. 147; see also petitioner's Notice of Appeal with Memorandum of Appeal, *id.* at 159.

[26] Decision of the Labor Arbiter, *id.* at 151.

[27] Decision of the Labor Arbiter, *id.* at 152-153. The CBA provision reads: "Sec. I: A seafarer who suffers permanent disability as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's willful act, whilst in the employment of the Company including accidents occurring while travelling to or from the Ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay be entitled to compensation according to the provisions of this agreement. The copy/ies of the medical certificate and other relevant medical reports shall be made available by the Company to the seafarer." *Id.* at 206.

[28] Decision of the Labor Arbiter, *id.* at 154-156.

[29] Decision of the Labor Arbiter, *id.* at 156.

Ruling of the National Labor Relations Commission (NLRC)

Both parties filed their appeal to the NLRC. On May 26, 2006, the NLRC rendered its Decision[30] the dispositive portion of which reads:

> WHEREFORE, complainant's appeal is dismissed for lack of merit. On the other hand, respondents' appeal is granted. The Labor Arbiter's award of ₱21,581.39 by way of balance of the sickness allowance is deleted as the same had been extinguished by payment, while the award of US$809.00 as a penalty is set aside for lack of factual and legal basis.
>
> SO ORDERED.[31]

The NLRC affirmed the findings of the Labor Arbiter that petitioner is not entitled to disability benefits because the CBA provision awarding the same refers to permanent disability suffered by the seafarer resulting from an accident and not from an illness.[32] As such, the NLRC found as irrelevant the issue of whether the company-designated physician's assessment of petitioner's disability deserves credence.[33]

As regards the sickness allowance, the NLRC noted that during the pendency of the case, respondents had already paid the remaining amount of ₱21,581.39. Consequently, respondents' obligation to pay the same had been extinguished.[34]

Anent the amount of US$809.00 imposed upon the respondents as penalty for their failure to re-deploy petitioner, the NLRC ruled that the same is without factual and legal basis. The NLRC held that petitioner is a contractual employee;

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[30] *Id.* at 209-216; penned by Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr. and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

[31] *Id.* at 215-216.

[32] *Id.* at 213-214.

[33] *Id.* at 214.

[34] *Id.* at 215.

consequently, after the expiration of his contract, the respondents were not duty-bound to deploy him absent a new contract.[35]

Petitioner filed a motion for reconsideration[36] but same was denied in the Resolution[37] dated July 31, 2006. Petitioner thus filed a Petition for *Certiorari*[38] with the CA.

Ruling of the Court of Appeals

On January 17, 2007, the CA rendered its Decision[39] denying the petition and affirming the Decision of the NLRC. The CA concurred with the findings of the Labor Arbiter and the NLRC that petitioner is not entitled to disability benefits under the CBA as the same referred to disabilities caused by accidents and not by illness.[40] The CA further ruled that even under the POEA Standard Employment Contract, petitioner is still not entitled to disability benefits because he was declared fit to work by the company-designated physician.[41] The CA found the evaluation of Dr. Cruz more accurate since he treated petitioner for more than six months[42] whereas the physicians consulted by petitioner examined him for only one day.

The dispositive portion of the CA Decision reads:

WHEREFORE, the petition is DENIED DUE COURSE. The decision of the NLRC is AFFIRMED.[43]

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[35] *Id.*

[36] *Id.* at 217-221.

[37] *Id.* at 223-225.

[38] Erroneously captioned as Petition for Review on *Certiorari*, *id.* at 2-16.

[39] *Id.* at 256-262.

[40] *Id.* at 259.

[41] *Id.* at 259-261, citing *Sarocam v. Inter-Orient Maritime Enterprises,* G.R. No. 167813, June 27, 2006, 493 SCRA 502.

[42] *Id.* at 261.

[43] *Id.*

Petitioner moved for reconsideration[44] but same was denied in the Resolution[45] dated February 28, 2007.

Hence, this Petition.

Issue

The main issue raised by both parties is whether petitioner is entitled to receive permanent disability benefits as well as attorney's fees.

The parties' arguments.

Petitioner insists that he is entitled to permanent disability benefits because he was declared unfit to work by his private physicians who are expert cardiologist *vis-à-vis* Dr. Cruz who is a general and cancer specialist.[46] More significantly, he claims that the assessment of Dr. Cruz that he is fit to work was issued after the lapse of 120 days from the date of his repatriation, as such his disability is considered total and permanent.[47]

On the other hand, respondents argue that petitioner is not entitled to receive permanent disability benefits because he was assessed fit to work by the company-designated physician[48] whose evaluation is more accurate because he treated petitioner for more than six months.[49] Respondents also claim that the mere fact that he was unable to work for more than 120 days does not automatically entitle him to total permanent disability benefits.[50] They argue that the duration of disability is not relevant for purposes of determining disability benefits[51] and

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[44] *Id.* at 264-270.

[45] *Id.* at 284-285.

[46] *Rollo*, p. 213.

[47] *Id.* at 224-225.

[48] *Id.* at 156-157.

[49] *Id.* at 161-162, 166, 173.

[50] *Id.* at 177.

[51] *Id.* at 182.

that petitioner's degree of disability and amount of disability benefits should be based on the Schedule of Disability under Section 32 of the POEA contract[52] as assessed by the doctor and not by the mere lapse of 120 days.[53]

Our Ruling

The petition is meritorious.

Petitioner is entitled to permanent disability benefits.

a) The certification by the company-designated physician that petitioner is fit to work was issued after 199 days or more than 120 days from the time he was medically repatriated to the Philippines.

Petitioner's Employment Contract[54] specifically provides that the same shall be deemed an "integral part of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels" otherwise known as the POEA Standard Employment Contract. Section 20(B) of the POEA Standard Employment Contract provides:

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

xxx xxx xxx

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

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[52] *Id.* at 181.

[53] *Id.* at 186.

[54] CA *rollo*, p. 29.

The Labor Code's provision on permanent total disability applies with equal force to seafarers.[55] Article 192 (c) (1) of the Labor Code provides, *viz*;

> Art. 192. Permanent total disability. - x x x
>
> xxx xxx xxx
>
> **(c)** The following disabilities shall be deemed **total and permanent:**
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;
>
> xxx xxx xxx[56]

Thus, in *Quitoriano v. Jebsens Maritime, Inc.*,[57] we held that:

> Thus, Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x
>
> xxx xxx xxx
>
> There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:
>
> > Sec. 2. *Disability.* — (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule X of these Rules.
> >
> > **(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.**

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[55] *Palisoc v. Easways Marine, Inc.*, *supra* note 1 at 592-594.

[56] Emphasis supplied.

[57] G.R. No. 179868, January 21, 2010, 610 SCRA 529.

> (c) A disability is partial and permanent if as a result of the injury or sickness the employee suffers a permanent partial loss of the use of any part of his body.

In *Vicente v. ECC* (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):

> x x x the test of whether or not an employee suffers from 'permanent total disability' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job for more than 120 days and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability (which, in more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from 'permanent total disability' regardless of whether or not he loses the use of any part of his body.

A total disability does not require that the employee be absolutely disabled or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom *(Austria v. Court of Appeals*, G.R. No. 146636, Aug. 12, 2002, 387 SCRA 216, 221). On the other hand, a total disability is considered permanent if it lasts continuously for more than 120 days. Thus, in the very recent case of *Crystal Shipping, Inc. v. Natividad* (G.R. No. 134028, December 17, 1999, 321 SCRA 268, 270-271), we held:

> Permanent disability is inability of a worker to perform his job for more than 120 days, regardless of whether or not he lose[s] the use of any part of his body. x x x
>
> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[58]

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[58] *Id.* at 534-536. Emphasis supplied.

In *Quitoriano*, the seafarer therein was medically repatriated to the Philippines on May 30, 2001[59] and upon arrival, he underwent several tests at the Medical Center Manila under the care of Dr. Cruz, the company-designated physician,[60] who incidentally is the same Dr. Cruz who treated petitioner in the instant case. After a lapse of 169 days from his repatriation, or on November 16, 2001, Dr. Cruz declared the seafarer therein fit to work.[61] Unconvinced, the seafarer consulted an independent internist-cardiologist who diagnosed him as suffering from "hypertension cardiovascular disease and hyperlipidemia".[62] The seafarer thus demanded from the shipping company payment of his permanent disability benefits but he was rebuffed on the ground that he was declared fit to work by Dr. Cruz.[63] The seafarer thus filed a complaint to recover his permanent disability benefits and attorney's fees. The case eventually reached this Court raising the issue of whether the CA erred in not finding the disability of the seafarer as permanent and total and for not awarding him attorney's fees.[64] The Court ruled in favor of the seafarer holding that "**the fact that it was only on November 16, 2001 that the 'fit to work' certification was issued by Dr. Cruz or more than five months from the time petitioner was medically repatriated on May 30, 2001, petitioner's disability is considered permanent and total.**"[65]

The ruling in *Quitoriano* applies in the instant case. Similarly, petitioner herein was medically repatriated to the Philippines on October 8, 2001. However, it was only on April 25, 2002 or after a lapse of 199 days that Dr. Cruz issued a certification declaring him fit to work. Thus, we declare herein, just as we

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[59] *Id.* at 531.

[60] *Id.*

[61] *Id.*

[62] *Id.* at 532.

[63] *Id.*

[64] *Id.* at 534.

[65] *Id.* at 536. Emphasis supplied.

pronounced in *Quitoriano,* that petitioner's disability is considered ***permanent and total*** because the "fit to work" certification was issued by Dr. Cruz only on April 25, 2002, or more than 120 days after he was medically repatriated on October 8, 2001.

b) The company-designated physician's certification that petitioner is fit to work does not make him ineligible for permanent total disability benefits.

We find no merit in respondents' contention that the company-designated physician's assessment that petitioner is fit to work makes him ineligible to claim permanent disability benefits.[66] This issue has already been raised, and rebuffed, in *United Philippine Lines, Inc. v. Beseril*.[67] Petitioners therein argued that "the provisions on disability benefits operate only upon certification by the company-designated physician that the claiming seafarer is indeed disabled, hence, respondent is not eligible for an award of disability benefits as 'he was certified fit for sea duty after the conduct of the last medical examination'".[68] However, this line of argument was resoundingly rebuffed by the Court, thus:

But even in the absence of an official finding by the company-designated physicians that respondent is unfit for sea duty, respondent is deemed to have suffered permanent disability. Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. It is undisputed that from the time respondent suffered a heart attack on December 5, 1997, he was unable to work for more than 120 days, his cardiac rehabilitation and physical therapy having ended only on May 28, 1998.

That respondent was found to be 'fit to return to work' by Clinica Manila (where he underwent regular cardiac rehabilitation

[66] *Rollo*, pp. 156-157.

[67] G.R. No. 165934, April 12, 2006, 487 SCRA 248.

[68] *Id.* at 260.

program and physical therapy from January 15 to May 28, 1998 under UPL's account) on September 22, 1998 or a few months after his rehabilitation does not matter. x x x[69]

Considering the circumstances prevailing in the instant case, we likewise rule that *it does not matter* that the company-designated physician assessed petitioner as fit to work. It is undisputed that from the time petitioner was repatriated on October 8, 2001, he was unable to work for more than 120 days as he was only certified fit to work on April 25, 2002. Consequently, petitioner's disability is considered permanent and total.[70] In fact, from his repatriation until the filing of his petition before this Court on March 21, 2007,[71] or for more than five years, petitioner claims that he was unable to resume his job as a seaman[72] which thus strongly indicates that his disability is permanent and total. Also, we note that the certification was issued only after petitioner consulted a private physician (Dr. Mapapala) and after he formally demanded from the respondents, through his lawyer, the payment of his sickness allowance, disability benefits and attorney's fees.

Consequently, we find it irrelevant to discuss at this juncture as to which prognosis, that of Dr. Cruz or petitioner's private physicians', is more accurate.

The case of Sarocam v. Interorient Maritime Ent. Inc. is not in point.

The CA[73] erroneously applied *Sarocam v. Interorient Maritime Ent. Inc*.[74] in ruling that petitioner is no longer entitled to claim disability benefits since he was declared fit to work by Dr. Cruz. The factual circumstances in *Sarocam* completely differ from

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[69] *Id.* at 262. Emphasis supplied.

[70] *Quitoriano v. Jebsens Maritime, Inc., supra* note 57 at 536.

[71] *Rollo*, p. 3.

[72] *Id.* at 15.

[73] CA *rollo*, p. 261.

[74] G.R. No. 167813, June 27, 2006, 493 SCRA 502.

the instant case. In *Sarocam,* the seafarer therein was declared fit to work by the company-designated physician after a lapse of only 13 days from the date of his repatriation[75] hence way before the lapse of the 120-day mark. Moreover, the seafarer therein executed a release and quitclaim in favor of his employers acknowledging receipt of his sickness benefits wages and freeing his employers of any liability.[76]

The amount of permanent disability benefits.

In his Petition, petitioner claims for disability benefits in the amount of US$80,000.00 pursuant to the CBA.[77] In his Memorandum, however, he concedes that the CBA provision does not apply[78] and now claims for only US$60,000.00 as disability benefits pursuant to the POEA Standard Employment Contract.

Indeed, the CBA provision does not apply as the same refers to disability arising from accidents and not due to illness as in the case of petitioner. The pertinent CBA provision reads:

> Sec. I: A seafarer who suffers permanent disability **as a result of an accident**, regardless of fault but excluding injuries caused by a seafarer's willful act, whilst in the employment of the Company including accidents occurring while travelling to or from the Ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay be entitled to compensation according to the provisions of this agreement. The copy/ies of the medical certificate and other relevant medical reports shall be made available by the Company to the seafarer.[79]

On the other hand, the POEA Standard Employment Contract particularly Section 20(B) (6) thereof provides, to wit:

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[75] *Id.* at 506.

[76] *Id.*

[77] *Rollo*, p. 16.

[78] *Id.* at 225.

[79] CA *rollo*, p. 206. Emphasis supplied.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

In turn, Section 32 provides that for an impediment considered as total and permanent, a disability allowance of US$60,000.00 (US$50,000.00 x 120%) is granted. Therefore, considering our earlier discussion finding petitioner's disability as permanent and total, he is then entitled to receive disability benefits of US$60,000.00.

Petitioner is entitled to attorney's fees.

Petitioner alleges that he is entitled to attorney's fees pursuant to Article 2208 of the Civil Code because he was forced to litigate to recover his wages.[80] On the other hand, respondents argue that petitioner's claim for attorney's fees is without legal and factual basis.

We find for the petitioner. Circumstances show that he demanded from the respondents the payment of his disability benefits but the same went unheeded. Left with no other recourse, petitioner filed the instant case to recover what is rightfully his under the law. Plainly, he was "compelled to litigate due to respondent[s'] failure to satisfy his valid claim, [thus, he] is x x x entitled to attorney's fees of ten percent (10%) of the total award at its peso equivalent at the time of actual payment."[81]

WHEREFORE, the petition is *GRANTED*. The January 17, 2007 Decision of the Court of Appeals and its February 28, 2007 Resolution in CA-G.R. SP No. 96303 are *REVERSED* and *SET ASIDE*. Respondents are held jointly and severally liable to pay petitioner permanent and total disability benefits of US$60,000.00 and attorney's fees of ten percent (10%) of

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[80] *Rollo,* p. 225.

[81] *Quitoriano v. Jebsens Maritime, Inc., supra* note 57 at 537.

the total monetary award, both at its peso equivalent at the time of actual payment.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 179632. October 19, 2011]

SOUTHERN PHILIPPINES POWER CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION LAWS; NATIONAL INTERNAL REVENUE CODE (NIRC); TAX CREDIT; CRITERIA GOVERNING CLAIMS THEREFOR.— The Court reiterated in *San Roque Power Corporation v. Commissioner of Internal Revenue* the following criteria governing claims for refund or tax credit under Section 112(A) of the NIRC: (1) The taxpayer is VAT-registered; (2) The taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) The input taxes are due or paid; (4) The input taxes are not transitional input taxes; (5) The input taxes have not been applied against output taxes during and in the succeeding quarters; (6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (8) Where there

are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (9) The claim is filed within two years after the close of the taxable quarter when such sales were made.

2. ID.; ID.; ZERO-RATED TRANSACTION; INPUT TAX SUBJECT OF TAX REFUND IS EVIDENCED BY A VALUE ADDED TAX (VAT) INVOICE "OR" OFFICIAL RECEIPT ISSUED.— NIRC Section 110 (A.1) provides that the input tax subject of tax refund is to be evidenced by a VAT invoice **"or"** official receipt issued in accordance with Section 113. Section 113 has been amended by Republic Act (R.A.) 9337 but it is the unamended version that covers the period when the transactions in this case took place. It reads: Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons. – A. Invoicing Requirements. – A VAT-registered person shall, for every sale, issue an **invoice or receipt.** In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt: x x x The above does not distinguish between an invoice and a receipt when used as evidence of a zero-rated transaction. x x x Section 237 of the NIRC also makes no distinction between receipts and invoices as evidence of a commercial transaction: x x x The Court held in *Seaoil Petroleum Corporation v. Autocorp Group* that business forms like sales invoices are recognized in the commercial world as valid between the parties and serve as memorials of their business transactions. And such documents have probative value.

3. ID.; ID.; ID.; ID.; THE WORDS "ZERO-RATED," REQUIRED ONLY ON INVOICES, NOT ON OFFICIAL RECEIPTS.— The CTA also did not accept SPP's official receipts due to the absence of the words "zero-rated" on it. The omission, said that court, made the receipts non-compliant with RR 7-95, specifically Section 4.108.1. But Section 4.108.1 requires the printing of the words "zero-rated" only on invoices, not on official receipts: x x x Actually, it is R. A. 9337 that in 2005 required the printing of the words "zero-rated" on receipts. But, since the receipts and invoices in this case cover sales made from 1999 to 2000, what applies is Section 4.108.1

above which refers only to invoices. A claim for tax credit or refund, arising out of zero-rated transactions, is essentially based on excess payment. In zero-rating a transaction, the purpose is not to benefit the person legally liable to pay the tax, like SPP, but to relieve exempt entities like NPC which supplies electricity to factories, offices, and homes, from having to shoulder the tax burden that ultimately would be passed to the public. The principle of *solutio indebiti* should govern this case since the BIR received something that it was not entitled to. Thus, it has to return the same. The government should not use technicalities to hold on to money that does not belong to it. Only a preponderance of evidence is needed to grant a claim for tax refund based on excess payment.

APPEARANCES OF COUNSEL

Balmeo and Go Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

The case is about the sufficiency of sales invoices and receipts, which do not have the words "zero-rated" imprinted on them, to evidence zero-rated transactions, a requirement in taxpayer's claim for tax credit or refund.

The Facts and the Case

Petitioner Southern Philippines Power Corporation (SPP), a power company that generates and sells electricity to the National Power Corporation (NPC), applied with the Bureau of Internal Revenue (BIR) for zero-rating of its transactions under Section 108(B)(3) of the National Internal Revenue Code (NIRC). The BIR approved the application for taxable years 1999 and 2000.

On June 20, 2000 SPP filed a claim with respondent Commissioner of Internal Revenue (CIR) for a ₱5,083,371.57 tax credit or refund for 1999. On July 13, 2001 SPP filed a

second claim of ₱6,221,078.44 in tax credit or refund for 2000. The amounts represented unutilized input VAT attributable to SPP's zero-rated sale of electricity to NPC.

On September 29, 2001, before the lapse of the two-year prescriptive period for such actions, SPP filed with the Court of Tax Appeals (CTA) Second Division a petition for review covering its claims for refund or tax credit. The petition claimed only the aggregate amount of ₱8,636,126.75 which covered the last two quarters of 1999 and the four quarters in 2000.

In his Comment on the petition, the CIR maintained that SPP is not entitled to tax credit or refund since (a) the BIR was still examining SPP's claims for the same; (b) SPP failed to substantiate its payment of input VAT; (c) its right to claim refund already prescribed, and (d) SPP has not shown compliance with Section 204(c) in relation to Section 229 of the NIRC as amended and Revenue Regulation (RR) 5-87 as amended by RR 3-88.

In a Decision dated April 26, 2006, the Second Division[1] denied SPP's claims, holding that its zero-rated official receipts did not correspond to the quarterly VAT returns, bearing a difference of ₱800,107,956.61. Those receipts only support the amount of ₱118,945,643.88. Further, these receipts do not bear the words "zero-rated" in violation of RR 7-95. The Second Division denied SPP's motion for reconsideration on August 15, 2006.

On appeal, the CTA *En Banc* affirmed the Second Division's decision dated July 31, 2007.[2] The CTA *En Banc* rejected SPP's contention that its sales invoices reflected the words "zero-rated,"

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr. with the concurrence of Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez, *rollo*, pp. 115-127.

[2] Penned by Associate Justice Lovell R. Bautista with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez. Presiding Justice Ernesto D. Accosta dissented, *id*. at 77-101.

pointing out that it is on the official receipts that the law requires the printing of such words. Moreover, SPP did not report in the corresponding quarterly VAT return the sales subject of its zero-rated receipts. The CTA *En Banc* denied SPP's motion for reconsideration on September 19, 2007.

The Issues Presented

The case presents the following issues:

1. Whether or not the CTA *En Banc* correctly rejected the invoices that SPP presented and, thus, ruled that it failed to prove the zero-rated or effectively zero-rated sales that it made;

2. Whether or not the CTA *En Banc* correctly ruled that the words "BIR-VAT Zero Rate Application Number 419.2000" imprinted on SPP's invoices did not comply with RR 7-95;

3. Whether or not the CTA *En Banc* correctly held that SPP should have declared its zero-rated sales in its VAT returns for the subject period of the claim; and

4. Whether or not the CTA *En Banc* correctly ruled that SPP was not entitled to a tax refund or credit.

The Court's Rulings

One and Two. The Court reiterated in *San Roque Power Corporation v. Commissioner of Internal Revenue*[3] the following criteria governing claims for refund or tax credit under Section 112(A) of the NIRC:

(1) The taxpayer is VAT-registered;

(2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;

(3) The input taxes are due or paid;

(4) The input taxes are not transitional input taxes;

(5) The input taxes have not been applied against output taxes during and in the succeeding quarters;

[3] G.R. No. 180345, November 25, 2009, 605 SCRA 536, 555.

(6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

(7) For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

(8) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

(9) The claim is filed within two years after the close of the taxable quarter when such sales were made.

While acknowledging that SPP's sale of electricity to NPC is a zero-rated transaction,[4] the CTA *En Banc* ruled that SPP failed to establish that it made zero-rated sales. True, SPP submitted official receipts and sales invoices stamped with the words "BIR VAT Zero-Rate Application Number 419.2000" but the CTA *En Banc* held that these were not sufficient to prove the fact of sale.

But NIRC Section 110 (A.1) provides that the input tax subject of tax refund is to be evidenced by a VAT invoice **"or"** official receipt issued in accordance with Section 113. Section 113 has been amended by Republic Act (R.A.) 9337 but it is the unamended version that covers the period when the transactions in this case took place. It reads:

Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –

A. Invoicing Requirements. – A VAT-registered person shall, for every sale, issue an **invoice or receipt**. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

[4] As provided in Section 108(B)(3) of the NIRC, as amended, and in Republic Act 6395, also known as "*An Act Revising the Charter of the National Power Corporation*."

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. (Emphasis supplied)

The above does not distinguish between an invoice and a receipt when used as evidence of a zero-rated transaction. Consequently, the CTA should have accepted either or both of these documents as evidence of SPP's zero-rated transactions.

Section 237 of the NIRC also makes no distinction between receipts and invoices as evidence of a commercial transaction:

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.*— All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, **issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service**: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section. (Emphasis supplied)

The Court held in *Seaoil Petroleum Corporation v. Autocorp Group*[5] that business forms like sales invoices are recognized in the commercial world as valid between the parties and serve as memorials of their business transactions. And such documents have probative value.

Three. The CTA also did not accept SPP's official receipts due to the absence of the words "zero-rated" on it. The omission, said that court, made the receipts non-compliant with RR 7-95, specifically Section 4.108.1. But Section 4.108.1 requires the printing of the words "zero-rated" only on invoices, not on official receipts:

Section 4.108-1. Invoicing Requirements. — All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. The name, TIN and address of seller;

2. Date of transaction;

3. Quantity, unit cost and description of merchandise or nature of service;

4. The name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;

5. **The word "zero-rated" imprinted on the invoice covering zero-rated sales;** and

6. The invoice value or consideration.

x x x x (Emphasis supplied)

Actually, it is R.A. 9337 that in 2005 required the printing of the words "zero-rated" on receipts. But, since the receipts and invoices in this case cover sales made from 1999 to 2000,

[5] G.R. No. 164326, October 17, 2008, 569 SCRA 387, 395-396.

what applies is Section 4.108.1 above which refers only to invoices.

A claim for tax credit or refund, arising out of zero-rated transactions, is essentially based on excess payment. In zero-rating a transaction, the purpose is not to benefit the person legally liable to pay the tax, like SPP, but to relieve exempt entities like NPC which supplies electricity to factories, offices, and homes, from having to shoulder the tax burden that ultimately would be passed to the public.

The principle of *solutio indebiti* should govern this case since the BIR received something that it was not entitled to. Thus, it has to return the same. The government should not use technicalities to hold on to money that does not belong to it.[6] Only a preponderance of evidence is needed to grant a claim for tax refund based on excess payment.[7]

Notably, SPP does no other business except sell the power it produces to NPC, a fact that the CIR did not contest in the parties' joint stipulation of facts.[8] Consequently, the likelihood that SPP would claim input taxes paid on purchases attributed to sales that are not zero-rated is close to nil.

Four. The Court finds that SPP failed to indicate its zero-rated sales in its VAT returns. But this is not sufficient reason to deny it its claim for tax credit or refund when there are other documents from which the CTA can determine the veracity of SPP's claim.

Of course, such failure if partaking of a criminal act under Section 255 of the NIRC could warrant the criminal prosecution of the responsible person or persons. But the omission does

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[6] *State Land Investment Corporation v. Commissioner of Internal Revenue*, G.R. No. 171956, January 18, 2008, 542 SCRA 114, 123.

[7] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008, 565 SCRA 154, 166.

[8] *Rollo*, p. 113.

not furnish ground for the outright denial of the claim for tax credit or refund if such claim is in fact justified.

Five. The CTA denied SPP's claim outright for failure to establish the existence of zero-rated sales, disregarding SPP's sales invoices and receipts which evidence them. That court did not delve into the question of SPP's compliance with the other requisites provided under Section 112 of the NIRC.

Consequently, even as the Court holds that SPP's sales invoices and receipts would be sufficient to prove its zero-rated transactions, the case has to be remanded to the CTA for determination of whether or not SPP has complied with the other requisites mentioned. Such matter involves questions of fact and entails the need to examine the records. The Court is not a trier of facts and the competence needed for examining the relevant accounting books or records is undoubtedly with the CTA.

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the Court of Tax Appeals *En Banc* decision dated July 31, 2007 and resolution dated September 19, 2007, and *REMANDS* the case to the Court of Tax Appeals Second Division for further hearing as stated above.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 183830. October 19, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DELFIN CALISO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; THERE CAN BE NO CONVICTION WITHOUT PROOF OF IDENTITY OF THE CRIMINAL BEYOND REASONABLE DOUBT.— In every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the Prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.

2. ID.; ID.; ID.; THE IDENTIFICATION OF A MALEFACTOR, TO BE POSITIVE AND SUFFICIENT FOR CONVICTION, DOES NOT ALWAYS REQUIRE DIRECT EVIDENCE FROM AN EYEWITNESS; POSITIVE IDENTIFICATION, TWO TYPES.— The identification of a malefactor, to be positive and sufficient for conviction, does not always require direct evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused. Thus, the Court has distinguished two types of positive identification in *People v. Gallarde*, to wit: (*a*) that by direct evidence, through an eyewitness to the very commission of the act; and (*b*) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. x x x.

3. ID.; ID.; ID.; MORAL CERTAINTY IS REQUIRED IN ESTABLISHING THE IDENTITY OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME; THE TEST TO

DETERMINE THE MORAL CERTAINTY OF AN IDENTIFICATION IS ITS IMPERVIOUSNESS TO SKEPTICISM ON ACCOUNT OF ITS DISTINCTIVENESS.— Amegable asserted that she was familiar with Caliso because she had seen him pass by in her *barangay* several times prior to the killing. Such assertion indicates that she was obviously *assuming* that the killer was no other than Caliso. As matters stand, therefore, Caliso's conviction hangs by a single thread of evidence, the direct evidence of Amegable's identification of him as the perpetrator of the killing. But that single thread was thin, and cannot stand sincere scrutiny. In every criminal prosecution, no less than moral certainty is required in establishing the identity of the accused as the perpetrator of the crime. Her identification of Caliso as the perpetrator did not have unassailable reliability, the only means by which it might be said to be positive and sufficient. The test to determine the moral certainty of an identification is its imperviousness to skepticism on account of its distinctiveness. To achieve such distinctiveness, the identification evidence should encompass *unique* physical features or characteristics, like the face, the voice, the dentures, the distinguishing marks or tattoos on the body, fingerprints, DNA, or any other physical facts that set the individual apart from the rest of humanity.

4. ID.; ID.; ID.; A WITNESS' FAMILIARITY WITH THE ACCUSED, ALTHOUGH ACCEPTED AS BASIS FOR A POSITIVE IDENTIFICATION, DOES NOT ALWAYS PASS THE TEST OF MORAL CERTAINTY DUE TO THE POSSIBILITY OF MISTAKE; AN IDENTIFICATION THAT DOES NOT PRECLUDE A REASONABLE POSSIBILITY OF MISTAKE CANNOT BE ACCORDED ANY EVIDENTIARY FORCE.— A witness' familiarity with the accused, although accepted as basis for a positive identification, does not always pass the test of moral certainty due to the possibility of mistake. No matter how honest Amegable's testimony might have been, her identification of Caliso by a sheer look at his back for a few minutes could not be regarded as positive enough to generate that moral certainty about Caliso being the perpetrator of the killing, absent other reliable circumstances showing him to be AAA's killer. Her identification of him in that manner lacked the qualities of

exclusivity and uniqueness, even as it did not rule out her being mistaken. Indeed, there could be *so many* other individuals in the community where the crime was committed whose backs might have looked like Caliso's back. Moreover, many factors could have influenced her perception, including her lack of keenness of observation, her emotional stress of the moment, her proneness to suggestion from others, her excitement, and her tendency to assume. The extent of such factors are not part of the records; hence, the trial court and the CA could not have taken them into consideration. But the influence of such varied factors could not simply be ignored or taken for granted, for it is even a well-known phenomenon that the members of the same family, whose familiarity with one another could be easily granted, often inaccurately identify one another through a sheer view of another's back. Certainly, an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force.

5. ID.; ID.; ID.; LACK OF BAD FAITH OR ILL MOTIVE ON THE PART OF THE WITNESS TO IMPUTE THE KILLING TO THE ACCUSED DOES NOT GUARANTEE THE RELIABILITY AND ACCURACY OF HER IDENTIFICATION OF HIM.— Nor did the lack of bad faith or ill motive on the part of Amegable to impute the killing to Caliso guarantee the reliability and accuracy of her identification of him. The dearth of competent additional evidence that eliminated the possibility of any human error in Amegable's identification of Caliso rendered her lack of bad faith or ill motive irrelevant and immaterial, for even the most sincere person could easily be mistaken about her impressions of persons involved in startling occurrences such as the crime committed against AAA. It is neither fair nor judicious, therefore, to have the lack of bad faith or ill motive on the part of Amegable raise her identification to the level of moral certainty.

6. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; ABSENT PROOF BEYOND REASONABLE DOUBT AS TO THE IDENTITY OF THE CULPRIT, THE ACCUSED'S RIGHT TO BE PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVED IS NOT OVERCOME, AND HE IS ENTITLED TO AN ACQUITTAL, THOUGH HIS INNOCENCE MAY BE

DOUBTED.— In the absence of proof beyond reasonable doubt as to the identity of the culprit, the accused's constitutional right to be presumed innocent until the contrary is proved is not overcome, and he is entitled to an acquittal, though his innocence may be doubted. The constitutional presumption of innocence guaranteed to every individual is of primary importance, and the conviction of the accused must rest not on the weakness of the defense he put up but on the strength of the evidence for the Prosecution.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

The decisive question that seeks an answer is whether the identification of the perpetrator of the crime by an eyewitness who did not get a look at the face of the perpetrator was reliable and positive enough to support the conviction of appellant Delfin Caliso (Caliso).

Caliso was arraigned and tried for *rape with homicide*, but the Regional Trial Court (RTC), Branch 21, in Kapatagan, Lanao del Norte found him guilty of *murder* for the killing of AAA,[1] a mentally-retarded 16-year old girl, and sentenced him to death in its decision dated August 19, 2002.[2] The appeal of the conviction was brought automatically to the Court. On June 28, 2005,[3] the Court transferred the records to the Court of Appeals (CA) for

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[1] The real name of the victim and her immediate family are withheld per R.A. No. 7610 and R.A. No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*) and its implementing rules. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] Records, pp, 174-191.

[3] CA *rollo*, p. 122.

intermediate review pursuant to the ruling in *People v. Mateo*.[4] On October 26, 2007,[5] the CA, although affirming the conviction, reduced the penalty to *reclusion perpetua* and modified the civil awards. Now, Caliso is before us in a final bid to overturn his conviction.

Antecedents

The information dated August 5, 1997 charged Caliso with *rape with homicide* perpetrated in the following manner:

> That on or about the 5th day of June, 1997, at Kapatagan, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge upon one AAA, who is a minor of 16 years old and a mentally retarded girl, against her will and consent; that on the occasion of said rape and in furtherance of the accused's criminal designs, did then and there willfully, unlawfully and feloniously, with intent to kill, and taking advantage of superior strength, attack, assault and use personal violence upon said AAA by mauling her, pulling her towards a muddy water and submerging her underneath, which caused the death of said AAA soon thereafter.
>
> CONTRARY to and in VIOLATION of Article 335 of the Revised Penal Code in relation to R.A. 7659, otherwise known as the "Heinous Crimes Law".[6]

At his arraignment on November 12, 1997,[7] Caliso pleaded *not guilty* to the charge.

The records show that AAA died on June 5, 1997 at around 11:00 *am* in the river located in *Barangay* Tiacongan, Kapatagan, Lanao Del Norte; that the immediate cause of her death was

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[4] G.R. Nos. 147678-87, July 7, 2004,433 SCRA 640.

[5] CA *rollo*, pp. 125-133; penned by Associate Justice Michael P. Elbinias, with Associate Justice Teresita Dy-Liacco Flores (retired) and Associate Justice Rodrigo F. Lim concurring.

[6] Records, p. 1.

[7] *Id.*, p. 25.

asphyxia, secondary to drowning due to smothering; that the lone eyewitness, 34-year old Soledad Amegable (Amegable), had been clearing her farm when she heard the anguished cries of a girl pleading for mercy: *Please stop noy, it is painful noy!;*[8] that the cries came from an area with lush bamboo growth that made it difficult for Amegable to see what was going on; that Amegable subsequently heard sounds of beating and mauling that soon ended the girl's cries; that Amegable then proceeded to get a better glimpse of what was happening, hiding behind a cluster of banana trees in order not to be seen, and from there she saw a man wearing gray short pants bearing the number "11" mark, who dragged a girl's limp body into the river, where he submerged the girl into the knee-high muddy water and stood over her body; that he later lifted the limp body and tossed it to deeper water; that he next jumped into the other side of the river; that in that whole time, Amegable could not have a look at his face because he always had his back turned towards her;[9] that she nonetheless insisted that the man was Caliso, whose physical features she was familiar with due to having seen him pass by their *barangay* several times prior to the incident;[10] that after the man fled the crime scene, Amegable went straight to her house and told her husband what she had witnessed; and that her husband instantly reported the incident to the *barangay* chairman.

It appears that one SPO3 Romulo R. Pancipanci declared in an affidavit[11] that upon his station receiving the incident report on AAA's death at about 12:45 *pm* of June 5, 1997, he and two other officers proceeded to the crime scene to investigate; that he interviewed Amegable who identified the killer by his physical features and clothing (short pants); that based on such information, he traced Caliso as AAA's killer; and that Caliso gave an extrajudicial admission of the killing of AAA. However, the

[8] TSN, July 8, 1998, p. 4.

[9] TSN, September 2, 1998, p. 11.

[10] *Id*, p. 3.

[11] Records, p. 3.

declarations in the affidavit remained worthless because the Prosecution did not present SPO3 Pancipanci as its witness.

Leo Bering, the *barangay* chairman of San Vicente, Kapatagan, Lanao Del Norte, attested that on the occasion of Caliso's arrest and his custodial interrogation, he heard Caliso admit to the investigating police officer the ownership of the short pants recovered from the crime scene; that the admission was the reason why SPO3 Pancipanci arrested Caliso from among the curious onlookers that had gathered in the area; that Amegable, who saw SPO3 Pancipanci's arrest of Caliso at the crime scene, surmised that Caliso had gone home and returned to the crime scene thereafter.[12]

Municipal Health Officer Dr. Joseph G.B. Fuentecilla conducted the post-mortem examination on the body of AAA on June 6, 1997, and found the following injuries, to wit:

EXTERNAL FINDINGS:

1. The dead body was generally pale wearing a heavily soiled old sleeveless shirt and garter skirts.
2. The body was wet and heavily soiled with mud both nostrils and mouth was filled with mud.
3. The skin of hands and feet is bleached and corrugated in appearance.
4. 2 cm. linear lacerated wound on the left cheek (sic).
5. Multiple small (sic) reddish contusions on anterior neck area.
6. Circular hematoma formation 3 inches in diameter epigastric area of abdomen.
7. Four erythematus linear abrasion of the left cheek (sic).
8. Presence of a 6x8 inches bulge on the back just below the inferior angle of both scapula extending downwards.

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[12] TSN, September 2, 1998, p. 12.

9. The body was wearing an improperly placed underwear with the garter vertically oriented to the right stained with moderate amount of yellowish fecal material.

10. Minimal amount of pubic hair in the lower pubis with labia majora contracted and retracted.

11. There's no swelling abrasion, laceration, blood hematoma formation in the vulva. There were old healed hymenal lacerations at 5 and 9 o'clock position.

12. Vaginal canal admits one finger with no foreign body recovered (sic).

13. Oval shaped contusion/hematoma 6 cm at its greatest diameter anterior surface middle 3rd left thigh.

14. Presence of 2 contusion laceration 1x0.5 cm in size medial aspect left knee.[13]

Dr. Fuentecilla also conducted a physical examination on the body of Caliso and summed up his findings thusly:

P.E. FINDINGS:

1. Presence of a 7x0.1 cm. horizontally averted linear erythematus contusion left side of neck (Post ▲).

2. 8x0.2 cm. reddish linear abrasion (probably a scratch mark) from the left midclavicular line extending to the left anterioraxillary line.

3. Presence of 2 erythematus abrasion 3 cmx0.1 cm in average size dorsal surface (probably a scratch mark) middle 3rd left arm.

4. 2.5 cm. abrasion dorsal surface middle and right forearm.

5. Presence of a linear erythematus contusion (probably a scratch mark) 2x7 cm. in average size lateral boarder of scapula extending to left posterior axillary line.

6. Presence of 2 oblique oriented erythematus contusion (probably a scratch mark) 14x022 cm. and 5x0.2 cm. in size respectively at the upper left flank of the lower back extending downward to the midline.

[13] Records, p. 73.

7. Presence of 5 linear reddish pressure contusion parallel to each other with an average 5 cm left flank area.[14]

In his defense, Caliso denied the accusation and interposed an alibi, insisting that on the day of the killing, he plowed the rice field of Alac Yangyang from 7:00 *am* until 4:00 *pm*.

Yangyang corroborated Caliso's alibi, recalling that Caliso had plowed his rice field from 8 *am* to 4 *pm* of June 5, 1997. He further recalled that Caliso was in his farm around 12:00 noon because he brought lunch to Caliso. He conceded, however, that he was not aware where Caliso was at the time of the killing.

Ruling of the RTC

After trial, the RTC rendered its judgment on August 19, 2002, *viz*:

WHEREFORE, in view of the foregoing considerations, accused DELFIN CALISO is hereby sentenced to death and to indemnify the heirs of AAA in the amount of ₱50,000.00. The accused is also hereby ordered to pay the said heirs the amount of ₱50, 000.00 as exemplary damages.

SO ORDERED.[15]

The RTC found that rape could not be complexed with the killing of AAA because the old-healed hymenal lacerations of AAA and the fact that the victim's underwear had been irregularly placed could not establish the commission of carnal knowledge; that the examining physician also found no physical signs of rape on the body of AAA; and that as to the killing of AAA, the identification by Amegable that the man she had seen submerging AAA in the murky river was no other than Caliso himself was reliable.

Nevertheless, the RTC did not take into consideration the testimony of Bering on Caliso's extrajudicial admission of the ownership of the short pants because the pants were not presented

[14] *Id.*, p. 74.

[15] *Id.*, p. 191.

as evidence and because the police officers involved did not testify about the pants in court.[16] The RTC cited the qualifying circumstance of abuse of superior strength to raise the crime from homicide to murder, regarding the word *homicide* in the information to be used in its generic sense as to include all types of killing.

Ruling of the CA

On intermediate review, the following errors were raised in the brief for the accused-appellant,[17] namely:

> i. The court *a quo* gravely erred in convicting the accused-appellant of the crime of murder despite the failure of the prosecution to prove his guilt beyond reasonable doubt;
>
> ii. The court *a quo* gravely erred in giving weight and credence to the incredible and inconsistent testimony of the prosecution witnesses.
>
> iii. The court *a quo* gravely erred in appreciating the qualifying aggravating circumstance of taking advantage of superior strength and the generic aggravating circumstance of disregard of sex[; and]
>
> iv. The court *a quo* gravely erred in imposing the death penalty.

As stated, the CA affirmed Caliso's conviction for murder based on the same ratiocinations the RTC had rendered. The CA also relied on the identification by Amegable of Caliso, despite his back being turned towards her during the commission of the crime. The CA ruled that she made a positive identification of Caliso as the perpetrator of the killing, observing that the incident happened at noon when the sun had been at its brightest, coupled with the fact that Amegable's view had not been obstructed by any object at the time that AAA's body had been submerged in the water; that the RTC expressly found her testimony as clear and straightforward and worthy of credence; that no reason existed why Amegable would falsely testify against Caliso; that Caliso did not prove the physical impossibility for him to be at the crime scene or at its immediate vicinity at the

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[16] *Id.*, p. 186.

[17] CA *rollo*, pp. 54-68.

time of the incident, for both *Barangay* San Vicente, where AAA's body was found, and *Barangay* Tiacongan, where the rice field of Yangyang was located, were contiguous; that the attendant circumstance of abuse of superior strength qualified the killing of AAA to murder; that disregard of sex should not have been appreciated as an aggravating circumstance due to its not being alleged in the information and its not being proven during trial; and that the death penalty could not be imposed because of the passage of Republic Act No. 9346, prohibiting its imposition in the Philippines.

The CA decreed in its judgment, *viz*:

> WHEREFORE, the Decision of the Regional Trial Court dated August 19, 2002, finding appellant guilty of Murder, is hereby AFFIRMED with the MODIFICATION that appellant Delfin Caliso is sentenced to *reclusion perpetua*, and is directed to pay the victim's heirs the amount of ₱50,000.00 as moral damages, as well as the amount of ₱25,000.00 as exemplary damages, in addition to the civil indemnity of ₱50,000.00 he had been adjudged to pay by the trial court.
>
> SO ORDERED.[18]

Issue

The primordial issue is whether Amegable's identification of Caliso as the man who killed AAA at noon of July 5, 1997 was positive and reliable.

Ruling

The appeal is meritorious.

In every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the Prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.[19]

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[18] *Id.*, p. 133.

[19] *People v. Pineda*, G.R. No. 141644, May 27, 2004, 429 SCRA 478; *People v. Esmale*, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578;

The CA rejected the challenge Caliso mounted against the reliability of his identification as the culprit by Amegable in the following manner:[20]

As to the first two errors raised, appellant contends that the testimony of Soledad Amegable was replete with discrepancies. Appellant avers, for instance, that Soledad failed to see the assailant's face. Moreover, considering the distance between where Soledad was supposedly hiding and where the incident transpired, appellant states that it was inconceivable for her to have heard and seen the incident. According to appellant, witness Soledad could not even remember if at that time, she hid behind a banana plant, or a coconut tree.

At bench, the incident happened at noon, when the sun was at its brightest. Soledad could very well recognize appellant. Furthermore, notwithstanding the fact that it was his back that was facing her, she asserted being familiar with the physical features of appellant, considering that he frequented their *barangay*. Even during her cross-examination by the defense counsel, Soledad remained steadfast in categorically stating that she recognized appellant:

Q: Mrs. Amegable, you said during your direct examination that you saw Delfin Caliso, the accused in this case, several times passed by your barangay, am I correct?

A: Several times.

Q: By any chance prior to the incident, did you talk to him?

A: No, sir.

Q: Are you acquainted with him?

A: Yes, sir.

Q: Even if he is in his back position?

A: Yes, sir. (Emphasis Supplied)

Given the circumstances as stated above, it was even probable that Soledad caught glimpses of the profile of the appellant at the time of the incident. She related, in addition, that when the victim was being submerged in the water, there was no object obstructing her view.

Tuason v. Court of Appeals, G.R. Nos. 113779-80, February 23, 1995, 241 SCRA 695.

[20] CA *rollo*, pp. 129-130.

The inconsistencies as alleged by appellant, between Soledad Amegable's declaration in court and her affidavit, such as the tree or plant from where she was hiding behind at the time of the incident, are insignificant and cannot negate appellant's criminal liability. Her whole attention was riveted to the incident that was unfolding before her. Besides, any such inconsistencies are minor. Slight contradictions are indicative of an unrehearsed testimony and could even serve to strengthen the witness' credibility. A witness who is telling the truth is not always expected to give a perfectly concise testimony, considering the lapse of time and the treachery of human memory.

In fact, the testimony of a single eye-witness is sufficient to support a conviction, so long as such testimony is found to be clear and straightforward and worthy of credence by the trial court. Furthermore, over here, witness Soledad had no reason to testify falsely against appellant.

Besides, 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 to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court.

Contrary to the CA's holding that the identification of Caliso based on Amegable's recognition of him was reliable, the Court considers the identification not reliable and beyond doubt as to meet the requirement of moral certainty.

When is identification of the perpetrator of a crime positive and reliable enough for establishing his guilt beyond reasonable doubt?

The identification of a malefactor, to be positive and sufficient for conviction, does not always require direct evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused. Thus, the Court has distinguished two types of positive identification in *People v. Gallarde*,[21] to wit: (*a*) that by direct

[21] G.R. No. 133025, February 17, 2000, 325 SCRA 835.

evidence, through an eyewitness to the very commission of the act; and (*b*) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. The Court said:

> xxx **Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime**. There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, **although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.** This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons would go free and the community would be denied proper protection.[22]

Amegable asserted that she was familiar with Caliso because she had seen him pass by in her *barangay* several times prior to the killing. Such assertion indicates that she was obviously *assuming* that the killer was no other than Caliso. As matters stand, therefore, Caliso's conviction hangs by a single thread of evidence, the direct evidence of Amegable's identification

[22] *Id.*, at pp. 849-850; bold emphasis supplied.

of him as the perpetrator of the killing. But that single thread was thin, and cannot stand sincere scrutiny. In every criminal prosecution, no less than moral certainty is required in establishing the identity of the accused as the perpetrator of the crime. Her identification of Caliso as the perpetrator did not have unassailable reliability, the only means by which it might be said to be positive and sufficient. The test to determine the moral certainty of an identification is its imperviousness to skepticism on account of its distinctiveness. To achieve such distinctiveness, the identification evidence should encompass *unique* physical features or characteristics, like the face, the voice, the dentures, the distinguishing marks or tattoos on the body, fingerprints, DNA, or any other physical facts that set the individual apart from the rest of humanity.

A witness' familiarity with the accused, although accepted as basis for a positive identification, does not always pass the test of moral certainty due to the possibility of mistake.

No matter how honest Amegable's testimony might have been, her identification of Caliso by a sheer look at his back for a few minutes could not be regarded as positive enough to generate that moral certainty about Caliso being the perpetrator of the killing, absent other reliable circumstances showing him to be AAA's killer. Her identification of him in that manner lacked the qualities of exclusivity and uniqueness, even as it did not rule out her being mistaken. Indeed, there could be *so many* other individuals in the community where the crime was committed whose backs might have looked like Caliso's back. Moreover, many factors could have influenced her perception, including her lack of keenness of observation, her emotional stress of the moment, her proneness to suggestion from others, her excitement, and her tendency to assume. The extent of such factors are not part of the records; hence, the trial court and the CA could not have taken them into consideration. But the influence of such varied factors could not simply be ignored or taken for granted, for it is even a well-known phenomenon that the members of the same family, whose familiarity with one another could be easily granted, often inaccurately identify one another through

a sheer view of another's back. Certainly, an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force.[23]

Amegable's recollection of the perpetrator wearing short pants bearing the number "11" did not enhance the reliability of her identification of Caliso. For one, such pants were not one-of-a-kind apparel, but generic. Also, they were not offered in evidence. Yet, even if they had been admitted in evidence, it remained doubtful that they could have been linked to Caliso without proof of his ownership or possession of them in the moments before the crime was perpetrated.

Nor did the lack of bad faith or ill motive on the part of Amegable to impute the killing to Caliso guarantee the reliability and accuracy of her identification of him. The dearth of competent additional evidence that eliminated the possibility of any human error in Amegable's identification of Caliso rendered her lack of bad faith or ill motive irrelevant and immaterial, for even the most sincere person could easily be mistaken about her impressions of persons involved in startling occurrences such as the crime committed against AAA. It is neither fair nor judicious, therefore, to have the lack of bad faith or ill motive on the part of Amegable raise her identification to the level of moral certainty.

The injuries found on the person of Caliso by Dr. Fuentecilla, as borne out by the medical certificate dated June 9, 1997,[24] did not support the culpability of Caliso. The injuries, which were mostly mere scratch marks,[25] were not even linked by the examining physician to the crime charged. Inasmuch as the injuries of Caliso might also have been due to other causes, including

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[23] *People v. Fronda*, G.R. No. 130602, March 15, 2000; 328 SCRA 185; *Natividad v. Court of Appeals*, 98 SCRA 335, 346 [1980]; *People v. Beltran*, L-31860, November 29, 1974, 61 SCRA 246, 250; *People v. Manambit*, G.R. No. 1274445, April 18, 1997, 271 SCRA 344, 377; *People v. Maongco*, G.R. No. 108963-65, March 1, 1994, 230 SCRA 562, 575.

[24] Records, p. 74.

[25] TSN, June 16, 1999, pp. 11.

one related to his doing menial labor most of the time, their significance as evidence of guilt is nil.

In the absence of proof beyond reasonable doubt as to the identity of the culprit, the accused's constitutional right to be presumed innocent until the contrary is proved is not overcome, and he is entitled to an acquittal,[26] though his innocence may be doubted.[27] The constitutional presumption of innocence guaranteed to every individual is of primary importance, and the conviction of the accused must rest not on the weakness of the defense he put up but on the strength of the evidence for the Prosecution.[28]

WHEREFORE, the decision promulgated on October 26, 2007 is *REVERSED* and *SET ASIDE* for insufficiency of evidence, and accused-appellant Delfin Caliso is *ACQUITTED* of the crime of *murder*.

The Director of the Bureau of Corrections in Muntinlupa City is directed to forthwith release Delfin Caliso from confinement, unless there is another lawful cause warranting his further detention.

No pronouncement on costs of suit.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Villarama, Jr., JJ.,* concur.

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[26] See *Natividad v. Court of Appeals*, G.R. No. L-40233, June 25, 1980, 98 SCRA 335, 346.

[27] *Pecho v. People*, G.R. No. 111399, September 27, 1996, 262 SCRA 518, 533, *Perez v. Sandiganbayan*, G.R. Nos. 76203-04, December 6, 1989, 180 SCRA 9; *People v. Sadie*, No. 66907, April 14, 1987, 149 SCRA 240; *U.S. v. Gutierrez*, No. 1877, 4 Phil. 493 April 29, [1905].

[28] *People v. Pidia*, G.R. No. 112264, November 10, 1995, 249 SCRA 687, 702.

SPECIAL THIRD DIVISION

[G.R. No. 183891. October 19, 2011]

ROMARICO J. MENDOZA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATIONS; SOCIAL SECURITY SYSTEM; SOCIAL SECURITY CONDONATION LAW OF 2009 (R.A. NO. 9903); CONDONES EMPLOYERS WITH UNPAID SSS CONTRIBUTIONS OR WITH PENDING CASES WHO PAY WITHIN THE SIX(6)-MONTH PERIOD FOLLOWING THE EFFECTIVITY THEREOF.— We note that the petitioner does not ask for the reversal of his conviction based on the authority of RA No. 9903; he avoids making a straightforward claim because this law plainly does not apply to him or to others in the same situation. The clear intent of the law is to grant condonation only to employers with delinquent contributions or pending cases for their delinquencies and who pay their delinquencies within the six (6)-month period set by the law. Mere payment of unpaid contributions does not suffice; it is payment within, and only within, the six (6)-month availment period that triggers the applicability of RA No. 9903. True, the petitioner's case was pending with us when RA No. 9903 was passed. Unfortunately for him, he paid his delinquent SSS contributions in 2007. By paying outside of the availment period, the petitioner effectively placed himself outside the benevolent sphere of RA No. 9903. This is how the law is written: it condones employers — and only those employers — with unpaid SSS contributions or with pending cases who pay within the six (6)-month period following the law's date of effectivity. *Dura lex, sed lex.*

2. ID.; ID.; ID.; DOES NOT AUTHORIZE IMPOSITION OF A FINE IN LIEU OF IMPRISONMENT; AN IMPLEMENTING RULE OR REGULATION MUST CONFORM TO AND BE CONSISTENT WITH THE PROVISIONS OF THE ENABLING STATUTE; IT CANNOT AMEND THE LAW EITHER BY ABRIDGING

OR EXPANDING ITS SCOPE; LAWS GRANTING CONDONATION CONSTITUTE AN ACT OF BENEVOLENCE ON THE GOVERNMENT'S PART AND THEIR TERMS ARE STRICTLY CONSTRUED AGAINST THE APPLICANTS.— The Court cannot amplify the scope of RA No. 9903 on the ground of equal protection, and acquit the petitioner and other delinquent employers like him; it would in essence be an amendment of RA No. 9903, an act of judicial legislation abjured by the *trias politica* principle. RA No. 9903 creates two classifications of employers delinquent in remitting the SSS contributions of their employees: (1) those delinquent employers who pay within the six (6)-month period (*the former group*), and (2) those delinquent employers who pay outside of this availment period (*the latter group*). The creation of these two classes is obvious and unavoidable when Section 2 and the last proviso of Section 4 of the law are read together. The same provisions show the law's intent to limit the benefit of condonation to the former group only; had RA No. 9903 likewise intended to benefit the latter group, which includes the petitioner, it would have expressly declared so. Laws granting condonation constitute an act of benevolence on the government's part, similar to tax amnesty laws; their terms are strictly construed against the applicants. Since the law itself excludes the class of employers to which the petitioner belongs, no ground exists to justify his acquittal. An implementing rule or regulation must conform to and be consistent with the provisions of the enabling statute; it cannot amend the law either by abridging or expanding its scope. For the same reason, we cannot grant the petitioner's prayer to impose a fine in lieu of imprisonment; neither RA No. 8282 nor RA No. 9903 authorizes the Court to exercise this option.

3. ID.; ID.; ID.; THE DIFFERENCE IN THE DATES OF PAYMENT OF DELINQUENT CONTRIBUTIONS PROVIDES A SUBSTANTIAL DISTINCTION BETWEEN THE TWO CLASSES OF EMPLOYERS.— On the matter of equal protection, we stated in *Tolentino v. Board of Accountancy, et al.* that the guarantee simply means "that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances." In *People v. Cayat*, we further summarized the jurisprudence on equal

protection in this wise: It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class. The difference in the dates of payment of delinquent contributions provides a substantial distinction between the two classes of employers. In limiting the benefits of RA No. 9903 to delinquent employers who pay within the six (6)-month period, the legislature refused to allow a sweeping, non-discriminatory condonation to *all* delinquent employers, lest the policy behind RA No. 8282 be undermined.

4. ID.; ID.; ID.; ID.; DELINQUENT-EMPLOYER WHO SETTLED HIS CONTRIBUTIONS LONG BEFORE THE PASSAGE OF THE LAW IS ENTITLED TO A WAIVER OF THE ACCRUED PENALTIES BUT NOT TO THE REVERSAL OF HIS CONVICTION.— [T]he petitioner's move to have our *Decision* reconsidered is not entirely futile. The one benefit the petitioner can obtain from RA No. 9903 is the waiver of his accrued penalties, which remain unpaid in the amount of ₱181,394.29. This waiver is derived from the last proviso of Section 4 of RA No. 9903: *Provided, further,* That for reason of equity, employers who settled arrears in contributions before the effectivity of this Act shall likewise have their accrued penalties waived. This proviso is applicable to the petitioner who settled his contributions long before the passage of the law. Applied to the petitioner, therefore, RA No. 9903 only works to allow a *waiver* of his accrued penalties, but not the reversal of his conviction.

5. CRIMINAL LAW; REVISED PENAL CODE; PENALTIES; THE COURT HAS DISCRETION TO RECOMMEND TO THE PRESIDENT ACTIONS IT DEEMS APPROPRIATE BUT ARE BEYOND ITS POWER WHEN IT CONSIDERS THE PENALTY IMPOSED AS EXCESSIVE.— We realize that with the affirmation of the petitioner's conviction for violation of RA No. 8282, he stands to suffer imprisonment for four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as

maximum, notwithstanding the payment of his delinquent contribution. Under Article 5 of the Revised Penal Code, the courts are bound to apply the law as it is and impose the proper penalty, no matter how harsh it might be. The same provision, however, gives the Court the discretion to recommend to the President actions it deems appropriate but are beyond its power when it considers the penalty imposed as excessive. Although the petitioner was convicted under a special penal law, the Court is not precluded from giving the Revised Penal Code suppletory application in light of Article 10 of the same Code and our ruling in *People v. Simon.*

APPEARANCES OF COUNSEL

Celso P. Mariano and *Pascual Himan Cansino Dave Law Offices* for petitioner.

The Solicitor General for respondent.

R E S O L U T I O N

BRION, *J.*:

We resolve the motion for reconsideration filed by petitioner Romarico J. Mendoza seeking the reversal of our *Decision* dated August 3, 2010. The *Decision* affirmed the petitioner's conviction for his failure to remit the Social Security Service (*SSS*) contributions of his employees. The petitioner anchors the present motion on his supposed inclusion within the coverage of Republic Act (*RA*) No. 9903 or the Social Security Condonation Law of 2009, whose passage the petitioner claims to be a *supervening event* in his case. He further invokes the equal protection clause in support of his motion.

In our *Decision* dated August 3, 2010, we **AFFIRMED, with modification,** the decree of conviction issued by both the trial and appellate courts for the petitioner's violation of Section 22(a) and (d), in relation to Section 28 of RA No. 8282 or the Social Security Act of 1997. To recall its highlights,

our *Decision* emphasized that the petitioner readily admitted during trial that he did not remit the SSS premium contributions of his employees at Summa Alta Tierra Industries, Inc. from August 1998 to July 1999, in the amount of ₱239,756.80; inclusive of penalties, this unremitted amount totaled to ₱421,151.09. The petitioner's explanation for his failure to remit, which the trial court disbelieved, was that during this period, Summa Alta Tierra Industries, Inc. shut down as a result of the general decline in the economy. The petitioner pleaded good faith and lack of criminal intent as his defenses.

We ruled that the decree of conviction was founded on proof beyond reasonable doubt, based on the following considerations: *first,* the remittance of employee contributions to the SSS is mandatory under RA No. 8282; and *second,* the failure to comply with a special law being *malum prohibitum,* the defenses of good faith and lack of criminal intent are immaterial.

The petitioner further argued that since he was designated in the *Information* as a "proprietor," he was without criminal liability since "proprietors" are not among the corporate officers specifically enumerated in Section 28(f) of RA No. 8282 to be criminally liable for the violation of its provisions. We rejected this argument based on our ruling in *Garcia v. Social Security Commission Legal and Collection.*[1] We ruled that to sustain the petitioner's argument would be to allow the unscrupulous to conveniently escape liability merely through the creative use of managerial titles.

After taking into account the Indeterminate Penalty Law and Article 315 of the Revised Penal Code, we **MODIFIED** the penalty originally imposed by the trial court[2] and, instead, decreed the penalty of four (4) years and two (2) months of *prision correccional,* as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

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[1] G.R. No. 170735, December 17, 2007, 540 SCRA 456.

[2] The penalty originally imposed was six (6) years and one (1) day to eight (8) years of imprisonment.

In the present motion for reconsideration, the petitioner points out that pending his appeal with the Court of Appeals (*CA*), he voluntarily paid the SSS the amount of ₱239,756.80 to settle his delinquency.[3] Note that the petitioner also gave notice of this payment to the CA via a *Motion for Reconsideration* and a *Motion for New Trial*. Although the People did not contest the fact of voluntary payment, the CA nevertheless denied the said motions.

The present motion for reconsideration rests on the following points:

First. On January 7, 2010, during the pendency of the petitioner's case before the Court, then President Gloria Macapagal-Arroyo signed RA No. 9903 into law. RA No. 9903 mandates the effective withdrawal of **all pending** cases against employers who would remit their delinquent contributions to the SSS within a specified period, *viz.*, **within six months after the law's effectivity.**[4] The petitioner claims that in view of RA No. 9903 and its implementing rules, the settlement of his delinquent contributions in 2007 entitles him to an acquittal. He invokes the equal protection clause in support of his plea.

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[3] SSS Special Bank Receipt No. 918224 is attached to the present motion as Annex "A"; *rollo*, p. 278.

[4] Section 2. *Condonation of Penalty*. - Any employer who is delinquent or has not remitted all contributions due and payable to the Social Security System (SSS), including those with pending cases either before the Social Security Commission, courts or Office of the Prosecutor involving collection of contributions and/or penalties, may within six (6) months from the effectivity of this Act: (a) remit said contributions; or (b) submit a proposal to pay the same in installments, subject to the implementing rules and regulations which the Social Security Commission may prescribe: Provided, That the delinquent employer submits the corresponding collection lists together with the remittance or proposal to pay installments: Provided, further, That upon approval and payment in full or in installments of contributions due and payable to the SSS, all such pending cases filed against the employer shall be withdrawn without prejudice to the refiling of the case in the event the employer fails to remit in full the required delinquent contributions or defaults in the payment of any installment under the approved proposal.

Second. The petitioner alternatively prays that should the Court find his above argument wanting, he should still be acquitted since the prosecution failed to prove all the elements of the crime charged.

Third. The petitioner prays that a fine be imposed, not imprisonment, should he be found guilty.

The Solicitor General filed a *Manifestation In Lieu of Comment* and claims that the passage of RA No. 9903 constituted a supervening event in the petitioner's case that **supports the petitioner's acquittal** "[a]fter a conscientious review of the case."[5]

THE COURT'S RULING

The petitioner's arguments supporting his prayer for acquittal fail to convince us. However, we find basis to allow waiver of the petitioner's liability for accrued penalties.

The petitioner's liability for the crime is a settled matter

Upfront, we reject the petitioner's claim that the prosecution failed to prove all the elements of the crime charged. This is a matter that has been resolved in our *Decision*, and the petitioner did not raise anything substantial to merit the reversal of our finding of guilt. To reiterate, the petitioner's conviction was based on his admission that he failed to remit his employees' contribution to the SSS.

The petitioner cannot benefit from the terms of RA No. 9903, which condone only employers who pay their delinquencies within six months from the law's effectivity

We note that the petitioner does not ask for the reversal of his conviction based on the authority of RA No. 9903; he avoids making a straightforward claim because this law plainly does not apply to him or to others in the same situation. The clear intent of the law is to grant condonation only to employers with

[5] *Rollo*, p. 355.

delinquent contributions or pending cases for their delinquencies and who pay their delinquencies within the six (6)-month period set by the law. Mere payment of unpaid contributions does not suffice; it is payment within, and only within, the six (6)-month availment period that triggers the applicability of RA No. 9903.

True, the petitioner's case was pending with us when RA No. 9903 was passed. Unfortunately for him, he paid his delinquent SSS contributions in 2007. By paying outside of the availment period, the petitioner effectively placed himself outside the benevolent sphere of RA No. 9903. This is how the law is written: it condones employers — and only those employers — with unpaid SSS contributions or with pending cases who pay within the six (6)-month period following the law's date of effectivity. *Dura lex, sed lex.*

The petitioner's awareness that RA No. 9903 operates as discussed above is apparent in his plea for equal protection. In his motion, he states that—

> [he] is entitled under the equal protection clause to the dismissal of the case against him since he had already paid the subject delinquent contributions due to the SSS which accepted the payment as borne by the official receipt it issued (please see Annex "A"). The equal protection clause requires that similar subjects, [*sic*] should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The petitioner is no more no less in the same situation as the employer who would enjoy freedom from criminal prosecution upon payment in full of the delinquent contributions due and payable to the SSS within six months from the effectivity of Republic Act No. 9903.[6]

The Court cannot amplify the scope of RA No. 9903 on the ground of equal protection, and acquit the petitioner and other delinquent employers like him; it would in essence be an amendment of RA No. 9903, an act of judicial legislation abjured by the *trias politica* principle.[7]

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[6] Citing *Philippine Judges Association v. Prado*, G.R. No. 105371, November 11, 1993, 227 SCRA 70, *id.* at 563-564.

[7] Refers to the principle of separation of powers among the three branches of the government.

RA No. 9903 creates two classifications of employers delinquent in remitting the SSS contributions of their employees: (1) those delinquent employers who pay within the six (6)-month period (*the former group*), and (2) those delinquent employers who pay outside of this availment period (*the latter group*). The creation of these two classes is obvious and unavoidable when Section 2 and the last proviso of Section 4[8] of the law are read together. The same provisions show the law's intent to limit the benefit of condonation to the former group only; had RA No. 9903 likewise intended to benefit the latter group, which includes the petitioner, it would have expressly declared so. Laws granting condonation constitute an act of benevolence on the government's part, similar to tax amnesty laws; their terms are strictly construed against the applicants. Since the law itself excludes the class of employers to which the petitioner belongs, no ground exists to justify his acquittal. An implementing rule or regulation must conform to and be consistent with the provisions of the enabling statute; it cannot amend the law either by abridging or expanding its scope.[9]

For the same reason, we cannot grant the petitioner's prayer to impose a fine in lieu of imprisonment; neither RA No. 8282 nor RA No. 9903 authorizes the Court to exercise this option.

On the matter of equal protection, we stated in *Tolentino v. Board of Accountancy, et al.*[10] that the guarantee simply means

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[8] Section 4. *Effectivity of Condonation*. - The penalty provided under Section 22(a) of Republic Act No. 8282 shall be condoned by virtue of this Act when and until all the delinquent contributions are remitted by the employer to the SSS: Provided, That, in case the employer fails to remit in full the required delinquent contributions, or defaults in the payment of any installment under the approved proposal, within the availment period provided in this Act, the penalties are deemed reimposed from the time the contributions first become due, to accrue until the delinquent account is paid in full: Provided, further, That for reason of equity, employers who settled arrears in contributions *before* the effectivity of this Act shall likewise have their accrued penalties waived. [italics ours]

[9] *Perez v. Philippine Telegraph and Telephone Company*, G.R. No. 152048, April 7, 2009, 584 SCRA 110, 121-122.

[10] 90 Phil. 83, 90 (1951).

"that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances." In *People v. Cayat*,[11] we further summarized the jurisprudence on equal protection in this wise:

> It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.

The difference in the dates of payment of delinquent contributions provides a substantial distinction between the two classes of employers. In limiting the benefits of RA No. 9903 to delinquent employers who pay within the six (6)-month period, the legislature refused to allow a sweeping, non-discriminatory condonation to *all* delinquent employers, lest the policy behind RA No. 8282 be undermined.

The petitioner is entitled to a waiver of his accrued penalties

Despite our discussion above, the petitioner's move to have our *Decision* reconsidered is not entirely futile. The one benefit the petitioner can obtain from RA No. 9903 is the waiver of his accrued penalties, which remain unpaid in the amount of ₱181,394.29. This waiver is derived from the last proviso of Section 4 of RA No. 9903:

> *Provided, further,* That for reason of equity, employers who settled arrears in contributions before the effectivity of this Act shall likewise have their accrued penalties waived.

This proviso is applicable to the petitioner who settled his contributions long before the passage of the law. Applied to the petitioner, therefore, RA No. 9903 only works to allow a

[11] 68 Phil. 12, 18 (1939).

waiver of his accrued penalties, but not the reversal of his conviction.

Referral to the Chief Executive for possible exercise of executive clemency

We realize that with the affirmation of the petitioner's conviction for violation of RA No. 8282, he stands to suffer imprisonment for four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, notwithstanding the payment of his delinquent contribution.

Under Article 5 of the Revised Penal Code,[12] the courts are bound to apply the law as it is and impose the proper penalty, no matter how harsh it might be. The same provision, however, gives the Court the discretion to recommend to the President actions it deems appropriate but are beyond its power when it considers the penalty imposed as excessive. Although the petitioner was convicted under a special penal law, the Court is not precluded from giving the Revised Penal Code suppletory application in light of Article 10[13] of the same Code and our ruling in *People v. Simon*.[14]

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[12] Article 5. *Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties.* — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

[13] Article 10. *Offenses not subject to the provisions of this Code.* — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

WHEREFORE, the Court *PARTIALLY GRANTS* petitioner Romarico J. Mendoza's motion for reconsideration. The Court AFFIRMS the petitioner's conviction for violation of Section 22(a) and (d), in relation to Section 28 of Republic Act No. 8282, and the petitioner is thus sentenced to an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. In light of Section 4 of Republic Act No. 9903, the petitioner's liability for accrued penalties is considered *WAIVED*. Considering the circumstances of the case, the Court transmits the case to the Chief Executive, through the Department of Justice, and *RECOMMENDS* the grant of executive clemency to the petitioner.

SO ORDERED.

Brion, J. (Chairperson), Peralta, Bersamin, Abad, and *Villarama, Jr., JJ.,* concur.

[14] G.R. No. 93028, July 29, 1994, 234 SCRA 555, 574, which states:

> The suppletory effect of the Revised Penal Code to special laws, as provided in Article 10 of the former, cannot be invoked where there is a legal or physical impossibility of, or a prohibition in the special law against, such supplementary application.
>
> Since neither RA No. 8282 nor RA No. 9903 prohibits the application of the Revised Penal Code, the provisions of the Code may be applied suppletorily.

SECOND DIVISION

[G.R. No. 184054. October 19, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARNEL ZAPATA *y* CANILAO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; PRESENT.—** For a successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* of evidence. The evidence for the prosecution showed the presence of all these elements.

2. **ID.; ID.; ID.; CRUCIAL LINK IN THE CHAIN OF CUSTODY OVER THE SEIZED PROHIBITED ITEMS, ESTABLISHED.—** Contrary to the appellant's assertion, the chain of custody over the seized prohibited drugs was shown not to have been broken. x x x. The prosecution [e]stablished the crucial link in the chain of custody of the seized items from the time they were first seized until they were brought for examination and presented in court. Clearly, the integrity and the evidentiary value of the drugs seized from the appellant were duly proven not to have been compromised.

3. **ID.; ID.; ID.; MINOR DEVIATIONS WITH THE REQUIRED PROCEDURE ON THE CUSTODY AND CONTROL OF THE SEIZED ITEMS NOT FATAL, FOR WHAT IS OF UTMOST IMPORTANCE IS THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS.—** [W]e stress that the appellant failed to raise the buy-bust team's alleged non-compliance with Section 21,

Article II of R.A. No. 9165 during trial; this argument cannot be raised for the first time on appeal. At any rate, whatever minor deviations there might have been is not fatal, as failure to strictly comply with Section 21, Article II of R.A. No. 9165 will not necessarily render the items confiscated from an accused inadmissible; what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as these are the evidence critical in the determination of the guilt or innocence of the accused. In the present case, we find sufficient compliance by the police with the required procedure on the custody and control of the seized items. The succession of events established by evidence shows that the items seized were the *same* items tested, and subsequently identified and testified to in court.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Guillermo G. Sotto for appellant.

D E C I S I O N

BRION, *J.*:

We decide the appeal, filed by Arnel Zapata *y* Canilao (*appellant*), from the decision[1] and the resolution[2] of the Court of Appeals (*CA*) dated November 28, 2007 and March 6, 2008, respectively, in CA-G.R. CR-H.C. No. 02136. The CA decision affirmed *in toto* the October 12, 2005 decision[3] of the Regional Trial Court (*RTC*), Branch 41, San Fernando City, finding the appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[1] *Rollo*, pp. 2-19; penned by Associate Justice Rebecca de Guia-Salvador, and concurred in by Associate Justice Magdangal M. de Leon and Associate Justice Ricardo R. Rosario.

[2] CA *rollo*, pp. 170-171.

[3] *Id*. at 79-100.

In its October 12, 2005 decision, the RTC found the appellant guilty of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165. The RTC held that the witnesses for the prosecution were able to prove that a buy-bust operation indeed took place; and the *shabu* subject of the sale was brought to, and duly identified in, court. It found no improper motive on the part of the police officers to falsely testify against the appellant. The lower court likewise disregarded the appellant's claim of frame-up, as this defense can easily be concocted and is a common and standard defense ploy in prosecutions for violation of dangerous drugs. Accordingly, it ordered the appellant to suffer the penalty of life imprisonment, and to pay a ₱500,000.00 fine.

On appeal, the CA affirmed the RTC decision *in toto*. It held that the poseur-buyer positively identified the appellant as the person who gave him two (2) transparent plastic sachets containing white crystalline substances in exchange for ₱300.00. It added that the plastic sachets were submitted to the Philippine National Police (*PNP*) Crime Laboratory for examination, and were found to be positive for the presence of *shabu*. It likewise held that the defense failed to overcome the presumption that the police officers regularly performed their official duties. The CA further ruled that the chain of custody over the seized items was not shown to have been broken. It also took note of the admission of the appellant's wife that the appellant was a "financier of drugs," as well as the positive result of the drug test conducted on the appellant.

Our Ruling

The appellant's conviction stands.

For a successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs

is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* of evidence.[4]

The evidence for the prosecution showed the presence of all these elements. Police Officer (*PO*)3 John U. Salcedo narrated in detail on how the police conducted a surveillance on the appellant for two months; and how he and PO1 Edwin Carlos conducted the buy-bust operation. PO3 Salcedo duly and positively identified the appellant as the person who sold to him two (2) transparent plastic sachets containing white crystalline substances in exchange for ₱300.00. The white crystalline substances contained in the two plastic sachets were later on confirmed to be methamphetamine hydrochloride or *shabu*, per Chemistry Report No. D-316-2004 issued by the PNP Forensic Chemist, Police Inspector (*P/Insp.*) Maria Luisa David. The marked money used in the entrapment operation was likewise positively identified by the arresting officers as the same one provided and used in the buy-bust operation. PO1 Carlos corroborated PO3 Salcedo's testimony on all material points. Significantly, the appellant failed to produce convincing proof that the prosecution witnesses had any improper or malicious motive when they testified.

Contrary to the appellant's assertion, the chain of custody over the seized prohibited drugs was shown not to have been broken. The evidence shows that after PO3 Salcedo received the two plastic sachets from the appellant, PO3 Salcedo and PO1 Carlos brought the appellant and the confiscated items to the police station. There, PO3 Salcedo immediately marked the two plastic sachets with "*JUS 1*" and "*JUS 2*," respectively.[5] PO3 Salcedo, thereafter, turned over

[4] See *People of the Philippines v. Manuel Cruz y Cruz*, G.R. No. 187047, June 15, 2011; *People v. Andres*, G.R. No. 193184, February 7, 2011, 641 SCRA 602, 608; and *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 263-264.

[5] See also *People v. Resurreccion*, G.R. No. 186380, October 12, 2009, 603 SCRA 510, 520, where we clarified that "[m]arking upon immediate confiscation" does not exclude the possibility that marking can be at the police station or office of the apprehending team.

the seized items to Senior Police Officer 3 Danilo Fernandez who, in turn, made the appropriate requests for the laboratory examination of the seized items and for the drug test on the appellant. On the same day, PO1 Ronwald Basa brought the plastic sachets and the appellant's urine sample to the PNP Crime Laboratory, where a certain SPO1 Sales received and immediately forwarded the submitted specimens to P/Insp. David. The latter then examined the two heat-sealed transparent plastic sachets marked as "*JUS 1*" and "*JUS 2*," and found them to be positive for the presence of *shabu*. She likewise examined the appellant's urine sample, and concluded that it tested positive for the presence of shabu. When the prosecution presented the two plastic sachets in court, PO3 Salcedo positively identified them to be the same items he seized from the appellant.

The prosecution thus established the crucial link in the chain of custody of the seized items from the time they were first seized until they were brought for examination and presented in court. Clearly, the integrity and the evidentiary value of the drugs seized from the appellant were duly proven not to have been compromised.

Finally, we stress that the appellant failed to raise the buy-bust team's alleged non-compliance with Section 21, Article II of R.A. No. 9165 during trial; this argument cannot be raised for the first time on appeal. At any rate, whatever minor deviations there might have been is not fatal, as failure to strictly comply with Section 21, Article II of R.A. No. 9165 will not necessarily render the items confiscated from an accused inadmissible; what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as these are the evidence critical in the determination of the guilt or innocence of the accused.[6] In the present case, we find sufficient compliance by the police with the required procedure on the custody and control of the seized items. The succession of events established by evidence shows that the items seized were the *same* items tested, and subsequently identified and testified to in court.

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[6] See *People v. Campomanes*, G.R. No. 187741, August 9, 2010, 627 SCRA 494, 507; and *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

WHEREFORE, the decision and the resolution of the Court of Appeals dated November 28, 2007 and March 6, 2008, respectively, in CA-G.R. CR-H.C. No. 02136 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Sereno, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 186659-710. October 19, 2011]

ZACARIA A. CANDAO, ABAS A. CANDAO and ISRAEL B. HARON, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; MALVERSATION; ELEMENTS; ESTABLISHED.— The following elements are essential for conviction in malversation cases: 1. That the offender is a public officer; 2. That he had custody or control of funds or property by reason of the duties of his office; 3. That those funds or property were public funds or property for which he was accountable; and 4. That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. All the foregoing elements were satisfactorily established by the prosecution in this case. Petitioners have not rebutted the legal presumption that with the Disbursing Officer's (Haron)

[*] Designated as Acting Member of the Second Division in lieu of Associate Justice Jose Portugal Perez, per Special Order No. 1114 dated October 3, 2011.

failure to account for the illegally withdrawn amounts covered by the subject checks when demanded by the COA, they misappropriated and used the said funds for their personal benefit.

2. REMEDIAL LAW; EVIDENCE; EQUIPOSE RULE, EXPLAINED; DIRECT EVIDENCE OF PERSONAL MISAPPROPRIATION BY THE ACCUSED IS HARDLY NECESSARY IN MALVERSATION CASES.— [T]he Sandiganbayan committed no reversible error in holding that the testimonial and documentary evidence presented by the petitioners failed to overcome the *prima facie* evidence of misappropriation arising from Haron's failure to give a satisfactory explanation for the illegal withdrawals from the ARMM funds under his custody and control. Petitioners likewise did not accomplish the proper liquidation of the entire amount withdrawn, during the expanded audit or any time thereafter. There is therefore no merit in petitioners' argument that the Sandiganbayan erred in not applying the equipoise rule. Under the equipoise rule, where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. The equipoise rule finds application if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then the evidence does not fulfill the test of moral certainty, and does not suffice to produce a conviction. Such is not the situation in this case because the prosecution was able to prove by adequate evidence that Disbursing Officer Haron failed to account for funds under his custody and control upon demand, specifically for the ₱21,045,570.64 illegally withdrawn from the said funds. In the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary in malversation cases.

3. CRIMINAL LAW; CONSPIRACY; PRESENT WHEN ONE CONCURS WITH THE CRIMINAL DESIGN OF ANOTHER, INDICATED BY THE PERFORMANCE OF

AN OVERT ACT LEADING TO THE CRIME COMMITTED.— As to the liability of petitioners Zacaria A. Candao and Abas A. Candao, the Sandiganbayan correctly ruled that they acted in conspiracy with petitioner Haron to effect the illegal withdrawals and misappropriation of ORG-ARMM funds. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated. In this case, petitioners Zacaria A. Candao and Abas A. Candao were co-signatories in the subject checks issued without the required disbursement vouchers. Their signatures in the checks, as authorized officials for the purpose, made possible the illegal withdrawals and embezzlement of public funds in the staggering aggregate amount of ₱21,045,570.64.

4. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AUDITING CODE OF THE PHILIPPINES; THE HEAD OF ANY AGENCY OF THE GOVERNMENT IS CHARGED WITH THE DUTY OF DILIGENTLY SUPERVISING THE SUBORDINATES TO PREVENT LOSS OF GOVERNMENT FUNDS OR PROPERTY, AND IS THUS LIABLE FOR ANY UNLAWFUL APPLICATION OF GOVERNMENT FUNDS RESULTING FROM NEGLIGENCE.— As the Regional Governor of ARMM, petitioner Zacaria A. Candao cannot exonerate himself from liability for the illegally withdrawn funds of ORG-ARMM. Under Section 102 (1) of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the agency he heads: Section 102. *Primary and secondary responsibility.* – (1) The head of any agency of the government is **immediately and primarily responsible for all government funds and property pertaining to his agency**. x x x Petitioners Zacaria A. Candao and his Executive Secretary Abas A. Candao are both accountable public

officers within the meaning of Article 217 of the Revised Penal Code, as amended. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval, as in fact checks issued and signed by petitioner Haron had to be countersigned by them. Their indispensable participation in the issuance of the subject checks to effect illegal withdrawals of ARMM funds was therefore duly established by the prosecution and the Sandiganbayan did not err in ruling that they acted in conspiracy with petitioner Haron in embezzling and misappropriating such funds. Moreover, as such accountable officers, petitioners Zacaria A. Candao and Abas A. Candao were charged with the duty of diligently supervising their subordinates to prevent loss of government funds or property, and are thus liable for any unlawful application of government funds resulting from negligence, as provided in Sections 104 and 105 of the Government Auditing Code of the Philippines x x x.

5. CRIMINAL LAW; MALVERSATION; COMMITTED EITHER INTENTIONALLY OR BY NEGLIGENCE; ACCOUNTABLE OFFICERS ARE LIABLE AS CO-PRINCIPALS IN THE CRIME OF MALVERSATION EVEN IF THEY LACK KNOWLEDGE OF THE CRIMINAL DESIGN OF THEIR SUBORDINATES, WHERE THE MISAPPROPRIATION OF PUBLIC FUNDS WAS DUE TO THEIR NEGLIGENCE IN THE PERFORMANCE OF THEIR DUTIES.— The fact that ARMM was still a recently established autonomous government unit at the time does not mitigate or exempt petitioners from criminal liability for any misuse or embezzlement of public funds allocated for their operations and projects. The Organic Act for ARMM (R.A. No. 6734) mandates that the financial accounts of the expenditures and revenues of the ARMM are subject to audit by the COA. Presently, under the Amended Organic Act (R.A. No. 9054), the ARMM remained subject to national laws and policies relating to, among others, fiscal matters and general auditing. Here, the prosecution successfully demonstrated that the illegal withdrawals were deliberately effected through the issuance of checks without the required disbursement vouchers and supporting documents. And even

if petitioners Zacaria A. Candao and Abas A. Candao invoke lack of knowledge in the criminal design of their subordinate, Disbursing Officer Haron, they are still liable as co-principals in the crime of malversation assuming such misappropriation of public funds was not intentional, as alleged in the informations, but due to their negligence in the performance of their duties. As this Court ratiocinated in *Cabello v. Sandiganbayan*: Besides, even on the putative assumption that the evidence against petitioner yielded a case of malversation by negligence but the information was for intentional malversation, under the circumstances of this case his conviction under the first mode of misappropriation would still be in order. Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. **Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper.** A possible exception would be when the mode of commission alleged in the particulars of the indictment is so far removed from the ultimate categorization of the crime that it may be said due process was denied by deluding the accused into an erroneous comprehension of the charge against him. That no such prejudice was occasioned on petitioner nor was he beleaguered in his defense is apparent from the records of this case.

6. ID.; ID.; PROPER PENALTY.— Under Article 217, paragraph 4 of the Revised Penal Code, as amended, the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed if the amount involved exceeds ₱22,000.00, in addition to fine equal to the funds malversed. Considering that neither aggravating nor mitigating circumstance attended the crime charged, the maximum imposable penalty shall be within the range of the medium period of *reclusion temporal* maximum to *reclusion perpetua*, or eighteen (18) years, eight (8) months and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the minimum penalty, which is one degree lower from the maximum imposable penalty, shall be within the range of *prision mayor* maximum to *reclusion temporal* medium, or ten (10) years and one (1) day to seventeen (17) years and four (4) months. The penalty imposed by the Sandiganbayan on petitioners needs therefore to be modified

insofar as the maximum penalty is concerned and is hereby reduced to seventeen (17) years and four (4) months of *reclusion temporal* medium, for each count.

APPEARANCES OF COUNSEL

Dante F. Vargas for petitioners.

Office of the Special Prosecutor (Sandiganbayan) for respondents

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 is the Decision[1] dated October 29, 2008 and Resolution[2] dated February 20, 2009 of the Sandiganbayan (First Division) finding the petitioners guilty beyond reasonable doubt of malversation of public funds under Article 217 of the Revised Penal Code, as amended.

The Facts

On August 5, 1993, Chairman Pascasio S. Banaria of the Commission on Audit (COA) constituted a team of auditors from the central office to conduct an Expanded Special Audit of the Office of the Regional Governor, Autonomous Region for Muslim Mindanao (ORG-ARMM). State Auditors Heidi L. Mendoza (Team Leader) and Jaime Roxas (Member) were directed to conduct the said audit under the supervision of Jaime P. Naranjo (State Auditor V). From August 24 to September 1, 1993, the expanded audit was thus conducted on the financial

[1] *Rollo*, pp. 74-124. Penned by Associate Justice Rodolfo A. Ponferrada with Presiding Justice Diosdado M. Peralta (now a Member of this Court) and Associate Justice Alexander G. Gesmundo concurring.

[2] *Id.* at 125-131. Penned by Associate Justice Rodolfo A. Ponferrada with Associate Justices Norberto Y. Geraldez and Alexander G. Gesmundo concurring.

transactions and operations of ORG-ARMM for the period July 1992 to March 1993.

As stated in Special Audit Office (SAO) Report No. 93-25 submitted by the audit team, it was found that illegal withdrawals were made from the depository accounts of the agency through the issuance of checks payable to the order of petitioner Israel B. Haron (Disbursing Officer II) without the required disbursement vouchers. The following are the details of the government accounts and the fifty-two (52) checks[3] issued and encashed without proper supporting documents:

PNB Account No. 370-3208

DATE ISSUED	CHECK NO.	SIGNATORIES	AMOUNT
December 29, 1992	414431	Israel Haron & Abas Candao	500,000.00
December 29, 1992	414432	Israel Haron & Abas Candao	439,585.00
December 29, 1992	414433	Israel Haron & Abas Candao	210,000.00
January 26, 1993	414487	Israel Haron & Abas Candao	500,000.00
January 26, 1993	414488	Israel Haron & Abas Candao	500,000.00
January 26, 1993	414489	Israel Haron & Abas Candao	500,000.00
February 2, 1993	414493	Israel Haron & Abas Candao	500,000.00
February 2, 1993	414494	Israel Haron & Abas Candao	500,000.00
February 3, 1993	414499	Israel Haron & Abas Candao	450,000.00
February 5, 1993	414500	Israel Haron & Abas Candao	500,000.00
February 5, 1993	461801	Israel Haron & Abas Candao	500,000.00
February 18, 1993	461803	Israel Haron & Zacaria Candao	500,000.00
February 18, 1993	461804	Israel Haron & Zacaria Candao	104,985.64
February 22, 1993	461876	Israel Haron & Zacaria Candao	500,000.00
February 22, 1993	461877	Israel Haron & Zacaria Candao	500,000.00
February 22, 1993	461878	Israel Haron & Zacaria Candao	500,000.00
February 22, 1993	461879	Israel Haron & Zacaria Candao	500,000.00

[3] Exhibits "A" to "ZZ", Sandiganbayan Records.

February 22, 1993	461880	Israel Haron & Zacaria Candao	500,000.00
February 22, 1993	461881	Israel Haron & Zacaria Candao	500,000.00
February 24, 1993	461888	Israel Haron & Abas Candao	64,000.00
March 18, 1993	461932	Israel Haron & Abas Candao	500,000.00
March 18, 1993	461933	Israel Haron & Abas Candao	500,000.00
March 19, 1993	461934	Israel Haron & Abas Candao	350,000.00
March 22, 1993	461935	Israel Haron & Abas Candao	500,000.00
March 22, 1993	461936	Israel Haron & Abas Candao	500,000.00
		TOTAL	**₱11,118,570.64**

Account No. 844061 (Treasurer of the Philippines)

DATE ISSUED	**CHECK NO.**	**SIGNATORIES**	**AMOUNT**
January 11, 1993	968739	Israel Haron & Abas Candao	400,000.00
January 11, 1993	968740	Israel Haron & Abas Candao	400,000.00
January 11, 1993	968741	Israel Haron & Abas Candao	400,000.00
January 13, 1993	968751	Pandical Santiago & Abas Candao	120,000.00
January 18, 1993	968804	Israel Haron & Abas Candao	380,000.00
March 2, 1993	974192	Israel Haron & Zacaria Candao	250,000.00
March 4, 1993	974208	Israel Haron & Abas Candao	500,000.00
March 4, 1993	974209	Israel Haron & Abas Candao	500,000.00
March 4, 1993	974210	Israel Haron & Abas Candao	500,000.00
March 4, 1993	974211	Israel Haron & Abas Candao	500,000.00
March 4, 1993	974212	Israel Haron & Abas Candao	30,000.00
March 5, 1993	974227	Israel Haron & Abas Candao	500,000.00
March 5, 1993	974228	Israel Haron & Abas Candao	500,000.00
March 12, 1993	974244	Israel Haron & Abas Candao	100,000.00
March 18, 1993	974324	Israel Haron & Abas Candao	500,000.00
March 18, 1993	974325	Israel Haron & Abas Candao	500,000.00
March 18, 1993	974326	Israel Haron & Abas Candao	500,000.00

March 18, 1993	974327	Israel Haron & Abas Candao	500,000.00
March 18, 1993	974328	Israel Haron & Abas Candao	500,000.00
March 19, 1993	974339	Israel Haron & Abas Candao	200,000.00
March 19, 1993	974340	Israel Haron & Abas Candao	25,000.00
March 19, 1993	974341	Israel Haron & Abas Candao	172,000.00
March 29, 1993	979533	Israel Haron & Abas Candao	500,000.00
March 29, 1993	979543	Israel Haron & Abas Candao	500,000.00
March 29, 1993	979544	Israel Haron & Abas Candao	500,000.00
March 29, 1993	979545	Israel Haron & Abas Candao	300,000.00
March 30, 1993	979590	Israel Haron & Abas Candao	150,000.00
		TOTAL	**₱9,927,000.00**

GRAND TOTAL = ₱21,045,570.64

In a letter dated September 10, 1993, Chairman Banaria demanded from petitioner Haron to produce and restitute to the ARMM-Regional Treasurer immediately the full amount of ₱21,045,570.64 and submit his explanation within seventy-two (72) hours together with the official receipt issued by the ARMM Regional Treasurer in acknowledgment of such restitution.

On April 17, 1998, the Office of the Special Prosecutor, Office of the Ombudsman-Mindanao, filed in the Sandiganbayan criminal cases for malversation of public funds against the following ORG-ARMM officials/employees: Zacaria A. Candao (Regional Governor), Israel B. Haron (Disbursing Officer II), Abas A. Candao (Executive Secretary) and Pandical M. Santiago (Cashier). They were charged with violation of Article 217 of the Revised Penal Code, as amended, under the following informations with identical allegations except for the varying date, number and amount of the check involved in each case:

Criminal Case Nos. 24569-24574, 24576-24584, 24593, 24595-24620[4]
(42 counts involving checks in the total amount of ₱17,190,585.00)

[4] SB Records, Vols. 1, 5-10, 12-20, 29, 31-56.

That on or about 29 December 1992, in Cotabato City, Philippines, and within the jurisdiction of this Honorable Court, accused **Israel B. Haron**, a low-ranking public officer being the Disbursing Officer of the Office of the Regional Governor, and as such is responsible and accountable for the funds of the said office in the Autonomous Region in Muslim Mindanao, in connivance and in conspiracy with [**Abas] Candao**, Executive Secretary of the same office, who is a high ranking officer, while in the performance of their respective official functions, taking advantage of their official positions, and committing the offense in relation to their respective functions, with gross abuse of confidence, did then and there wilfully, unlawfully and feloniously withdraw the amount of ₱500,000.00 from the depository account of the Office of the Regional Governor thru the issuance of Check No. 414431 dated 29 December 1992, payable to the order of accused Israel B. Haron, without the required disbursement voucher and once in possession of the said amount withdrawn, wilfully, unlawfully and feloniously take, misappropriate, embezzle and convert to their own personal use and benefit the amount of ₱500,000.00, to the damage and prejudice of the government in the aforesaid sum as abovestated.

CONTRARY TO LAW.

Criminal Case Nos. 24585- 24592 and 24594[5]
(9 counts involving checks in the total amount of ₱3,854,985.64)

That on or about 18 February 1993, in Cotabato City, Philippines, and within the jurisdiction of this Honorable Court, accused **Israel B. Haron**, a low-ranking public officer being the Disbursing Officer of the Office of the Regional Governor, and as such is responsible and accountable for the funds of the said office in the Autonomous Region in Muslim Mindanao, in connivance and in conspiracy with **Zacaria Candao**, Regional Governor of the same office, who is a high ranking officer, while in the performance of their respective official functions, taking advantage of their official positions, and committing the offense in relation to their respective functions, with gross abuse of confidence, did then and there wilfully, unlawfully and feloniously withdraw the amount of ₱500,000.00 from the depository account of the Office of the Regional Governor thru the

[5] *Id.*, Vols. 21-28 and 30.

issuance of Check No. 461803 dated 18 February 1993, payable to the order of accused Israel B. Haron, without the required disbursement voucher and once in possession of the said amount withdrawn, wilfully, unlawfully and feloniously take, misappropriate, embezzle and convert to their own personal use and benefit the amount of ₱500,000.00, to the damage and prejudice of the government in the aforesaid sum as abovestated.

CONTRARY TO LAW.

Criminal Case No. 24575[6]

That on or about 13 January 1993, in Cotabato City, Philippines, and within the jurisdiction of this Honorable Court, accused **Israel B. Haron**, a low-ranking public officer being the Disbursing Officer of the Office of the Regional Governor, and as such is responsible and accountable for the funds of the said office in the Autonomous Region in Muslim Mindanao, in connivance and in conspiracy with **Pandical Santiago and [Abas] Candao**, Cashier and Executive Secretary, respectively, of the same office, while in the performance of their respective official functions, taking advantage of their official positions, and committing the offense in relation to their respective functions, with gross abuse of confidence, did then and there wilfully, unlawfully and feloniously withdraw the amount of ₱120,000.00 from the depository account of the Office of the Regional Governor thru the issuance of Check No. 968751 dated 13 January 1993, payable to the order of accused Israel B. Haron, without the required disbursement voucher and once in possession of the said amount withdrawn, wilfully, unlawfully and feloniously take, misappropriate, embezzle and convert to their own personal use and benefit the amount of ₱120,000.00, to the damage and prejudice of the government in the aforesaid sum as abovestated.

CONTRARY TO LAW.

At their arraignment, all accused pleaded not guilty to the charge of malversation. In the meantime, accused Santiago died and consequently the case against him in Criminal Case No. 24575 was dismissed.

[6] *Id.*, Vol. 11.

The prosecution's lone witness was Heidi L. Mendoza,[7] COA State Auditor IV. She testified that their expanded audit, conducted from August 24 to September 1, 1993, disclosed the illegal withdrawals of funds from the PNB and Treasury accounts of ORG-ARMM involving 52 checks issued without the required disbursement vouchers. Specifically, their attention was caught by the fact that the Report of Checks Issued by the Deputized Disbursing Officer (RCIDDO) showed that the subject 52 checks have no assigned voucher numbers. The audit team demanded for the original of said RCIDDO for the months of December 1992, February and March 1993, which were supposed to be prepared and submitted by the disbursing officer, but the ORG-ARMM did not submit the same. In a letter dated August 24, 1993, the COA likewise made a demand from the Regional Governor through the resident auditor for the production of the original disbursement vouchers and complete supporting documents of the subject checks.[8]

In response, the Finance and Budget Management Services of ORG-ARMM informed the audit team that the vouchers were already submitted to COA Resident Auditor, Supervising State Auditor IV Rosalinda Gagwis, purportedly under transmittal letters dated March 4 and March 30, 1993. Mendoza then personally verified from Gagwis who denied having received the subject vouchers and issued a certification to that effect. In a letter dated September 10, 1993, Chairman Banaria finally demanded for the restitution of the funds illegally withdrawn through the issued 52 checks and to comply with such demand within 72 hours from receipt of said letter. As to the absence of her signature in the audit report, she explained that she was already on maternity leave when the interim report (SAO Report No. 93-25) was submitted. However, she, together with audit team member Jaime B. Roxas executed a Joint Affidavit dated May 17, 1996 regarding their conduct of the expanded audit and their findings and recommendation. Although Haron submitted copies

[7] Recently appointed Commissioner of the Commission on Audit.

[8] TSN, October 13, 1998, pp. 3, 7-26.

of disbursement vouchers to the COA receiving clerk, this was made beyond the 72-hour deadline given to them.[9]

On cross-examination, witness Mendoza was asked if the audit team had informed the office or parties concerned that they are going to be audited (entry conference). She replied that this was a sensitive assignment, recalling that they were threatened after their identities were established during the earlier audit of the same office such that she had to be brought back to Manila. At that time, the Regional Governor was accused Candao. Hence, during the expanded audit, the team was unable to proceed as in ordinary situations. While they did an entry conference during the previous main audit, they were unable to do so at the time of the expanded audit. Again for security reasons, the team also did not conduct an exit conference after field work; they would be risking their lives if they discuss there and then their findings. Due to threat to her life, it was her team supervisor (Naranjo) and member (Roxas) who personally retrieved the documents in Cotabato City. She admitted the belated submission of original vouchers (October 29, 1993) to the COA central office but these are without supporting documents.[10]

For the accused, the first witness was Nick Luz Aduana who was the Director of Finance of ORG-ARMM from July 1991 until his resignation in March 1993. He testified that his functions then include the supervision and overseeing of the three divisions: Budget, Accounting and Management. When report of the audit team came out, he was surprised because they were not informed of the audit. He was familiar with the 52 checks because the disbursement vouchers passed through his office. He explained the procedure with respect to the processing of cash advances as follows: generally, there were cash advances made in ARMM which cover travels, salaries, *etc*. but particularly for "peace and order campaign," it emanates from the ORG when the Regional Governor issues an authority for cash advance, and

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[9] *Id*. at 27-34, 40-41.

[10] *Id*. at 41-52, 73-74.

then they process the voucher (Finance and Budget Management Services); once their division have performed their accounting functions relative to the vouchers, the same are forwarded to the Regional Governor for approval or in his absence to his Executive Secretary; after the approval of the voucher, it will be forwarded to the Cash Division for the issuance of check; the person who will liquidate the cash advance is usually the employee mentioned in the voucher; and after they have prepared all the liquidation papers, these are submitted to the Budget and Management Division before forwarding them to the COA Auditor. He maintained that the original disbursement vouchers have already been submitted to the COA Special Audit Office. Since 1991, they have never received any notice of disallowance of their disbursements, including those intended for "peace and order campaign." Being the first ARMM set of officials, they had sought the advice of their Auditor as to proper accounting procedures; they followed the advice of Auditor Gagwis who said that there should be authority to cash advance coming from the Regional Governor which should be given to the Disbursing Officer. He identified the vouchers presented by the defense as the ones processed by their division with the corresponding amounts reflected therein. Insofar as the expanded audit is concerned, they were not given the opportunity to defend the case as they were not given the so-called exit conference.[11]

On cross-examination, witness Aduana hinted on political reasons why an expanded audit was conducted when Regional Governor Pagdanganan assumed office despite the fact that an earlier audit was already made during the administration of Governor Candao. He claimed that he did not receive any copy of the demand letter dated August 24, 1993; he was no longer connected with ARMM at the time. He also maintained that the disbursement vouchers were processed by their office and entered into their books of account. However, when asked what happened to these books of account, Aduana said these are with the Office of the Regional Governor. He admitted that the only supporting document for the checks and vouchers were the

[11] TSN, May 20, 2004, pp. 15-24.

authority to cash advance; the "peace and order campaign" disbursement is peculiar to ARMM and hence they did not know what supporting documents to attach. When queried about the particular activities covered by this "peace and order campaign" disbursement, Aduana admitted that he really does not know the breakdown of expenses or for what items in particular were the disbursed amounts spent. Their division merely processed the disbursement vouchers that were prepared by the ORG, and while his signature appears in said vouchers his role was limited to certifying the availability of funds.[12]

The next witness, Rosalinda G. Gagwis, former COA Resident Auditor of ORG-ARMM, testified that in 1991 she was the Chief of the Operation and Review Division (ORD), COA Region XII which at the time has jurisdiction over ORG-ARMM; she was Auditor-in-Charge of ORG-ARMM only up to March 8, 1993 when the separation of COA Region XII personnel and COA-ARMM was implemented. Among her duties as such Auditor-in-Charge was to conduct a post-audit of the financial transactions of ORG-ARMM. In the course of the expanded audit of ORG-ARMM, she was requested to issue the Certification dated August 27, 1993 stating that she has not received the January to March 1993 vouchers as stated in the letter of Haron. Subsequently, on July 22, 1998 she executed a two-page Affidavit because she has been hearing that her previous Certification was misinterpreted to mean that the subject vouchers were "not existing." She then clarified that actually, ORG-ARMM tried to submit bundles of vouchers to her office but she refused to accept them because she was no longer Auditor-in-Charge of that office as there was already an order separating COA-Regional Office XII from the COA-ARMM. She confirmed that when ARMM was a newly created agency, its officers (Aduana, Brigida Fontanilla and Bartolome Corpus) sought her advice regarding accounting procedures. Prior to submission to her office for post-audit, the accountable officers like the Cashier and Disbursement Officer prepares and submits a Monthly Report of Disbursements to the Accounting Division

[12] *Id.* at 25-42.

which, within ten days from receipt and recording in the Books of Accounts, shall submit the same to the auditor for post-audit custody. Based on her experience, however, this deadline was not strictly observed as 25% to 50% of the national agencies are delayed in the submission of such reports. The usual reasons given were the geographical locations of the offices in Region XII and ARMM, lack of manpower due to budgetary constraints and lack of know-how of personnel regarding accounting and auditing procedures, especially if there is a change in administration. As far as she can recall, their office had not issued a notice of disallowance to ORG-ARMM although notices of suspension have been issued for minor deficiencies noted during post-audit; these notices of suspension were usually complied with by the agency.[13]

On cross-examination, witness Gagwis said that upon seeing the bundles of vouchers being submitted to her office, she immediately refused to accept, and sort of "washed her hands" by telling her staff that they were no longer incharge of ORG-ARMM. She did not actually scan those documents and examine their contents. She also did not receive the Monthly Report of Disbursements from said office. As to the execution of the July 22, 1998 Affidavit, she insisted that she did it voluntarily five years later in order to clarify herself after hearing about the case filed in the Sandiganbayan and her name was being dragged because of the Certification she made in August 1993. As to the earlier Certification, she maintained that she did not receive the subject vouchers and she does not know where these documents are at present.[14]

Another witness, Brigida C. Fontanilla, Chief Accountant, ORG-ARMM, testified that her duties and responsibilities include the processing, updating and recording of transactions of ORG-ARMM in the books of accounts while vouchers are recorded in the Journal of Analysis and Obligations (JAO). They also prepared financial reports. As to cash advances, she explained

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[13] TSN, April 26, 2005, pp. 6-22.

[14] *Id.* at 24-40.

that the procedure starts with the preparation of the voucher at ORG which also issues the authority to withdraw cash advance which is attached to the disbursement voucher and supporting documents, afterwhich it is forwarded to the Finance and Budget Management Services for processing: there, it is first submitted to the Budget Division for the request for allotment of obligation, and next forwarded to the Accounting Division for the journal entry of obligation and recording in the books of account, and then the documents are forwarded to the Office of the Finance Director for his approval, and thereafter returned back to the ORG for final approval for the issuance of the check. Presently, their office is more systematic and organized than it was during the administration of Governor Candao. Sometime in 1994 during the investigation by the Office of the Ombudsman relative to the subject illegal withdrawals, she was summoned to produce the Cash Receipts Book and Cash Disbursement Book of the 1991 ARMM seed money for regional, provincial and district Impact Infrastructure Projects. However, she was not able to comply with the said directive because such books are not among those required by the COA for their office; what the COA directed them to maintain was the JAO, a book of original entry for allotments received and disbursements for the transactions of ORG-ARMM. She wrote a letter-reply to the Ombudsman Investigator and transmitted the original 1992 JAO which was never returned to their office.[15]

Explaining the contents of the JAO, witness Fontanilla said that the entries in the voucher are recorded therein: an obligation number is placed in the request of allotment (ROA) which also appears in the voucher. Before such recording in the JAO, the disbursement vouchers are presented to their office. Actually, she does not know whether the 1992 JAO still exists or with the Ombudsman Investigator because at the time, they were holding office temporarily at the office of ORG Auditor which unfortunately got burned sometime in 1996.[16]

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[15] TSN, June 8, 2006, pp. 5-12.

[16] *Id.* at 13-15.

As for witness Bartolome M. Corpus, his deposition upon oral examination was taken on August 27, 2004 before Atty. Edipolo Sarabia, Clerk of Court, Regional Trial Court of Davao City. He testified that in 1991 he was appointed Chief of the Management Division of the Finance and Budget Management Services (FBMS), ORG-ARMM. He was placed on floating status for three years by the new Chief of Staff of ORG-ARMM (Nasser Pangandaman) upon the election of a new Regional Governor, Lininding Pangandaman who defeated Governor Candao. As Finance Director, it was his responsibility to review all transactions of the ORG-ARMM and see to it that COA regulations are in place and supporting documents are complete. After reviewing documents, which include disbursement vouchers, his office submits the same to the COA Regional Officer or to the COA Resident Auditor. Being the internal control unit of ORG-ARMM, all transactions and supporting documents must pass through his office. As to the transactions covered by the subject 52 checks, he confirmed that these passed through his office, including the disbursement vouchers, afterwhich these were forwarded to the Accounting Office and then to the Cash Division for issuance of checks. He claimed that his subordinates tried to submit the disbursement vouchers to the Resident Auditor, as shown by the transmittal letters dated March 4 and March 30, 1993. However, Ms. Gagwis refused to accept the vouchers because she was no longer the Resident Auditor at the time. During the time of Governor Candao, he does not recall having received any notice of disallowance from the COA although there were times they received a notice of suspension which had been settled. During the time he was on floating status, he discovered that some vouchers including those original vouchers covered by the subject 52 checks were still in his filing cabinet. He then handed them over to Haron. In 1996, he was reinstated by Governor Nur Misuari.[17]

On cross-examination, witness Corpus said that they tried to submit the vouchers to Gagwis sometime in late March or early April 1993. He was not aware of the August 27, 1993

[17] TSN, August 27, 2004, pp. 3-17; SB Records (Vol. II), pp. 467-481.

Certification issued by Gagwis. When asked about the stated purpose "peace and order campaign" in the cash advance vouchers, he confirmed that this was the practice at that time and it was only during liquidation that ORG will have the list of expenses; the supporting documents will come only after the issuance of the check.[18] On re-direct examination, he maintained that there were previous similar vouchers for "peace and order campaign" which have not been disallowed but only suspended by the COA.[19]

Sandiganbayan Ruling

By Decision dated October 29, 2008, the Sandiganbayan found petitioner Haron guilty beyond reasonable doubt of malversation of public funds under Article 217 of the Revised Penal Code, as amended, committed in conspiracy with petitioners Zacaria A. Candao and Abas A. Candao who were likewise sentenced to imprisonment and ordered to pay a fine equivalent to the amount of the check in each case, as follows:

Criminal Case Nos. 24569-24584, 24593, 24595-24620

Israel B. Haron and **Abas A. Candao** - convicted of **43** counts of Malversation of Public Funds and each was sentenced to indeterminate prison term in each case of ten (10) years and one (1) day of *prision mayor*, as minimum, to eighteen (18) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and ordered to pay a fine in each case equivalent to the particular check involved, without subsidiary imprisonment in case of insolvency and the penalty of perpetual special disqualification to hold public office and other accessory penalties provided by law. In the service of their respective sentences, they shall be entitled to the benefit of the three-fold rule as provided in Art. 70 of the Revised Penal Code, as amended.

Criminal Case Nos. 24585-24592 & 24594

Israel B. Haron and **Zacaria A. Candao** – convicted of **9** counts of Malversation of Public Funds and each was sentenced to

[18] *Id.* at 17-21; *id.* at 481-485.

[19] *Id.* at 21-22; *id.* at 485-486.

indeterminate prison term in each case of ten (10) years and one (1) day of *prision mayor* as minimum, to eighteen (18) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and ordered to pay a fine in each case equivalent to the particular check involved, without subsidiary imprisonment in case of insolvency and the penalty of perpetual special disqualification to hold public office and other accessory penalties provided by law. In the service of their respective sentences, they shall be entitled to the benefit of the three-fold rule as provided in Art. 70 of the Revised Penal Code, as amended.[20]

The Sandiganbayan found no merit in petitioners' claim that the subject checks were covered by existing disbursement vouchers which were belatedly submitted and received by the COA Central Office on October 29, 1993. It said that had those vouchers really existed at the time of the 52 withdrawals petitioners made from December 29, 1992 to March 30, 1993, petitioner Haron could have readily produced them when required to do so by the special audit team on August 24, 1993. Said court likewise did not give credence to the testimony of Corpus in view of the August 27, 1993 Certification issued by then COA Auditor Gagwis that she has not received the vouchers mentioned in the transmittal letters. Gagwis' explanation, on the other hand, contradicted the testimony of Corpus that when he returned to his office sometime in May 1993, he found the original vouchers together with the transmittal letters still there in his filing cabinet and have not been submitted to the COA Resident Auditor.

The Sandiganbayan noted that petitioners presented no proof that the cash advances intended for "peace and order campaign" were spent for public purposes, as in fact the alleged disbursement vouchers did not indicate any detail as to the nature of the expense/s such as purchase of equipment, services, meals, travel, *etc*. and there were no supporting documents such as the Request for Issuance of Voucher, Purchase Request and Inspection Report of the items supposedly purchased. More importantly, the vouchers were not accomplished in accordance with existing COA circulars because they are unnumbered and undated. Hence,

[20] *Rollo,* pp. 104-123.

the belatedly submitted vouchers are of doubtful veracity or origin, nay, a fabricated evidence or, as pointed out by the prosecution, "self-serving or an afterthought, belatedly prepared to give the illegal disbursements amounting to the aggregate amount of more than ₱21M, a semblance of regularity."[21] As to the JAO and Certification dated August 18, 1998 issued by Chief Accountant Fontanilla, the Sandiganbayan found there is nothing therein to indicate the particular disbursement voucher that corresponds to each of the subject 52 checks which were neither reflected in the JAO.

With respect to petitioners' assertion that the audit conducted by the COA special audit team was incomplete and tainted as it did not follow procedures because the person audited were not notified thereof, the Sandiganbayan found these allegations unsubstantiated as in fact at the start of the audit on August 24, 1993, the audit team thru their team leader State Auditor Naranjo, informed the management of ORG-ARMM thru the COA Resident Auditor of the expanded special audit to be conducted as they even requested for the original copies of the disbursement vouchers together with their complete supporting documents covering the 52 checks. But despite said letter, the ORG-ARMM failed to heed the audit team's request. For the failure of petitioner Haron to account for the funds involved in the illegal withdrawals when asked to do so, the presumption arose that he misappropriated the same, which presumption was not overcome by defense evidence.

On the respective liabilities of petitioners Zacaria A. Candao and Abas A. Candao, the Sandiganbayan held that by their act of co-signing the subject checks, petitioner Haron was able to consummate the illegal withdrawals without the required disbursement vouchers of the amounts covered by the 43 checks (for Abas) and 9 checks (for Zacaria). Thus, by their collective acts, said court concluded that petitioners conspired to effect the illegal withdrawals of public funds which, when required by the COA to be properly accounted for, petitioners failed to do so.

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[21] *Id.* at 100.

In its Resolution dated February 20, 2009, the Sandiganbayan denied the prosecution's motion to cancel bail bonds and petitioners' motion for reconsideration.

The Petition

Petitioners raised the following grounds for their acquittal:

1. …THE SANDIGANBAYAN...COMMITTED A REVERSIBLE ERROR IN CONVICTING THE ACCUSED PETITIONERS FOR THE CRIME OF MALVERSATION OF PUBLIC FUNDS DESPITE PROOF POSITIVE THAT, CONTRARY TO WHAT THE INFORMATIONS CHARGED, THERE *WERE* DISBURSEMENT VOUCHERS EXCEPT THAT THE COA REFUSED TO ACCEPT MUCH LESS EXAMINE THE SAME. PETITIONERS WERE THUS DENIED DUE PROCESS OF LAW WHEN THEY WERE CONVICTED FOR OFFENSES NOT COVERED BY THE INFORMATIONS AGAINST THEM.
2. ….THE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR IN NOT APPLYING THE "EQUIPOISE RULE" WHICH IF APPLIED WOULD HAVE RESULTED IN THE ACQUITTAL OF THE ACCUSED-PETITIONERS.
3. … THE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR IN CONVICTING ACCUSED PETITIONERS ZACARIA A. CANDAO AND ABAS A. CANDAO DESPITE THE FACT THAT THE CHARGE OF CONSPIRACY WHICH IS THEIR ONLY LINK TO THE OFFENSES HEREIN HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[22]

Our Ruling

The petition has no merit.

Article 217 of the Revised Penal Code, as amended, provides:

Art. 217. *Malversation of public funds or property –Presumption of malversation.*— Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent,

[22] *Id.* at 48.

or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public fund or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. (Emphasis supplied.)

The following elements are essential for conviction in malversation cases:

1. That the offender is a public officer;
2. That he had custody or control of funds or property by reason of the duties of his office;
3. That those funds or property were public funds or property for which he was accountable; and

4. That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[23]

All the foregoing elements were satisfactorily established by the prosecution in this case. Petitioners have not rebutted the legal presumption that with the Disbursing Officer's (Haron) failure to account for the illegally withdrawn amounts covered by the subject checks when demanded by the COA, they misappropriated and used the said funds for their personal benefit.

Petitioners however assert that their convictions were based solely on the Sandiganbayan's conclusion that the vouchers submitted by the defense were illegal or irregular, whereas the informations simply alleged their absence or non-existence. They contend that said court could not have validly assessed the disbursement vouchers as to their legality because that duty pertains to the COA which refused and failed to examine the same. Had the court allowed the COA to evaluate and make a ruling on the validity of the vouchers, the result would have been different and most probably they would have been acquitted of the crime charged.

We are not persuaded by petitioners' asseveration.

The Sandiganbayan categorically ruled that the disbursement vouchers were inexistent at the time of the issuance of the subject checks and expanded special audit based on its findings that: (1) petitioner Haron could not produce the vouchers upon demand by the COA in August 1993; (2) Resident Auditor Gagwis certified at about the same time that to date she has not received the vouchers mentioned in the supposed transmittal letters of March 4 and March 30, 1993; (3) the entries in the duly certified Report of Checks Issued by Deputized Disbursing Officer (RCIDDO) of the late Pandical M. Santiago, Cashier of ORG-ARMM, showed that for the months of January, February and March 1993, there were indeed entries of checks issued with Haron as payee but *no disbursement voucher numbers* as these

[23] LUIS B. REYES, *The Revised Penal Code*, Book Two, 2008 Edition, p. 426.

were either lacking, detached or missing, and which were verified by the audit team as corresponding to the subject 52 checks issued and signed by petitioners and encashed by petitioner Haron who received the money withdrawn from the government depositary accounts; (4) FBMS Chief Corpus testified that he discovered the supposed vouchers still there at his office filing cabinet in May 1993 when these supposedly have already been submitted to the COA Resident Auditor as reflected in the March 4 and March 30, 1993 transmittal letters; and (5) the supposed original disbursement vouchers belatedly submitted to the COA central office last week of October 1993, were undated and unnumbered with no supporting documents as required by COA Circular No. 78-79 (April 5, 1978).

Contrary to petitioners' claim, the special audit team could not have examined the vouchers presented by the defense (Exhibits "1" to "1-A-43") because the only indication of its actual receipt by the COA as admitted by the prosecution, was on October 23, 1993 long after the expanded audit was completed and beyond the 72-hour deadline specified in the September 10, 1993 demand letter addressed to Haron for the restitution of the total amount of illegal withdrawals. In addition, such disbursement vouchers have no supporting documents as required by COA Circular No. 92-389 dated November 3, 1992. On the other hand, the Certification dated August 18, 1998 issued by ARMM Chief Accountant Fontanilla stating that the vouchers were regular because these were properly recorded in the JAO, was not given credence by the Sandiganbayan. Upon scrutiny of the JAO covering the period January to March 1993, said court found that it failed to indicate the particular disbursement voucher that corresponds to each of the 52 checks, aside from the fact that it was prepared by the ARMM Chief Accountant who is under the control and supervision of the ORG. Notably, the JAO is used to summarize obligations incurred and to monitor the balance of unobligated allotments, which is prepared by function, and project for each fund and allotment class.[24] The

[24] Sec. 405, Government Auditing and Accounting Manual.

JAO is thus separate and distinct from the Report of Checks Issued (RCI) which is prepared by the Disbursing Officer to report checks issued for payment of expenditures and/or prior accounts payable. What is clear is that the disbursement of funds covered by the 52 checks issued by the petitioners are subject to the rule that disbursement voucher "shall be used by all government entities for all money claims" and that the "voucher number shall be indicated on the voucher and on every supporting document."[25] Inasmuch as the JAO for the months of January, February and March 1993 do not at all reflect or indicate the number of each of the disbursement vouchers supposedly attached to the 52 checks, it cannot serve as evidence of the recording of the original vouchers, much less the existence of those disbursement vouchers at the time of the issuance of the 52 checks and the conduct of the expanded audit.

Petitioners further raise issue on the regularity, completeness and objectivity of the expanded audit conducted by the COA. However, records showed that the ORG-ARMM were duly notified of the expanded audit at its commencement and was even requested thru the COA Resident Auditor to submit the needed disbursement vouchers. It must be noted that at an earlier date, a main audit had already been conducted for the financial transactions of ORG-ARMM during which State Auditor Mendoza experienced threats against her own security that she had to be immediately recalled from her assignment. Thus, by the time the expanded audit was conducted in August 1993 upon the directive of the COA Chairman, petitioners, especially Haron, should have seen to it that the records of disbursements and financial transactions including the period January to March 1993, were in order and available for further audit examination. In any case, even if there was no so-called entry conference held, there is absolutely no showing that petitioners were denied due process in the conduct of the expanded audit as they simply refused or failed to heed COA's request for the production of disbursement vouchers and likewise ignored the formal demand made by COA Chairman Banaria for the restitution of the illegally

[25] Sec. 430, Government Auditing and Accounting Manual.

withdrawn public funds, submitting their compliance only after the special audit team had submitted their report.

In fine, the Sandiganbayan committed no reversible error in holding that the testimonial and documentary evidence presented by the petitioners failed to overcome the *prima facie* evidence of misappropriation arising from Haron's failure to give a satisfactory explanation for the illegal withdrawals from the ARMM funds under his custody and control. Petitioners likewise did not accomplish the proper liquidation of the entire amount withdrawn, during the expanded audit or any time thereafter. There is therefore no merit in petitioners' argument that the Sandiganbayan erred in not applying the equipoise rule.

Under the equipoise rule, where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. The equipoise rule finds application if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then the evidence does not fulfill the test of moral certainty, and does not suffice to produce a conviction.[26] Such is not the situation in this case because the prosecution was able to prove by adequate evidence that Disbursing Officer Haron failed to account for funds under his custody and control upon demand, specifically for the ₱21,045,570.64 illegally withdrawn from the said funds. In the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he did not have them in his possession when demand therefor was made, and that he could not satisfactorily explain his failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary in malversation cases.[27]

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[26] *Bernardino v. People*, G.R. Nos. 170453 and 170518, October 30, 2006, 506 SCRA 237, 252, citing *Dado v. People*, 440 Phil. 521, 537 (2002).

[27] *Davalos, Sr. v. People*, G.R. No. 145229, April 24, 2006, 488 SCRA 85, 92, citing *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533, 554.

As to the liability of petitioners Zacaria A. Candao and Abas A. Candao, the Sandiganbayan correctly ruled that they acted in conspiracy with petitioner Haron to effect the illegal withdrawals and misappropriation of ORG-ARMM funds.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.[28]

In this case, petitioners Zacaria A. Candao and Abas A. Candao were co-signatories in the subject checks issued without the required disbursement vouchers. Their signatures in the checks, as authorized officials for the purpose, made possible the illegal withdrawals and embezzlement of public funds in the staggering aggregate amount of ₱21,045,570.64.

Petitioners Zacaria A. Candao and Abas A. Candao assail their conviction as co-conspirators in the crime of malversation contending that their only participation was in the ministerial act of signing the checks. The checks having passed through processing by finance and accounting personnel of ORG-ARMM, petitioners said they had to rely on the presumption of regularity in the performance of their subordinates' acts. Furthermore, they assert that since conspiracy requires knowledge of the purpose for which the crime was committed, they could not have been conspirators in the design to defraud the government.

We disagree with such postulation.

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[28] *People v. Pajaro*, G.R. Nos. 167860-65, June 17, 2008, 554 SCRA 572, 586, citing *People v. Garcia, Jr.*, G.R. No. 138470, April 1, 2003, 400 SCRA 229, 238-239.

As the Regional Governor of ARMM, petitioner Zacaria A. Candao cannot exonerate himself from liability for the illegally withdrawn funds of ORG-ARMM. Under Section 102 (1) of the Government Auditing Code of the Philippines, he is responsible for all government funds pertaining to the agency he heads:

> Section 102. *Primary and secondary responsibility.* – (1) The head of any agency of the government is **immediately and primarily responsible for all government funds and property pertaining to his agency**.
>
> xxx xxx xxx (Emphasis supplied.)

Petitioners Zacaria A. Candao and his Executive Secretary Abas A. Candao are both accountable public officers within the meaning of Article 217 of the Revised Penal Code, as amended. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval,[29] as in fact checks issued and signed by petitioner Haron had to be countersigned by them. Their indispensable participation in the issuance of the subject checks to effect illegal withdrawals of ARMM funds was therefore duly established by the prosecution and the Sandiganbayan did not err in ruling that they acted in conspiracy with petitioner Haron in embezzling and misappropriating such funds.

Moreover, as such accountable officers, petitioners Zacaria A. Candao and Abas A. Candao were charged with the duty of diligently supervising their subordinates to prevent loss of government funds or property, and are thus liable for any unlawful application of government funds resulting from negligence, as provided in Sections 104 and 105 of the Government Auditing Code of the Philippines, which read:

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[29] Article VII, Sec. 24 (e) of R.A. No. 6734 entitled "An Act Providing for an Organic Act For the Autonomous Region in Muslim Mindanao", provides that: "No funds or resources shall be disbursed unless duly approved by the Regional Governor or by his duly authorized representative." This provision was retained under R.A. No. 9054 amending the Organic Act, Art. VII, Sec. 24 (e) thereof.

Sec. 104. *Records and reports required by primarily responsible officers.* – The head of any agency or instrumentality of the national government or any government-owned or controlled corporation and any other self-governing board or commission of the government shall exercise the diligence of a good father of a family in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, otherwise he shall be jointly and solidarily liable with the person primarily accountable therefor.
x x x x

Sec. 105. *Measure of liability of accountable officers.* x x x

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

The fact that ARMM was still a recently established autonomous government unit at the time does not mitigate or exempt petitioners from criminal liability for any misuse or embezzlement of public funds allocated for their operations and projects. The Organic Act for ARMM (R.A. No. 6734) mandates that the financial accounts of the expenditures and revenues of the ARMM are subject to audit by the COA.[30] Presently, under the Amended Organic Act (R.A. No. 9054), the ARMM remained subject to national laws and policies relating to, among others, fiscal matters and general auditing.[31] Here, the prosecution successfully demonstrated that the illegal withdrawals were deliberately effected through the issuance of checks without the required disbursement vouchers and supporting documents. And even if petitioners Zacaria A. Candao and Abas A. Candao invoke lack of knowledge in the criminal design of their subordinate, Disbursing Officer Haron, they are still liable as co-principals in the crime of malversation assuming such misappropriation of public funds was not intentional, as alleged in the informations, but due to their negligence in the performance

[30] Art. IX, Sec. 2.

[31] Art. IV, Section 3 (d) and (j).

of their duties. As this Court ratiocinated in *Cabello v. Sandiganbayan*[32]:

> Besides, even on the putative assumption that the evidence against petitioner yielded a case of malversation by negligence but the information was for intentional malversation, under the circumstances of this case his conviction under the first mode of misappropriation would still be in order. Malversation is committed either intentionally or by negligence. The *dolo* or the *culpa* present in the offense is only a modality in the perpetration of the felony. **Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper.** A possible exception would be when the mode of commission alleged in the particulars of the indictment is so far removed from the ultimate categorization of the crime that it may be said due process was denied by deluding the accused into an erroneous comprehension of the charge against him. That no such prejudice was occasioned on petitioner nor was he beleaguered in his defense is apparent from the records of this case.[33] (Emphasis supplied.)

Under Article 217, paragraph 4 of the Revised Penal Code, as amended, the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed if the amount involved exceeds ₱22,000.00, in addition to fine equal to the funds malversed. Considering that neither aggravating nor mitigating circumstance attended the crime charged, the maximum imposable penalty shall be within the range of the medium period of *reclusion temporal* maximum to *reclusion perpetua*, or eighteen (18) years, eight (8) months and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the minimum penalty, which is one degree lower from the maximum imposable penalty, shall be within the range of *prision mayor* maximum to *reclusion temporal* medium, or ten (10) years and one (1) day to seventeen (17) years and four (4) months.[34] The penalty imposed by the Sandiganbayan on petitioners needs therefore to be modified insofar as the maximum penalty is

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[32] G.R. No. 93885, May 14, 1991, 197 SCRA 94.

[33] *Id.* at 103.

[34] *Cabarlo v. People*, G.R. No. 172274, November 16, 2006, 507 SCRA 236, 246.

concerned and is hereby reduced to seventeen (17) years and four (4) months of *reclusion temporal* medium, for each count.

WHEREFORE, the petition for review on *certiorari* is *DENIED* for lack of merit. The Decision dated October 29, 2008 in Criminal Case Nos. 24569 to 24574, 24575, 24576 to 24584, 24585 to 24592, 24593, 24594, 24595 to 24620 finding petitioners guilty beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217, paragraph 4 of the Revised Penal Code, as amended, and the Resolution dated February 20, 2009 of the Sandiganbayan (First Division), denying petitioners' motion for reconsideration are *AFFIRMED with MODIFICATIONS* in that petitioners are instead accordingly sentenced to suffer an indeterminate prison term of ten (10) years and one (1) day of *prision mayor* maximum, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum, in each of the above-numbered criminal cases.

In addition to the payment of the fine ordered by the Sandiganbayan, and by way of restitution, the petitioners are likewise ordered to pay, jointly and severally, the Republic of the Philippines through the ARMM-Regional Treasurer, the total amount of ₱21,045,570.64 malversed funds as finally determined by the COA.

In the service of their respective sentences, the petitioners shall be entitled to the benefit of the three-fold rule as provided in Article 70 of the Revised Penal Code, as amended.

With costs against the petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Sereno,*[*] *JJ.,* concur.

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[*] Designated additional member per Raffle dated October 17, 2011 vice Associate Justice Teresita J. Leonardo-De Castro who recused herself from the case due to prior action in the Sandiganbayan.

THIRD DIVISION

[G.R. No. 188072. October 19, 2011]

EMERITA M. DE GUZMAN, *petitioner, vs.* **ANTONIO M. TUMOLVA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF CONSTRUCTION ARBITRATORS ARE FINAL AND CONCLUSIVE AND NOT REVIEWABLE ON APPEAL.— There is no doubt that De Guzman incurred damages as a result of the collapse of the perimeter fence. The Contractor is clearly guilty of negligence and, therefore, liable for the damages caused. x x x. The Court finds no compelling reason to deviate from [the] factual finding by the CIAC, as affirmed by the CA. It is settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the CA. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.

2. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; IN DETERMINING ACTUAL DAMAGES, ONE CANNOT RELY ON MERE ASSERTIONS, SPECULATIONS, CONJECTURES, OR GUESSWORK, BUT MUST DEPEND ON COMPETENT PROOF AND ON THE BEST EVIDENCE OBTAINABLE REGARDING SPECIFIC FACTS THAT COULD AFFORD SOME BASIS FOR MEASURING COMPENSATORY OR ACTUAL DAMAGES; AWARD OF ACTUAL DAMAGES NOT PROPER DUE TO ABSENCE OF CONCRETE EVIDENCE TO SUPPORT THE PLEA.— CIAC's award of actual damages, however, is indeed not proper under the circumstances as there is no concrete evidence to support the plea. In determining actual damages, one cannot rely on mere assertions, speculations, conjectures or guesswork, but must depend on competent proof and on the best evidence obtainable regarding specific facts that could afford some basis for measuring

compensatory or actual damages. Article 2199 of the New Civil Code defines actual or compensatory damages x x x. Unfortunately, De Guzman failed to adduce evidence to satisfactorily prove the amount of actual damage incurred. Contrary to her assertion, the handwritten calculation of reconstruction costs made by Engineer Santos and attached to his affidavit cannot be given any probative value because he never took the witness stand to affirm the veracity of his allegations in his affidavit and be cross-examined on them. Neither is there any evidence presented to substantiate Engineer Santos' computation of the reconstruction costs. For such computation to be considered, there must be some other relevant evidence to corroborate the same. Thus, the CA was correct in disregarding the affidavit of Engineer Santos for being hearsay and in not giving probative weight to it. There being no tangible document or concrete evidence to support the award of actual damages, the same cannot be sustained.

3. ID.; ID.; TEMPERATE DAMAGES; MAY BE ALLOWED IN CASES WHERE FROM THE NATURE OF THE CASE, DEFINITE PROOF OF PECUNIARY LOSS CANNOT BE ADDUCED, ALTHOUGH THE COURT IS CONVINCED THAT THE AGGRIEVED PARTY SUFFERED SOME PECUNIARY LOSS; AWARD OF TEMPERATE DAMAGES, WARRANTED.— Nevertheless, De Guzman is indeed entitled to temperate damages as provided under Article 2224 of the Civil Code for the loss she suffered. When pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty, temperate damages may be recovered. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss. Undoubtedly, De Guzman suffered pecuniary loss brought about by the collapse of the perimeter fence by reason of the Contractor's negligence and failure to comply with the specifications. As she failed to prove the exact amount of damage with certainty as required by law, the CA was correct in awarding temperate damages, in lieu of actual damages. However, after weighing carefully the attendant circumstances and taking into account the cost of rebuilding the damaged portions of the perimeter fence, the amount of ₱100,000.00 awarded to De

Guzman should be increased. This Court, in recognition of the pecuniary loss suffered, finds the award of ₱150,000.00 by way of temperate damages as reasonable and just under the premises.

4. ID.; ID.; MORAL DAMAGES; AWARD THEREOF IS PREDICATED ON THE CATEGORICAL SHOWING BY THE CLAIMANT THAT SHE ACTUALLY EXPERIENCED EMOTIONAL AND MENTAL SUFFERINGS, BUT THE SAME MUST BE DISALLOWED ABSENT ANY EVIDENCE THEREON; AWARD OF MORAL DAMAGES, NOT PROPER.— As to the CIAC's award of ₱100,000.00 as moral damages, this Court is one with the CA that De Guzman is not entitled to such an award. The record is bereft of any proof that she actually suffered moral damages as contemplated in Article 2217 of the Code x x x. Certainly, the award of moral damages must be anchored on a clear showing that she actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury. There could not have been a better witness to this experience than De Guzman herself. Her testimony, however, did not provide specific details of the suffering she allegedly went through after the fence collapsed while she was miles away in the United States. As the CA aptly observed, "the testimony of the OWNER as to her worry for the safety of the children in the orphanage is insufficient to establish entitlement thereto." Since an award of moral damages is predicated on a categorical showing by the claimant that she actually experienced emotional and mental sufferings, it must be disallowed absent any evidence thereon. Moreover, under the aforequoted provision, moral damages cannot be recovered as the perimeter fence collapsed in the midst of the strong typhoon "Milenyo." It was not clearly established that the destruction was the proximate result of the Contractor's act of making deviation from the plan. x x x. Further, De Guzman was not able to show that her situation fell within any of the cases enumerated in Article 2219 of the Civil Code upon which to base her demand for the award of moral damages. Neither does the breach of contract committed by the Contractor, not being fraudulent or made in bad faith, warrant the grant of moral damages under Article 2220 x x x.

5. ID.; ID.; EXEMPLARY DAMAGES; CANNOT BE AWARDED ABSENT ANY EVIDENCE THAT THE CONTRACTOR ACTED IN A WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE, OR MALEVOLENT MANNER.— De Guzman cannot be awarded exemplary damages either, in the absence of any evidence showing that the Contractor acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner as provided in Article 2232 of the Civil Code. The ruling in the case of *Nakpil and Sons v. Court of Appeals*, relied upon by De Guzman, where it was emphasized that the wanton negligence in effecting the plans, designs, specifications, and construction of a building is equivalent to bad faith in the performance of the assigned task, finds no application in the case at bench. As already pointed out, there is negligence on the part of Contractor, but it is neither wanton, fraudulent, reckless, oppressive, nor malevolent. The award of exemplary damages cannot be made merely on the allegation of De Guzman that the Contractor's deviations from the plans and specifications without her written consent was deplorable and condemnable. The Court regards the deviations as excusable due to the unavailability of the approved construction materials. Besides, these were made known to De Guzman's project manager who was present all the time during the construction. Indeed, no deliberate intent on the part of the Contractor to defraud the orphanage's benefactors was ever shown, much less proved.

6. ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF, WHEN PROPER; AWARD OF ATTORNEY'S FEES TO PETITIONER, WARRANTED.— As regards the award of attorney's fees, the Court upholds De Guzman's entitlement to reasonable attorney's fees, although it recognizes that it is a sound policy not to set a premium on the right to litigate. It must be recalled that De Guzman's repeated demands for the repair of the fence or the payment of damages by way of compensation, were not heeded by the Contractor. The latter's unjust refusal to satisfy De Guzman's valid, just and demandable claim constrained her to litigate and incur expenses to protect her interest. Article 2208 of the Civil Code, thus, provides: Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: xxx (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; xxx

APPEARANCES OF COUNSEL

Nino Delvin E. Embuscado for petitioner.
Nimfa E. Silvestre-Pineda for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court assailing the February 24, 2009 Decision[1] of the Court of Appeals (*CA*) and its May 26, 2009 Resolution[2] in CA-G.R. SP. No. 104945 entitled "*Antonio M. Tumolva v. Emerita M. De Guzman.*"

The Facts

On September 6, 2004, petitioner Emerita M. De Guzman *(De Guzman)*, represented by her attorneys-in-fact, Lourdes Rivera and Dhonna Chan, and respondent Antonio Tumolva, doing business under the name and style A.M. Tumolva Engineering Works *(the Contractor)*, entered into a Construction Agreement[3] *(Agreement)* for the construction of an orphanage consisting of an administration building, directors/guests house, dining and service building, children's dormitory, male staff house, and covered walkways in Brgy. Pulong Bunga, Purok 4, Silang, Cavite, for a contract price of ₱15,982,150.39. Incorporated in the Agreement was the plan and specifications of the perimeter fence. The Contractor, however, made deviations from the agreed plan[4] with respect to the perimeter fence of the orphanage.

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[1] *Rollo*, pp. 39-46. Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justice Mario L. Guariña III and Associate Justice Marlene Gonzales-Sison, concurring.

[2] *Id.* at 49.

[3] *Id.* at 50-59.

[4] Annex "E" of Petition, *id.* at 68.

On September 6, 2005, after the completion of the project, De Guzman issued a Certificate of Acceptance. For his part, the Contractor issued a quitclaim acknowledging the termination of the contract and the full compliance therewith by De Guzman.

In November 2006, during typhoon "Milenyo," a portion of the perimeter fence collapsed and other portions tilted. In her Letter dated December 5, 2006, De Guzman, through counsel, demanded the repair of the fence in accordance with the plan. In response, the Contractor claimed that the destruction of the fence was an act of God and expressed willingness to discuss the matter to avoid unnecessary litigation. De Guzman, however, reiterated her demand for the restoration of the wall without additional cost on her part, or in the alternative, for the Contractor to make an offer of a certain amount by way of compensation for the damages she sustained. Her demand was not heeded.

On February 14, 2008, De Guzman filed a Request for Arbitration[5] of the dispute before the Construction Industry Arbitration Commission *(CIAC)*. She alleged that the Contractor deliberately defrauded her in the construction of the perimeter fence by "under sizing the required column rebars from 12mm. based on the plan to only 10mm., the required concrete hollow blocks from #6 to #5, and the distance between columns from 3.0m to 4.3m."[6] Further, the Contractor neither anchored the lenten beams to the columns nor placed drains or weepholes along the lower walls. She prayed for an award of actual, moral and exemplary damages, as well as attorney's fees and expenses of litigation, and for the inspection and technical assessment of the construction project and the rectification of any defect.

In his Answer with Counterclaim, the Contractor denied liability for the damaged fence claiming, among others, that its destruction was an act of God. He admitted making deviations from the plan, but pointed out that the same were made with the knowledge and consent of De Guzman through her representatives, Architect Quin Baterna and Project Engineer Rodello Santos *(Engineer*

[5] Annex "D" of Petition, *id.* at 61-66.

[6] *Id.*

Santos), who were present during the construction of the fence. He further argued that pursuant to the Agreement, the claim for damages was already barred by the 12-month period from the issuance of the Certificate of Acceptance of the project within which to file the claim. He, thus, prayed for the dismissal of the action and interposed a counterclaim for actual and compensatory damages for the additional work/change orders made on the project in the amount of ₱2,046,500.00, attorney's fees and litigation expenses.

After due proceedings, the CIAC issued the Award dated July 17, 2008 in favor of De Guzman, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered and **AWARD** is made on the monetary claims of Claimant **EMERITA M. DE GUZMAN**, directing **Respondent Contractor ANTONIO M. TUMOLVA**, to pay her the following amounts:

₱187,509.00 as **actual damages** for reconstructing the collapsed and damaged perimeter fence.

Interest is awarded on the foregoing amount at the **legal rate of 6% per annum** computed from the date of this Award. After finality thereof, interest at the rate of **12%** per annum shall be paid thereon until full payment of the awarded amount shall have been made, "*this interim period being deemed to be at that time already a forbearance of credit" (Eastern Shipping Lines, Inc. v. Court of Appeals* (243 SCRA 78 [1994])

₱100,000.00 as moral damages.

₱100,000.00 as exemplary damages.

₱50,000.00 for attorney's fees and expenses of litigation.

₱437,509.00 – TOTAL AMOUNT DUE THE CLAIMANT

The CIAC staff is hereby directed to make the necessary computation of how much has been paid by Claimant as its proportionate share of the arbitration costs totaling **₱110,910.44**, which computed amount shall be reimbursed by Respondent to the Claimant.

SO ORDERED.[7]

Aggrieved, the Contractor filed before the CA a Petition for Review with prayer for the issuance of a temporary restraining order, challenging the CIAC's award of damages in favor of De Guzman.

On February 24, 2009, the CA modified the Award rendered by CIAC. The dispositive portion of the decision states:

> WHEREFORE, the instant petition is **partly GRANTED**. The assailed Award dated July 17, 2008 rendered by the CIAC in CIAC Case No. 03-2008 is hereby **MODIFIED**, deleting the award of actual, moral and exemplary damages, but awarding temperate damages in the amount of ₱100,000.00 for reconstructing the collapsed and damaged perimeter fence. The rest of the Award stands.
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> SO ORDERED.[8]

The CA held that although the Contractor deviated from the plan, CIAC's award of actual damages was not proper inasmuch as De Guzman failed to establish its extent with reasonable certainty. The CA, however, found it appropriate to award temperate damages considering that De Guzman suffered pecuniary loss as a result of the collapse of the perimeter fence due to the Contractor's negligence and violation of his undertakings in the Agreement. It further ruled that there was no basis for awarding moral damages reasoning out that De Guzman's worry for the safety of the children in the orphanage was insufficient to justify the award. Likewise, it could not sustain the award of exemplary damages as there was no showing that the Contractor acted in wanton, reckless, fraudulent, oppressive, or malevolent manner.

De Guzman filed a motion for reconsideration of the said decision, but it was denied for lack of merit by the CA in its Resolution dated May 26, 2009.

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[7] Annex "K" of Petition, *id.* at 164-165.

[8] Annex "A" of Petition, *id.* at 46.

Hence, De Guzman interposed the present petition before this Court anchored on the following

GROUNDS

(I)

THE COURT OF APPEALS ERRED IN RULING THAT THE EVIDENCE ON RECORD FAILED TO SUFFICIENTLY ESTABLISH THE AMOUNT OF ACTUAL DAMAGES THAT PETITIONER DE GUZMAN CAN RECOVER FROM THE RESPONDENT.

(II)

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER DE GUZMAN IS NOT ENTITLED TO AWARDS OF MORAL AND EXEMPLARY DAMAGES.[9]

De Guzman argues *inter alia* that the Contractor is liable for the actual damages that she suffered from the collapse of the perimeter fence. He failed to put weep holes on the collapsed portion of the said fence, which could have relieved the pressure from the wet soil of the adjoining higher ground.

De Guzman adds that the computation of the cost of rebuilding the collapsed portion of the perimeter fence by Engineer Santos constituted substantial evidence warranting an award of actual damages. His affidavit served as his direct testimony in the case even if he did not appear during the hearing. Having been notarized, it must be admissible in evidence without further proof of authenticity.

Further, De Guzman questions the CA's deletion of the award for moral and exemplary damages. She insists that her anxiety and suffering over the safety of the children in the orphanage entitled her to an award of moral damages. It is likewise her position that the Contractor's wanton acts of deliberately cheating the benefactors of the orphanage by making deviations on the approved plan through the use of construction materials of inferior

[9] *Rollo*, pp. 25 and 29.

quality warranted the imposition of exemplary damages against the Contractor.

The Court's ruling

There is no doubt that De Guzman incurred damages as a result of the collapse of the perimeter fence. The Contractor is clearly guilty of negligence and, therefore, liable for the damages caused. As correctly found by the CA:

> Nonetheless, the Court sustains the CIAC's conclusion that the CONTRACTOR was negligent in failing to place weepholes on the collapsed portion of the perimeter fence. Fault or negligence of the obligor consists in his failure to exercise due care and prudence in the performance of the obligation as the nature of the obligation so demands, taking into account the particulars of each case. It should be emphasized that even if not provided for in the plan, the CONTRACTOR himself admitted the necessity of putting weepholes and claimed to have actually placed them in view of the higher ground elevation of the adjacent lot *vis-à-vis* the level ground of the construction site. Since he was the one who levelled the ground and was, thus, aware that the lowest portion of the adjoining land was nearest the perimeter fence, he should have ensured that sufficient weepholes were placed because water would naturally flow towards the fence.
>
> However, the CONTRACTOR failed to refute Mr. Ramos' claim that the collapsed portion of the perimeter fence lacked weepholes. Records also show that the omission of such weepholes and/or their being plastered over resulted from his failure to exercise the requisite degree of supervision over the work, which is the same reason he was unable to discover the deviations from the plan until the fence collapsed. Hence, the CONTRACTOR cannot be relieved from liability therefor.[10]

The Court finds no compelling reason to deviate from this factual finding by the CIAC, as affirmed by the CA. It is settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters,

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[10] *Id.* at 44.

are generally accorded not only respect, but also finality, especially when affirmed by the CA. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.[11]

CIAC's award of actual damages, however, is indeed not proper under the circumstances as there is no concrete evidence to support the plea. In determining actual damages, one cannot rely on mere assertions, speculations, conjectures or guesswork, but must depend on competent proof and on the best evidence obtainable regarding specific facts that could afford some basis for measuring compensatory or actual damages.[12] Article 2199 of the New Civil Code defines actual or compensatory damages as follows:

> Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages.

Unfortunately, De Guzman failed to adduce evidence to satisfactorily prove the amount of actual damage incurred. Contrary to her assertion, the handwritten calculation of reconstruction costs made by Engineer Santos and attached to his affidavit cannot be given any probative value because he never took the witness stand to affirm the veracity of his allegations in his affidavit and be cross-examined on them. In this regard, it is well to quote the ruling of the Court in the case of *Tating v. Marcella*,[13] to wit:

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[11] *Shinryo (Philippines) Company, Inc. v. RRN Incorporated*, G.R. No. 172525, October 20, 2010, 634 SCRA 123, 130, citing *IBEX International, Inc. v. Government Service Insurance System*, G.R. No. 162095, October 12, 2009, 603 SCRA 306.

[12] *Soriano v. Marcelo*, G.R. No. 163178, January 30, 2009, 577 SCRA 312, 320, citing *Ilao-Oreta v. Ronquillo*, G.R. No. 172406, October 11, 2007, 535 SCRA 633-642; *MCC Industrial Sales Corporation v. Ssangyong Corporation*, G.R. No. 170633, October 17, 2007, 536 SCRA 408, 468.

[13] G.R. No. 155208, March 27, 2007, 519 SCRA 79.

There is no issue on the admissibility of the subject sworn statement. However, the admissibility of evidence should not be equated with weight of evidence. The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence. It is settled that affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiant. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.

Neither is there any evidence presented to substantiate Engineer Santos' computation of the reconstruction costs. For such computation to be considered, there must be some other relevant evidence to corroborate the same.[14] Thus, the CA was correct in disregarding the affidavit of Engineer Santos for being hearsay and in not giving probative weight to it. There being no tangible document or concrete evidence to support the award of actual damages, the same cannot be sustained.

Nevertheless, De Guzman is indeed entitled to temperate damages as provided under Article 2224 of the Civil Code for the loss she suffered. When pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty, temperate damages may be recovered. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some

[14] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, 511 Phil. 384 (2005).

pecuniary loss.[15] Undoubtedly, De Guzman suffered pecuniary loss brought about by the collapse of the perimeter fence by reason of the Contractor's negligence and failure to comply with the specifications. As she failed to prove the exact amount of damage with certainty as required by law, the CA was correct in awarding temperate damages, in lieu of actual damages. However, after weighing carefully the attendant circumstances and taking into account the cost of rebuilding the damaged portions of the perimeter fence, the amount of ₱100,000.00 awarded to De Guzman should be increased. This Court, in recognition of the pecuniary loss suffered, finds the award of ₱150,000.00 by way of temperate damages as reasonable and just under the premises.

As to the CIAC's award of ₱100,000.00 as moral damages, this Court is one with the CA that De Guzman is not entitled to such an award. The record is bereft of any proof that she actually suffered moral damages as contemplated in Article 2217 of the Code, which provides:

> Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Certainly, the award of moral damages must be anchored on a clear showing that she actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury. There could not have been a better witness to this experience than De Guzman herself.[16] Her testimony, however, did not provide specific details of the suffering she allegedly went through after the fence collapsed while she was

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[15] *Seguritan v. People of the Philippines*, G.R. No. 172896, April 9, 2010, 618 SCRA 406, 420, citing *Canada v. All Commodities Marketing Corp*., G.R. No. 146141, October 17, 2008, 569 SCRA 321, 329.

[16] *Philippine Savings Bank v. Sps. Mañalac, Jr* , 496 Phil. 671 (2005), citing *Mahinay v. Atty. Velasquez, Jr.*, 464 Phil. 146 (2004).

miles away in the United States. As the CA aptly observed, "the testimony of the OWNER as to her worry for the safety of the children in the orphanage is insufficient to establish entitlement thereto."[17] Since an award of moral damages is predicated on a categorical showing by the claimant that she actually experienced emotional and mental sufferings, it must be disallowed absent any evidence thereon.[18]

Moreover, under the aforequoted provision, moral damages cannot be recovered as the perimeter fence collapsed in the midst of the strong typhoon "Milenyo." It was not clearly established that the destruction was the proximate result of the Contractor's act of making deviation from the plan. As correctly concluded by the CA, *viz*:

> However, while it cannot be denied that the Contractor deviated from the plan, there was no clear showing whether the same caused or contributed to the collapse/tilting of the subject perimeter fence. No competent evidence was presented to establish such fact. As the CIAC itself acknowledged, "(t)here is no way by which to accurately resolve this issue by the evidence submitted by the parties." The statement of Edwin B. Ramos, Engineering Aide at the Office of the Municipal Engineer of Silang, Cavite, who conducted an ocular inspection of the collapsed perimeter fence, that the observed deviations from the plan "affected the strength of the fence and made it weaker, such that its chance of withstanding the pressure of water from the other side thereof was greatly diminished or affected" was merely an expression of opinion. As he himself admitted, he is not qualified to render an expert opinion.[19]

Further, De Guzman was not able to show that her situation fell within any of the cases enumerated in Article 2219[20] of the

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[17] *Rollo*, p. 45.

[18] *Metropolitan Bank and Trust Co. v. Perez*, G.R. No. 181842, February 5, 2010, 611 SCRA 740, 746, citing *Bank of Commerce v. Sps. San Pablo*, G.R. No. 167848, April 27, 2007, 522 SCRA 713, 715.

[19] *Rollo*, p. 44.

[20] Art. 2219. Moral damages may be recovered in the following and analogous cases:

Civil Code upon which to base her demand for the award of moral damages.

Neither does the breach of contract committed by the Contractor, not being fraudulent or made in bad faith, warrant the grant of moral damages under Article 2220 which provides that:

> Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

De Guzman cannot be awarded exemplary damages either, in the absence of any evidence showing that the Contractor acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner as provided in Article 2232 of the Civil Code. The ruling in the case of *Nakpil and Sons v. Court of Appeals*,[21] relied upon by De Guzman, where it was emphasized that the wanton negligence in effecting the plans, designs, specifications, and

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(1) A criminal offense resulting in physical injuries;

(2) *Quasi-delicts* causing physical injuries;

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[21] 243 Phil. 489 (1988).

construction of a building is equivalent to bad faith in the performance of the assigned task, finds no application in the case at bench. As already pointed out, there is negligence on the part of Contractor, but it is neither wanton, fraudulent, reckless, oppressive, nor malevolent.

The award of exemplary damages cannot be made merely on the allegation of De Guzman that the Contractor's deviations from the plans and specifications without her written consent was deplorable and condemnable. The Court regards the deviations as excusable due to the unavailability of the approved construction materials. Besides, these were made known to De Guzman's project manager who was present all the time during the construction. Indeed, no deliberate intent on the part of the Contractor to defraud the orphanage's benefactors was ever shown, much less proved. As may be gleaned from his testimony:

xxx xxx xxx

2.2.0 : What can you say to the claim that the column rebars were reduced in size from 12mm to 10mm?

A : That is untrue.

2.2.1 : Why did you say that it was untrue?

A : Because the column rebars that we used is 12mm and not 10mm contrary to the claim of the claimant. The column rebars that claimant and his engineers claimed to have been undersized [were] those already subjected to stretching. Due to the lateral load on the perimeter fence coming from the water that accumulated thereon, the strength of the column bars was subjected to such kind of force beyond its capacity thereby resulting them to yield or "*mapatid*." As a result of such stretching, the column rebars were deformed thereby causing it [to] change its width but the length was extended. You can compare it to a candy like "*tira-tira*" which if you stretch it becomes longer but its width is reduced. The other column rebars on the perimeter fence which [were] not subjected to stretching will prove what I am stating.

2.2.2 : Also, in the said request for arbitration, it was claimed that the required hollow blocks (CHB) was reduced also from #6 to #5, how would you explain this?

A : It is true but such deviation was known to them in view of the fact that there was no available CHB #6 in Silang, Cavite and so to save on the travel cost in bringing materials from Manila to the site, it was agreed that such CHB #5 shall be used instead.

2.2.3 : What was the effect of such deviation in using CHB #5 instead of CHB #6?

A : No effect, madam.

2.2.4 : Why did you state so, Mr. Witness?

A : Because the entire area of the land which is being secured by the perimeter fence was fully covered with the fence which is made of CHB. This simply implies that even though we used a much lesser size of CHB, but we increased the compressive strength of the mortar and filler used in the premises. This has really no effect because we cover the entire place with fence.

2.2.5 : It was also claimed that the distance between columns was deviated from 3.0 m. to 4.0 m, will you please explain this matter.

A : The computation of the distance between the columns of the perimeter fence as appearing on the plan was 3.0 m inside to inside. However, the computation made by the engineer of the claimant as alleged in their Request for Arbitration was 4.0 m. outside to outside which should be 3.6 m. outside to outside as correct distance.

2.2.6 : It now appears from your statement that there was a deviation as between the 3.0 m. inside to inside computation in the plan and the actual 3.6 m. outside to outside computation made by the engineers of the claimant. My question Mr. Witness is, what would be the effect of such deviation on the columns?

A : It is true that there was such a deviation on the distance of the column but it will have no effect because still the factor of safety was well provided for. Even the existing

law on building construction supports this matter. I even sought Engineer Rommel Amante on the matter and his report supports my allegation.

2.2.7 : Was such deviation approved by the claimant or the representatives of the claimant?

A : Yes because during all the time the construction of the perimeter fence was done, the project manager of the claimant was present and observing the works. Further, they have executed a Certificate of Final Acceptance of the project.[22]

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As regards the award of attorney's fees, the Court upholds De Guzman's entitlement to reasonable attorney's fees, although it recognizes that it is a sound policy not to set a premium on the right to litigate.[23] It must be recalled that De Guzman's repeated demands for the repair of the fence or the payment of damages by way of compensation, were not heeded by the Contractor. The latter's unjust refusal to satisfy De Guzman's valid, just and demandable claim constrained her to litigate and incur expenses to protect her interest. Article 2208 of the Civil Code, thus, provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

xxx xxx xxx

(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;

xxx xxx xxx

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

[23] *Northwest Airlines, Inc. v. Chiong*, G.R. No. 155550, January 31, 2008, 543 SCRA 308, 327, citing *BPI Family Savings Bank v. Franco*, G.R. No. 123498, November 23, 2007, 538 SCRA 184, 205.

Finally, the dismissal of the Contractor's counterclaim is sustained for lack of merit. In his Comment[24] and Memorandum,[25] the Contractor pleaded that damages should have been awarded to him. This deserves scant consideration. A perusal of the record reveals that the matter as regards the return of what he had donated by reason of De Guzman's ingratitude was not among the issues raised in this petition. Thus, the same cannot be taken cognizance by the Court.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated February 24, 2009 and its Resolution dated May 26, 2009 are *AFFIRMED* with the *MODIFICATION* that the award of ₱100,000.00 as temperate damages is increased to ₱150,000.00. The award shall earn interest at the rate of 12% per annum reckoned from the finality of this judgment until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Reyes,*[**] *JJ.,* concur.

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[24] *Rollo*, pp. 289-323.

[25] *Id.* at 340-374.

[*] Designated as additional member in lieu of Associate Justice Roberto A. Abad, per Raffle dated June 19, 2009.

[**] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Raffle dated September 26, 2011.

THIRD DIVISION

[G.R. No. 188851. October 19, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCIANO DOLLANO, JR.,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S CONCLUSIONS ON THE CREDIBILITY OF WITNESSES IN RAPE CASE ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT AND AT TIMES EVEN FINALITY; EXCEPTIONS.— The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witness was telling the truth. In this case, the trial and appellate courts gave credence to the testimonies of AAA and BBB when they were presented as witnesses for the prosecution. They found that their clear narration of how the offenses were committed and their categorical statement that appellant committed them, are sufficient to warrant the conviction of the appellant for four counts of rape.

2. ID.; ID.; ID.; RECANTATION; FROWNED UPON BY THE COURTS AND DOES NOT NECESSARILY NEGATE AN EARLIER DECLARATION.— As aptly held by the RTC and the CA, the recantation of both private complainants are insufficient to warrant the reversal of appellant's conviction. Recantations are frowned upon by the courts. A recantation of a testimony is exceedingly unreliable, for there is always the probability that such recantation may later on be itself

repudiated. Courts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary consideration. It is also a dangerous rule for courts to reject testimony solemnly taken before courts of justice simply because the witness who gave it later changed his mind for one reason or another. This will make a mockery of solemn trials and put the investigation of crimes at the mercy of unscrupulous witnesses. A retraction does not necessarily negate an earlier declaration.

3. CRIMINAL LAW; ARTICLE 344 OF THE REVISED PENAL CODE; PARDON GIVEN BY THE RAPE VICTIM IN FAVOR OF THE ACCUSED CANNOT BE APPRECIATED FOR PURPOSES OF ACQUITTING THE ACCUSED WHERE THE SAME WAS MADE AFTER THE INSTITUTION OF THE CRIMINAL ACTION.— It is significant to note that in Criminal Case Nos. 1381 and 1382 against AAA, the rape incidents occurred prior to the effectivity of RA 8353, or *The Anti-Rape Law of 1997* which took effect on October 22, 1997 and classified the crime of rape as a crime against persons. Thus, we apply the old law and treat the acts of rape as private crimes. As provided in Article 344 of the RPC, for crimes of seduction, abduction, rape and acts of lasciviousness, pardon and marriage extinguish criminal liability. However, pardon should have been made prior to the institution of the criminal actions. In this case, AAA gave her testimony in court during the presentation of the evidence for the prosecution. After the prosecution rested its case and during the presentation of the evidence for the defense, AAA again testified to tell the court that she lied when she first testified thereby recanting her previous testimony. Clearly, even if we consider the recantation as pardon on the part of the offended party in favor of appellant, the same cannot be appreciated for purposes of acquitting the accused as it was given definitely after the institution of the criminal action. Once the case is filed in court, control of the prosecution is removed from the offended party's hands and any change of heart by the victim will not affect the state's right to vindicate the atrocity committed against itself. It must be stressed that the true aggrieved party in a criminal prosecution is the People of the Philippines whose collective sense of morality, decency and justice has been outraged.

4. ID.; THE ANTI-RAPE LAW OF 1997 (RA 8353); RAPE CONSIDERED AS A CRIME AGAINST PERSON; RECANTATION IS LESS SIGNIFICANT.— In Criminal Case Nos. 1387 and 1388, the rape incidents were committed when RA 8353 was already effective wherein rape was considered as a crime against person. The recantation became less significant. Indeed, AAA and BBB claimed that they lied when they first testified and the truth is that they charged appellant with such grave offenses because they were mad at him for having maltreated them. However, records show that when they were asked why they were recanting their initial testimony, private complainants explained that they had forgiven their father. This, in fact, strengthens their earlier testimony that appellant committed the acts complained of. Undoubtedly, the initial testimonies of AAA and BBB are positive, credible and convincing. Thus, we affirm the court's conviction of appellant.

5. ID.; STATUTORY RAPE; HOW COMMITTED; THE LAW PRESUMES THAT THE VICTIM DOES NOT AND CANNOT HAVE A WILL OF HER OWN ON ACCOUNT OF HER TENDER YEARS.— In Criminal Case Nos. 1381 and 1382, the prevailing law at the time the crimes were committed in 1995 and 1997 (the month when the incident occurred was not specified) was still Article 335 of the RPC as amended by RA 7659 x x x. Rape under paragraph 3 of the above-mentioned article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below 12 years of age. Thus, the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years. As clearly shown in the narration of facts above, the prosecution was able to establish that appellant succeeded in having carnal knowledge with AAA in 1995, or three months after the death of her mother. The incident was repeated in 1997. AAA's testimony was corroborated by the medical findings of the MHO. It was also established through AAA's birth certificate that she was born on September 10, 1987. Thus, at the time of the commission of the first rape incident in 1995, AAA was only eight (8) years old; and at the time of the second rape incident in 1997, she was only 10 years old. Statutory rape was, therefore, committed in 1995 and 1997.

6. ID.; ID.; IT IS NOT NECESSARY TO STATE THE PRECISE TIME WHEN THE OFFENSE WAS COMMITTED, EXCEPT WHEN TIME IS A MATERIAL INGREDIENT OF THE OFFENSE.— It is immaterial that the prosecution failed to allege in the Information the exact date of the commission of the offenses. It is sufficient that it was alleged therein that in Criminal Case Nos. 1381 and 1382, the crime was committed in October 1995 and 1997, respectively; that AAA was under 12 years of age; and that appellant had carnal knowledge with her. These allegations sufficiently informed appellant that he was being charged with rape of a child who was below 12 years of age. He was definitely afforded the opportunity to prepare his defense. We have repeatedly held that the date of the commission of rape is not an essential element of the crime. It is not necessary to state the precise time when the offense was committed, except when time is a material ingredient of the offense. This Court has upheld the complaints and informations for rape which merely alleged the month and year of its commission. We have also sustained the validity of the information which merely alleged the year of its commission.

7. ID.; QUALIFIED RAPE; COMMITTED; CIRCUMSTANCE OF MINORITY AND RELATIONSHIP ALLEGED AND PROVED.— In Criminal Case Nos. 1387 and 1388, appellant had carnal knowledge with BBB who, at the time of commission, was more than 12 but less than 18 years of age. BBB was intimidated and could not offer resistance because appellant was holding a bolo. As in the case of AAA, the prosecution adequately established through BBB's testimony that appellant had carnal knowledge with her. As aptly held by the CA and contrary to the conclusion of the RTC, the prosecution clearly established that private complainants are appellant's own daughters. Although AAA and BBB's mothers appear to be different, it appears from their birth certificates that their father is the same, that is, appellant herein. This fact was even admitted by appellant during the pre-trial. Undoubtedly, the circumstance of relationship was alleged in the information and proven during the trial in all the cases under consideration. Considering that BBB was less than 18 years of age, and considering further that the crimes were committed by her own father, the CA

was correct in convicting appellant of qualified rape in Criminal Case Nos. 1387 and 1388.

8. ID.; STATUTORY RAPE AND QUALIFIED RAPE; PROPER PENALTIES.— On the proper penalty, Article 335 of the RPC is applicable in Criminal Case Nos. 1381 and 1382: The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. In Criminal Case Nos. 1387 and 1388, Article 266-B of the RPC is applicable which states: The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances: 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. However, as aptly held by the CA, we cannot impose the death penalty in view of RA 9346, and thus impose the lesser penalty of *reclusion perpetua* for the four counts of rape committed against AAA and BBB. Appellant shall also not be eligible for parole.

9. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— As to civil liabilities, the CA aptly awarded a total amount of ₱150,000.00 as civil indemnity and ₱150,000.00 as moral damages in favor of BBB for the rape committed in Criminal Case Nos. 1387 and 1388. In addition, considering the attendance of the aggravating circumstances of minority and relationship, the appellate court correctly awarded exemplary damages, but the amount shall be increased from ₱25,000.00 to ₱30,000.00 each, or a total of ₱60,000.00 pursuant to prevailing jurisprudence. The same amounts shall also be awarded to AAA for the crimes committed in Criminal Case Nos. 1381 and 1382.

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.*:

On appeal is the Court of Appeals (CA) Decision[1] dated April 16, 2009 in CA-G.R. CR-H.C. No. 02989 affirming with modification the Regional Trial Court (RTC)[2] Decision[3] dated July 31, 2006 in Criminal Case Nos. 1381 and 1382 for *Statutory Rape* under Article 335 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353, and Criminal Case Nos. 1387 and 1388 for *Rape*.

Appellant Marciano Dollano, Jr. was charged in four (4) Informations, the accusatory portions of which read as follows:

Criminal Case No. 1381 for Statutory Rape under Article 335 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353

That on or about the month of October, 1995, or barely three (3) months after the death of her mother in July, 1995, at Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, had carnal knowledge of one AAA, [his] own daughter, under 12 years of age, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[4]

Criminal Case No. 1382 for Statutory Rape under Article 335 of the RPC, as amended by RA 8353

That on or about the year 1997, at Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the

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[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Japar B. Dimaampao and Ramon R. Garcia, concurring; CA *rollo*, pp. 129-143.

[2] Branch 55, Irosin, Sorsogon.

[3] Penned by Judge-Designate Adolfo G. Fajardo; records, Vol. I, pp. 140-157.

[4] Records, Vol. I, p. 1.

jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously, had carnal knowledge of one AAA, her own daughter, under 12 years of age, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[5]

Criminal Case No. 1387 for Rape under Article 335 of the RPC and as amended by RA 8353 and RA 7659

That on or about the month of November 1998, at Sitio Palali, Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, said accused, did then and there, willfully, unlawfully and feloniously, have carnal knowledge of [his] own daughter BBB, a 15-year-old girl, against her will and without her consent, to her damage and prejudice.

CONTRARY TO LAW.[6]

Criminal Case No. 1388 for Rape under Article 335 of the RPC and as amended by RA 8353 and RA 7659

That on or about the year 1997, at Sitio Palali, Barangay Hidhid, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, said accused, did then and there, willfully, unlawfully and feloniously, have carnal knowledge of [his] own daughter BBB, a 13-year-old girl, against her will and without his consent, to her damage and prejudice.

CONTRARY TO LAW.[7]

When arraigned with the assistance of his counsel from the Public Attorney's Office (PAO), appellant pleaded not guilty to all the charges.[8]

In **Criminal Case Nos. 1381 and 1382,** the prosecution presented AAA, whose testimony is summarized as follows:

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[5] Records, Vol. II, p. 1.

[6] Records, Vol. III, p. 1.

[7] Records, Vol. IV, p. 1.

[8] Records, Vol. I, p. 24.

AAA was raped by her father, the appellant.[9] The first incident occurred at nighttime, inside their house, but AAA could not recall the exact date when it happened.[10] At that time, her mother was already dead for more or less three months[11] and she was home, together with her two younger brothers, her sister BBB, and appellant.[12] While she and her siblings were sleeping inside their room, appellant, who was beside her, removed her shorts and panty, went on top of her,[13] then inserted his penis in her vagina.[14] She felt pain after that.[15] However, she could not ask help from her brothers, who were sound asleep, because of fear as her father was then holding a bolo.[16]

The second incident took place when she was in grade II inside a hut in the mountain of Hidhid, Matnog, Sorsogon.[17] As in the first incident, the second rape happened at nighttime while she, her brothers, and sister were sleeping. Again, appellant removed her shorts and panty then inserted his penis in her vagina.[18] These incidents were allegedly repeated for the third, fourth, and fifth times. AAA did not have the courage to tell anybody about her ordeal. She only had the chance to reveal the incidents when her sister suffered appendicitis and they needed the assistance of the Department of Social Work and Development or DSWD.[19] AAA informed the DSWD representative, who

[9] TSN, November 22, 2000, p. 3.

[10] *Id* at 4.

[11] *Id.* at 5.

[12] *Id.* at 4.

[13] *Id.* at 15.

[14] *Id.* at 4.

[15] *Id.* at 5.

[16] *Id.*

[17] *Id.* at 6.

[18] *Id.* at 7.

[19] *Id.* at 8.

reported the matter to the Philippine National Police of Matnog.[20]

AAA's testimony was corroborated by the medical findings of the Municipal Health Officer (MHO), who also testified[21] during the trial. The medicate certificate showed that upon examination of AAA's genitalia, her vagina admitted two fingers with difficulty, with lacerations at 3, 6 and 9 o'clock positions.[22]

In **Criminal Case Nos. 1387-1388**, the prosecution presented BBB, whose testimony is summarized as follows:

BBB was raped twice by her father, the appellant.[23] The first incident took place in November 1997 when BBB was more than 12 years old.[24] At that time, their mother already died.[25] She was then living with appellant, together with her sister and younger brothers.[26] It was nighttime and while she and her siblings were sleeping, appellant removed her panty, went on top of her, then inserted his penis in her vagina.[27] She felt pain after the incident.[28] She did not call the attention of her siblings, because they were fast asleep and she was afraid of her father who was then holding a bolo.[29]

The second incident happened in January 1998 when BBB was 14 years old, again in their house. Appellant raped her in the same manner as the first incident.[30] She kept the ordeal to herself because of fear, but later told her friend about it who

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

[21] TSN, June 7, 2000, pp. 1-4.

[22] Records, records, Vol. I, p. 11.

[23] TSN, March 7, 2001, pp. 2-3.

[24] *Id.* at 3.

[25] *Id.*

[26] *Id.*

[27] *Id.* at 4.

[28] *Id.* at 5.

[29] *Id.* at 4.

[30] *Id.* at 5.

in turn relayed the story to her grandmother who was a *barangay* official.[31] She was instrumental in bringing the matter to the *barangay* captain, the DSWD, and eventually the police authorities.[32] She was then brought to the hospital where she was examined. A medical certificate[33] was issued stating that BBB's vagina admitted one finger with healed hymenal laceration at 3 o'clock position.

During the pre-trial, appellant admitted that he was the father of AAA and BBB.[34] The prosecution likewise presented AAA's and BBB's Certificates of Live Birth[35] to show their ages at the time of the commission of the crimes as well as to prove that appellant is their father.

The defense, on the other hand, presented the brother of AAA and BBB who testified that he did not believe that their father could rape her sisters.[36]

In a sudden turn of events, more than four years after they testified in court for the prosecution, AAA and BBB retracted their previous testimonies that they were raped by their father. AAA explained that she was recanting her previous testimony because she had forgiven her father and he already suffered for a long time and repented for what he had done.[37] She claimed that she filed the case against her father because the latter had been maltreating her.[38] BBB likewise recanted her earlier testimony and claimed that she had forgiven appellant.[39]

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[31] *Id.* at 7.

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

[33] Records, Vol. III, p. 9.

[34] Records, Vol. I, p. 142.

[35] *Id.* at 123 and records, Vol. III, p. 41.

[36] TSN, November 23, 2005, pp. 1-2.

[37] TSN, November 25, 2005, p. 4.

[38] *Id.* at 5-6.

[39] *Id.* at 9-15.

On July 31, 2006, the RTC rendered a Decision[40] convicting appellant of all the charges against him. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, accused MARCIANO DOLLANO, JR.'S GUILT having been established beyond reasonable doubt, he is hereby sentenced as follows:
>
> **a)** **In Criminal Case Nos. 1381 and 1382** (For: Statutory Rape) he is meted the penalty of *RECLUSION PERPETUA* for EACH count of Statutory Rape, and to indemnify the victim [AAA] the amounts of Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages;
>
> **b)** **In Criminal Cases Nos. 1387 and 1388** (For Rape) he is meted the penalty of *RECLUSION PERPETUA* for EACH count of Rape, and to indemnify the victim [BBB] the amounts of **Php50,000.00** as civil indemnity and another **Php 50,000.00** as moral damages.
>
> With costs *de oficio*.
>
> The preventive imprisonment already served by said accused shall be credited in the service of his sentences, pursuant to Article 29 of the Revised Penal Code, as amended.
>
> SO ORDERED.[41]

Notwithstanding the recantation of AAA and BBB, the RTC gave credence to their earlier testimonies wherein they clearly narrated how appellant raped them. In Criminal Case Nos. 1381 and 1382, the court appreciated the minority of AAA who was then less than 12 years old. In Criminal Case Nos. 1387 and 1388, the RTC did not impose the supreme penalty of death because the exact age of BBB at the time of the commission of the crime was not stated in the Information, although it was adequately established by the prosecution. In all of the cases, the trial court did not appreciate the circumstance of relationship between AAA and BBB on the one hand, and appellant, on the other, because in their certificates of live birth, although appellant

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[40] *Supra* note 3.

[41] Records, Vol. I, p. 157.

appeared to be their father, the names of their mothers were not the same.[42] The court also explained that recantation does not necessarily negate an earlier declaration.[43] Finally, the court declared that, to be effective, pardon must be bestowed before the institution of the criminal action.[44]

On appeal, the CA affirmed with modification the RTC decision, the dispositive portion of which reads:

> **WHEREFORE,** the foregoing considered, the assailed Decision is **AFFIRMED** with the **MODIFICATION** that the amount of civil indemnity, in each case, is increased to ₱75,000.00 and that accused-appellant is further ordered to pay, in each case, ₱25,000.00 as exemplary damages. Costs against the accused-appellant.
>
> **SO ORDERED.**[45]

The appellate court sustained the appellant's conviction based on the testimonies of private complainants and the medical findings of the examining physicians.[46] The CA doubted the voluntariness of private complainants' retractions of their earlier testimonies and considered them unworthy of credence.[47] Contrary, however, to the RTC's conclusion, the appellate court appreciated the qualifying circumstance of relationship, since AAA's and BBB's certificates of live birth show that appellant is the father of the private complainants. Although the exact age of BBB was not stated in the information, the appellate court appreciated the circumstance of minority as the evidence showed that BBB was indeed below 18 years of age at the time of the commission of the offense and that the offender is her own father. Hence, were it not for RA 9346,[48] the supreme penalty of death should have

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[42] *Id.* at 151-156.

[43] *Id.* at 154.

[44] *Id.*

[45] *Rollo*, p. 15 (Emphasis supplied.)

[46] CA *rollo*, p. 138.

[47] *Id.* at 139.

[48] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

been imposed. Thus, the CA meted the penalty of *reclusion perpetua*. The CA likewise modified the civil liabilities of appellant.

Hence, this appeal.

In a Resolution[49] dated September 14, 2009, we notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. However, both parties manifested that they are both adopting their respective briefs before the CA as their supplemental briefs, as their issues and arguments had been thoroughly discussed therein. Thereafter, the case was deemed submitted for decision.

In his Brief, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[50]

Appellant faults the CA in giving weight to the testimonies of AAA and BBB, considering that their narration of how the crime was allegedly committed was overly generalized and lacked specific details.[51] He questions private complainants' failure to offer resistance and to ask for help during the alleged commission of the offense. Finally, appellant insists that the court should not have ignored the retraction made by private complainants.

The appeal must fail.

The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded

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[49] *Rollo*, pp. 23-24.

[50] CA *rollo*, p. 69.

[51] *Id.* at 70.

great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case.[52] Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witness was telling the truth.[53]

In this case, the trial and appellate courts gave credence to the testimonies of AAA and BBB when they were presented as witnesses for the prosecution. They found that their clear narration of how the offenses were committed and their categorical statement that appellant committed them, are sufficient to warrant the conviction of the appellant for four counts of rape.

AAA and BBB testified in open court that on separate occasions, appellant raped them. However, after more than four years, the defense presented AAA and BBB as their witnesses who claimed that they lied when they first testified in court. They maintained that they merely instituted the complaint because appellant had been scolding and maltreating them. In short, there was a recantation of their earlier testimony.

As aptly held by the RTC and the CA, the recantation of both private complainants are insufficient to warrant the reversal of appellant's conviction. Recantations are frowned upon by the courts. A recantation of a testimony is exceedingly unreliable, for there is always the probability that such recantation may later on be itself repudiated. Courts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary consideration.

It is also a dangerous rule for courts to reject testimony solemnly taken before courts of justice simply because the witness

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[52] *People v. Padilla*, G.R. No. 167955, September 30, 2009, 601 SCRA 385, 399.

[53] *People v. Lopez*, G.R. No. 179714, October 2, 2009, 602 SCRA 517, 526.

who gave it later changed his mind for one reason or another. This will make a mockery of solemn trials and put the investigation of crimes at the mercy of unscrupulous witnesses.[54] A retraction does not necessarily negate an earlier declaration.[55]

It is significant to note that in Criminal Case Nos. 1381 and 1382 against AAA, the rape incidents occurred prior to the effectivity of RA 8353, or *The Anti-Rape Law of 1997* which took effect on October 22, 1997 and classified the crime of rape as a crime against persons. Thus, we apply the old law and treat the acts of rape as private crimes.[56] As provided in Article 344[57] of the RPC, for crimes of seduction, abduction, rape and acts of lasciviousness, pardon and marriage extinguish criminal liability.[58] However, pardon should have been made prior to the institution of the criminal actions.[59]

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[54] *People v. Dela Cerna*, 439 Phil. 394, 407 (2002).

[55] *People v. Nardo*, 405 Phil. 826, 842 (2001).

[56] *People v. Dela Cerna*, *supra* note 54.

[57] ART. 344. *Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness.* – The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices, and accessories after the fact of the above-mentioned crimes.

[58] *People v. Dela Cerna*, *supra* note 54, at 408.

[59] *People of the Philippines v. Ireno Bonaagua y Berce*, G.R. No. 188897, June 6, 2011; *People v. Dela Cerna*, *id.*

In this case, AAA gave her testimony in court during the presentation of the evidence for the prosecution. After the prosecution rested its case and during the presentation of the evidence for the defense, AAA again testified to tell the court that she lied when she first testified thereby recanting her previous testimony. Clearly, even if we consider the recantation as pardon on the part of the offended party in favor of appellant, the same cannot be appreciated for purposes of acquitting the accused as it was given definitely after the institution of the criminal action. Once the case is filed in court, control of the prosecution is removed from the offended party's hands and any change of heart by the victim will not affect the state's right to vindicate the atrocity committed against itself.[60] It must be stressed that the true aggrieved party in a criminal prosecution is the People of the Philippines whose collective sense of morality, decency and justice has been outraged.[61]

In Criminal Case Nos. 1387 and 1388, the rape incidents were committed when RA 8353 was already effective wherein rape was considered as a crime against person. The recantation became less significant.

Indeed, AAA and BBB claimed that they lied when they first testified and the truth is that they charged appellant with such grave offenses because they were mad at him for having maltreated them. However, records show that when they were asked why they were recanting their initial testimony, private complainants explained that they had forgiven their father. This, in fact, strengthens their earlier testimony that appellant committed the acts complained of. Undoubtedly, the initial testimonies of AAA and BBB are positive, credible and convincing. Thus, we affirm the court's conviction of appellant.

In Criminal Case Nos. 1381 and 1382, the prevailing law at the time the crimes were committed in 1995 and 1997 (the month when the incident occurred was not specified) was still Article 335 of the RPC as amended by RA 7659, which provide:

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[60] *People v. Dela Cerna*, *supra* note 54, at 408-409.

[61] *Id.* at 408.

Article 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. ***When the woman is under twelve years of age or is demented***.

xxx xxx xxx[62]

Rape under paragraph 3 of the above-mentioned article is termed statutory rape as it departs from the usual modes of committing rape.[63] What the law punishes is carnal knowledge of a woman below 12 years of age. Thus, the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years.[64] As clearly shown in the narration of facts above, the prosecution was able to establish that appellant succeeded in having carnal knowledge with AAA in 1995, or three months after the death of her mother. The incident was repeated in 1997. AAA's testimony was corroborated by the medical findings of the MHO.[65] It was also established through AAA's birth certificate that she was born on September 10, 1987.[66] Thus, at the time of the commission of the first rape incident in 1995, AAA was only eight (8) years old; and at the time of the second rape incident in 1997, she was only 10 years old. Statutory rape was, therefore, committed in 1995 and 1997.

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[62] Emphasis supplied.

[63] *People v. Teodoro*, G.R. No. 172372, December 4, 2009, 607 SCRA 307, 314.

[64] *Id.* at 314-315.

[65] Records, Vol. I, p. 11.

[66] *Id.* at 123.

It is immaterial that the prosecution failed to allege in the Information the exact date of the commission of the offenses. It is sufficient that it was alleged therein that in Criminal Case Nos. 1381 and 1382, the crime was committed in October 1995 and 1997, respectively; that AAA was under 12 years of age; and that appellant had carnal knowledge with her. These allegations sufficiently informed appellant that he was being charged with rape of a child who was below 12 years of age. He was definitely afforded the opportunity to prepare his defense. We have repeatedly held that the date of the commission of rape is not an essential element of the crime. It is not necessary to state the precise time when the offense was committed, except when time is a material ingredient of the offense.[67] This Court has upheld the complaints and informations for rape which merely alleged the month and year of its commission. We have also sustained the validity of the information which merely alleged the year of its commission.[68]

In Criminal Case Nos. 1387 and 1388, appellant had carnal knowledge with BBB who, at the time of commission, was more than 12 but less than 18 years of age. BBB was intimidated and could not offer resistance because appellant was holding a bolo. As in the case of AAA, the prosecution adequately established through BBB's testimony that appellant had carnal knowledge with her.

As aptly held by the CA and contrary to the conclusion of the RTC, the prosecution clearly established that private complainants are appellant's own daughters. Although AAA and BBB's mothers appear to be different, it appears from their birth certificates that their father is the same, that is, appellant herein. This fact was even admitted by appellant during the pre-trial. Undoubtedly, the circumstance of relationship was alleged in the information and proven during the trial in all the cases under consideration.

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[67] *People v. Teodoro, supra* note 63, at 321.

[68] *People v. Ching,* G.R. No. 177150, November 22, 2007, 538 SCRA 117, 130.

Considering that BBB was less than 18 years of age, and considering further that the crimes were committed by her own father, the CA was correct in convicting appellant of qualified rape in Criminal Case Nos. 1387 and 1388.

On the proper penalty, Article 335 of the RPC is applicable in Criminal Case Nos. 1381 and 1382:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In Criminal Case Nos. 1387 and 1388, Article 266-B of the RPC is applicable which states:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

However, as aptly held by the CA, we cannot impose the death penalty in view of RA 9346, and thus impose the lesser penalty of *reclusion perpetua* for the four counts of rape committed against AAA and BBB. Appellant shall also not be eligible for parole.[69]

As to civil liabilities, the CA aptly awarded a total amount of ₱150,000.00 as civil indemnity and ₱150,000.00 as moral damages in favor of BBB for the rape committed in Criminal Case Nos. 1387 and 1388. In addition, considering the attendance of the aggravating circumstances of minority and relationship, the appellate court correctly awarded exemplary damages, but

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[69] *People of the Philippines v. Lucresio Espina*, G.R. No. 183564, June 29, 2011.

the amount shall be increased from ₱25,000.00 to ₱30,000.00 each, or a total of ₱60,000.00 pursuant to prevailing jurisprudence.[70]

The same amounts shall also be awarded to AAA for the crimes committed in Criminal Case Nos. 1381 and 1382.

WHEREFORE, premises considered, the Court of Appeals Decision dated April 16, 2009 in CA-G.R. CR-H.C. No. 02989 is *AFFIRMED* with *MODIFICATION*. Appellant Marciano Dollano, Jr. is hereby found guilty beyond reasonable doubt of two (2) counts of Statutory Rape in Criminal Case Nos. 1381 and 1382 and two (2) counts of Qualified Rape in Criminal Case Nos. 1387 and 1388, and is sentenced to suffer the penalty of *reclusion perpetua* for each count.

Appellant is *ORDERED* to pay AAA and BBB ₱150,000.00 each as civil indemnity, ₱150,000.00 each as moral damages, and ₱60,000.00 each as exemplary damages.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 188866. October 19, 2011]

PHILIPPINE ECONOMIC ZONE AUTHORITY, *petitioner, vs.* **GREEN ASIA CONSTRUCTION & DEVELOPMENT CORPORATION Represented by Mr. Renato P. Legaspi, President/CEO,** *respondent.*

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[70] *Id.*

SYLLABUS

1. STATUTORY CONSTRUCTION; STATUTES; WHEN CONSIDERED *IN PARI MATERIA*; PRESIDENTIAL DECREE 1594 AND PRESIDENTIAL DECREE 454, CONSTRUED.— We agree with the ruling of the appellate court that the OP correctly construed PD 1594 as being *in pari materia* to PD 454. Since the two presidential decrees are *in pari materia*, there is a need to construe them together. Thus explained the Court in *Honasan v. The Panel of the* "*Investigating Prosecutors of the Department of Justice:* Statutes are *in pari materia* when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter. It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, "*interpretare et concordare legibus est optimus interpretandi*," or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence." PD 454 which was enacted prior to PD 1594, was where the phrase "direct acts of the government" was explained to cover the increase of prices during the effectivity of a government infrastructure contract. The phrase was first used in Republic Act (RA) No. 1595, which was amended by PD 454. The latter amended R.A. No. 1595 by supplying the meaning of the phrase "direct acts of the government" and expressly including the increase of prices of gasoline within the coverage of that phrase. Consequently, when PD 1594 reproduced the phrase without supplying a contrary or different definition, the definition provided by the earlier enacted PD 454 was deemed adopted by the later decree. Thus, proof of an increase in fuel and cement price and a subsequent increase in the cost of labor and relevant construction materials during the contract period are considered a compliance with the IRR requirements for a claim for price escalation.

2. ID.; ID.; PROVISIONS ON PRICE ADJUSTMENT UNDER PD 1594 (PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR GOVERNMENT INFRASTRUCTURE CONTRACTS) AND PRICE

ESCALATION UNDER ITS IMPLEMENTING RULES AND REGULATIONS (IRR) BOTH PERTAIN TO THE ADJUSTMENT OF THE CONTRACT PRICE DUE TO CERTAIN CIRCUMSTANCE AND CANNOT BE INVOKED SEPARATELY BY THE PARTIES.— The parties separately invoke PD 1594 and its IRR. A reading of their provisions, however, leads to the conclusion that "price adjustment" under PD 1594 is actually the same as "price escalation" under the IRR. Just as the term "price escalation" is not found in PD 1594, so is "price adjustment" in the IRR. These concepts are, evidently, one and the same. They have different names, but pertain to the same thing — the adjustment of the contract price due to certain circumstances. The computation of the adjustment has been explained in detail as price escalation in the IRR, found in CI 12. At first glance, price escalation may be considered as an expansion of the concept of price adjustment. In truth, however, the IRR did not expand anything, but merely laid out a guideline for the computation of the adjustment or escalation of price. The two provisions are therefore not separate and must be read together. Otherwise, if we accept the arguments of both parties that one is invoking either PD 1594 or the IRR, two different rights would arise therefrom, which is obviously not intended by the law.

3. POLITICAL LAW; GOVERNMENT; GOVERNMENT INFRASTRUCTURE CONTRACTS; ABSENT PROHIBITORY CLAUSE ON PRICE ESCALATION, THE COURT WILL ALLOW PAYMENT THEREFOR.— Price escalation, as explained in paragraph 6 of Cl 2.1 of the IRR, is meant to compensate for changes in the prices of relevant construction necessities during the effectivity of the contract, resulting in more than 5% increase or decrease in the unit price of those items. It is thus the prices of the items that have actually increased that become the basis of the computation. It is also stated in the IRR that in case of advance payment, the materials to which the advance payment has been applied will not be adjusted for a price escalation. The government will charge an interest on the amount it has paid in advance to the contractor. This interest will be deducted from the succeeding price escalation that may be due the contractor. It should also be mentioned that in *National Steel Corporation v. The Regional Trial Court of Lanao del Norte,* the Supreme

Court held: "[P]rice escalation is expressly allowed under Presidential Decree 1594, which law allows price escalation in all contracts involving government projects including contracts entered into by government entities and instrumentalities and Government Owned or Controlled Corporations (GOCCs). It is a basic rule in contracts that the law is deemed written into the contract between the parties. And when there is no prohibitory clause on price escalation, the Court will allow payment therefor." The contract between PEZA and Green Asia did not incorporate provisions prohibiting price escalation or any clause that may be interpreted as a waiver of the price escalation. Consequently, payment of price escalation is deemed to have included the provision for the payment of price escalation.

4. ID.; ID.; ID.; PD 454; ADJUSTMENT OF CONTRACT PRICES FOR PUBLIC WORKS PROJECT WHEN AUTHORIZED; GRANT OF THE CLAIM FOR PAYMENT OF PRICE ESCALATION, UPHELD.— It was therefore wrong for PEZA to disregard PD 454 by automatically denying the claim of Green Asia for price escalation or to require the latter to prove that the increase in the construction cost was due to the direct acts of the government. PD 454 actually bridges the gap between PD 1594 and its IRR. PD 1594 no longer explains the provision on price adjustment, because it is already found in PD 454 and in older laws. In its Whereas Clause, PD 454 states: "WHEREAS, the Government feels that amendment of the existing escalatory clause is a fair and equitable way of dealing with the situation. The "amendment of the existing escalatory clause" referred to is found in Section 1 of PD 454, which provides: "The provisions of Section 10(b) of Republic Act No. 5979 and other existing laws, or presidential decrees to the contrary notwithstanding, adjustment of contract prices for public works project is hereby authorized, should any or both of the following conditions occur: (a) If during the effectivity of the contract, the cost of labor, materials, equipment rentals and supplies for construction should increase or decrease due to the direct acts of the government; and **for purposes of this Decree the increase of prices of gasoline and other fuel oils, and of cement shall be considered direct acts of the Government**; (b) If during the effectivity of the contract, the costs of labor, equipment rentals, construction materials and

supplies used in the project should cause the sum total of the prices of bid items to increase or decrease by more than five (5%) percent compared with the total contract price. x x x." We find that the assigned error allegedly committed by the Court of Appeals is absent. The appellate court was, thus, correct in granting respondent's claim for payment of price escalation, and the assailed Decision must be upheld.

APPEARANCES OF COUNSEL

Procolo M. Olaivar & Ross Vincent S. Sy for petitioner.
Brondial Law Office for respondent.

D E C I S I O N

SERENO, *J.*:

The Court, in this Petition for Review on *Certiorari*, is called upon to rule on a contractor's entitlement to a price escalation in a government infrastructure contract. Further, the Court is asked to rule on whether there is a need to prove first that direct acts of the government influenced the increase of construction materials.

The Factual Backdrop

The parties to this case — petitioner Philippine Economic Zone Authority (PEZA), formerly the Export Processing Zone Authority (EPZA), and respondent Green Asia Construction & Development Corporation (hereinafter Green Asia) – were parties to a contract for a road network/storm drainage project. The project was awarded to Green Asia on 14 September 1992 with a contract price of ₱130,595,337.40.[1] Tagumpay R. Jardiniano, administrator of the then EPZA and Renato P. Legaspi, the president of Green Asia, signed the contract on 23 September 1992.[2] The stipulations in the contract include the

[1] *Rollo* at 46.

[2] *Id.* at 56.

contract price,[3] the mode of payment, advance payment, and the progress payment.[4] These stipulations found in Articles III to VI of the contract comprised all the liabilities pertaining to EPZA. EPZA was later on effectively succeeded by PEZA.

On 26 March 1996, Green Asia sent a letter to the PEZA Director General through Atty. Eugenio V. Vigo, Project Director for Construction of the PEZA Development Project. The letter, invoking Presidential Decree (PD) No. 1594, notified PEZA of Green Asia's claim for price escalation in the amount of ₱ 9,860,169.58.[5] This claim was denied by PEZA through a letter signed by the Acting Corporate Secretary Atty. Nestor Hun Nadal. The denial of the claim was anchored on Section 8, PD 1594, requiring proof of the increase or decrease in construction cost due to the direct acts of the government. Alleging that Green Asia failed to present proof, PEZA stated in its letter as follows:[6]

> As per the records, it has not been established or proven that the increase/s in the cost of labor, equipment, materials and supplies required for the construction was/were due to the direct acts of the government.
>
> Moreover, the claim that the grant of claims for price escalation is "a normal process in the construction industry" was not enough to persuade the Board.
>
> Having failed to comply with the condition provided for by law, the Board decided to deny your claim for price escalation.

Despite the denial, Green Asia insisted on its claim and followed it up with three letters sent to PEZA from 1997 to 2000. Through Director General Lilia B. de Lima, PEZA reiterated the denial of the claim.[7] Because of these repeated denials, Green Asia

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

[4] *Id.*

[5] *Id.* at 58.

[6] *Id.* at 59.

[7] *Id.* at 62.

made a "final demand," which was received by PEZA on 29 November 2006 and signed by one Atty. Larry Ignacio. Atty. Ignacio included in the demand the amount of ₱ 2,500,357.11 for the price escalation of another project, legal interest, and a collection fee of 1% of the total amount due.[8] The exchanges of correspondence pertaining to Green Asia's claim continued until 2006.[9] PEZA was, however, consistent in its position that Green Asia was not entitled to its claim, as the latter failed to prove the legal necessity of applying the price escalation provided for in PD 1594. In its letter dated 30 November 2006, PEZA pointed out that the contract price was fixed, as stipulated in Article IV of the contract, and that this provision was in effect a waiver of the provisions of PD 1594.[10]

On 2 August 2007, Green Asia sent to PEZA another notice, labelled "final demand notice," a copy of which was furnished to the Office of the President. This notice was for unpaid claims for the price escalation of the road network and drainage system in the amount of ₱ 9,860,169.58, as well as for the sewage treatment plant in the amount of ₱ 2,500,357.11. Green Asia disagreed with PEZA and posited that the fact that the contract stipulated a fixed price did not mean that it was the final receivable amount for the contractor. The fixed price, according to Green Asia, would apply only when the work orders in the construction did not vary during the construction period. Green Asia explained that it was "impossible and unrealistic" to stay within the original budgeted amount. Thus, there was a need for price escalation under Cl 12.1 of the Implementing Rules and Regulations (IRR) of PD 1594. Green Asia stressed that the basis of its claim was the price escalation under the IRR, and not merely the price adjustment provided in Section 8 of PD 1594.[11]

Subsequent to the final demand notice to PEZA, Green Asia sent then President Gloria Macapagal Arroyo, on 14 November

[8] *Id.* at 63.

[9] *Id.* at 64-70.

[10] *Id.* at 71-72.

[11] *Id.* at 73-76.

2007, a letter with the heading "Appeal for the Settlement of Unpaid Claims for Price Escalation Under Project of the Philippines Economic Zone Authority." In this letter, Green Asia asked her to intervene for the affirmative resolution of its claim against PEZA in the amount of ₱ 12,360,525.69.[12] The Office of the President (OP) took cognizance of the letter as an appeal, docketed it as O.P. Case No. 07-K-451, and ordered Green Asia to pay the appeal fee and PEZA to forward the complete records of the case.[13]

After summary proceedings in the OP, the case was decided in favor of Green Asia. The dispositive portion of the OP Decision reads as follows:

> WHEREFORE, herein claim for Price Escalation Payment sought by Green Asia Construction & Development Corp. through its President/CEO Renato P. Legaspi is hereby GRANTED.
>
> Respondent Philippine Economic Zone Authority (PEZA) is hereby ordered to pay claimant the total amount of P12,360,526.70, subject to its verification by PEZA using the parametric formula provided in Cl 12, IRR, PD 1594.
>
> In addition, PEZA is liable to pay interest upon the total unpaid claims at the legal interest of 6% per annum reckoned from the date Green Asia made the final demand notice on August 6, 2007 up to finality of this Decision, and 12% interest from its finality up to full payment.
>
> SO ORDERED.[14]

The OP's reason for granting Green Asia's claim was that proof of increase in relevant construction prices due to the direct acts of the government was not required by law, before a price escalation may be invoked. The OP cited Item 6, Cl 12.1 of the IRR of PD 1594, quoting the following portions:

> Escalation of prices for work accomplishment on infrastructure construction x x x shall be made x x x using the parametric formula

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[12] *Id.* at 77-78.

[13] *Id.* at 79-80.

[14] *Id.* at 103-104.

as described below, to compensate for fluctuation of prices of construction supplies and materials, equipment and labor which would bring about during the period under consideration an increase or decrease of more than five percent (5%) of the original **OR ADJUSTED** contract unit price of items of work.

The OP also interpreted the phrase "due to direct acts of the Government." It held that PD 454,[15] a prior enactment on government infrastructure projects, authorized price escalation; and that "direct acts of the government" included increases in the prices of gasoline, fuel oil and cement. It was, therefore, not necessary to actually show that the prices of those commodities increased because of the direct acts of the government. In effect, the OP Decision held that price escalation is automatically awarded to contractors of all government infrastructure projects.

The Court of Appeals (CA), in CA-G.R. SP No. 105430,[16] sustained the OP Decision. It found the OP's construction of PD 1594, in connection with PD 454, proper. Since PD 454 was not expressly repealed by PD 1594, and since there was no apparent conflict between the two laws, the appellate court deemed it best to harmonize them. The result was again a favorable Decision to Green Asia.

The OP Decision was, however, modified by the CA as to the amount of the price escalation awarded to Green Asia. Citing paragraphs 6 and 7, Cl 12.1 of the IRR of PD 1594, the appellate court ordered the parties to compute the price escalation using the parametric formula provided therein. The Court of Appeals held:

...[W]e find that petitioner correctly faults the Office of the President for ordering the payment of respondent's claim for price escalation

[15] Dated 14 May 1974; Amending the Provisions of Section 10(b) of Republic Act No. 5979 to Authorize Adjustment of Contract Prices for Government Projects under Certain Conditions.

[16] Decision dated 15 July 2009, with Associate Justice Rebecca de Guia-Salvador as *ponente*, and Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr. concurring; *rollo* at 32-45.

in the sum of ₱12,360,526.70 – with legal interest from respondent's August 6, 2007 demand – despite the absence of showing of how said amount was computed. Granted that the assailed decision prov[i]des that payment is "subject to verification," it cannot be gainsaid that paragraphs 6 and 7, CI 12.1 of the Amended Rules and Regulations implementing Presidential Decree No. 1594 provide as follows:

> "6. Escalation of prices for work accomplishment on infrastructure construction, rehabilitation and/or improvement projects shall be made periodically, using the parametric formula as described below, to compensate for fluctuation of prices of construction supplies and materials, equipment and labor which would bring about during the period under consideration an increase or decrease of more than five percent (5%) of the original or adjusted contract unit price of items of work.
>
> 7. Price escalation shall be reckoned from the month of bidding of the project, and shall be allowed for every progress billing. When the contract has not been the subject of competitive bidding, price escalation shall be reckoned from the month agreed upon in the contract and shall be granted for every progress billing. For construction and related materials under government-controlled prices, the computation of price escalation shall be reckoned from the actual date of bidding the projects, or the actual date agreed upon in the contract has not been the subject of competitive project."

To our mind, the present quandary regarding the amount due is attributable to petitioner's outright and unjustified denial of the price escalation claimed by respondent as well as the concomitant failure on the part of the latter to submit the computation thereof. Given the practical and legal import of the foregoing provisions and respondent's right to the price escalation provided under Section 8 of Presidential Decree No. 1594, it consequently behooves the parties to compute the same in accordance with the parametric formula provided under CI12 of the Implementing Rules and Regulations of said law. Considering respondent's long-standing demand therefor, however, we find it equitable that payment of interest on the amount of price escalation due shall accrue upon determination of the amount due in accordance with the aforesaid parametric formula.

Hence, this petition for review.

The Issue

Whether Presidential Decree 1594 requires the contractor to prove that the price increase of construction materials was due to the direct acts of the government before a price escalation is granted in this payment dispute in a construction contract

PEZA argues that there was no need for any statutory construction of PD 1594, since the provisions thereof are not ambiguous. It insists that Section 8 thereof requires certain conditions before an adjustment of the contract price may be made.[17] These conditions obtain when there is a concurrence of the following: there was an increase or a decrease in the cost of labor, equipment, materials and supplies for construction; and the said increase or decrease is due to the direct acts of the government. PEZA stresses that respondent Green Asia has failed to show the existence of these conditions.[18]

Green Asia, in its Comment,[19] claims that it has proved the increase or decrease in the cost of labor and construction materials. It has allegedly relied on the official indices of prices regularly issued by the National Statistics Office (NSO) for Calendar Years 1992-1999. It was on these indices that it based the amount of its claim.[20]

The Court's Ruling

We sustain the assailed Decision.

After a painstaking study of the records before us and the relevant laws, we are of the opinion that the Court of Appeals was correct in its disposition of the case.

We agree with the ruling of the appellate court that the OP correctly construed PD 1594 as being *in pari materia* to PD 454. Since the two presidential decrees are *in pari materia*,

[17] *Id.* at 21.

[18] *Id.* at 22.

[19] *Id.* at 165-169.

[20] *Id.* at 168-169.

there is a need to construe them together. Thus explained the Court in *Honasan v. The Panel of the Investigating Prosecutors of the Department of Justice:*[21]

> Statutes are *in pari materia* when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter.
>
> It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, "*interpretare et concordare legibus est optimus interpretandi*," or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[22]

PD 454 which was enacted prior to PD 1594, was where the phrase "direct acts of the government" was explained to cover the increase of prices during the effectivity of a government infrastructure contract. The phrase was first used in Republic Act (RA) No. 1595, which was amended by PD 454. The latter amended R.A. No. 1595 by supplying the meaning of the phrase "direct acts of the government" and expressly including the increase of prices of gasoline within the coverage of that phrase. Consequently, when PD 1594 reproduced the phrase without supplying a contrary or different definition, the definition provided by the earlier enacted PD 454 was deemed adopted by the later decree. Thus, proof of an increase in fuel and cement price and a subsequent increase in the cost of labor and relevant construction materials during the contract period are considered a compliance with the IRR requirements for a claim for price escalation.

The parties separately invoke PD 1594[23] and its IRR. A reading of their provisions, however, leads to the conclusion that "price adjustment" under PD 1594 is actually the same as "price

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[21] G.R. No. 159747, 13 April 2004, 427 SCRA 46.

[22] *Id.* at 69-70.

[23] "Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts," June 11, 1978.

escalation" under the IRR. Just as the term "price escalation" is not found in PD 1594, so is "price adjustment" in the IRR. These concepts are, evidently, one and the same. They have different names, but pertain to the same thing — the adjustment of the contract price due to certain circumstances. The computation of the adjustment has been explained in detail as price escalation in the IRR, found in CI 12. At first glance, price escalation may be considered as an expansion of the concept of price adjustment. In truth, however, the IRR did not expand anything, but merely laid out a guideline for the computation of the adjustment or escalation of price. The two provisions are therefore not separate and must be read together. Otherwise, if we accept the arguments of both parties that one is invoking either PD 1594 or the IRR, two different rights would arise therefrom, which is obviously not intended by the law.

Price escalation, as explained in paragraph 6 of Cl 2.1 of the IRR, is meant to compensate for changes in the prices of relevant construction necessities during the effectivity of the contract, resulting in more than 5% increase or decrease in the unit price of those items. It is thus the prices of the items that have actually increased that become the basis of the computation. It is also stated in the IRR that in case of advance payment, the materials to which the advance payment has been applied will not be adjusted for a price escalation.[24] The government will charge an interest on the amount it has paid in advance to the contractor. This interest will be deducted from the succeeding price escalation that may be due the contractor.[25]

It should also be mentioned that in *National Steel Corporation v. The Regional Trial Court of Lanao del Norte*,[26] the Supreme Court held:

[P]rice escalation is expressly allowed under Presidential Decree 1594, which law allows price escalation in all contracts involving

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[24] IRR of PD 1594, Cl 2.1 (10).

[25] *Id.*

[26] G.R. No. 127004, March 11, 1999.

government projects including contracts entered into by government entities and instrumentalities and Government Owned or Controlled Corporations (GOCCs). It is a basic rule in contracts that the law is deemed written into the contract between the parties. And when there is no prohibitory clause on price escalation, the Court will allow payment therefor.

The contract between PEZA and Green Asia did not incorporate provisions prohibiting price escalation or any clause that may be interpreted as a waiver of the price escalation. Consequently, payment of price escalation is deemed to have included the provision for the payment of price escalation.

It was therefore wrong for PEZA to disregard PD 454 by automatically denying the claim of Green Asia for price escalation or to require the latter to prove that the increase in the construction cost was due to the direct acts of the government. PD 454 actually bridges the gap between PD 1594 and its IRR. PD 1594 no longer explains the provision on price adjustment, because it is already found in PD 454 and in older laws. In its Whereas Clause, PD 454 states:

> WHEREAS, the Government feels that amendment of the existing escalatory clause is a fair and equitable way of dealing with the situation.

The "amendment of the existing escalatory clause" referred to is found in Section 1 of PD 454, which provides:

> "The provisions of Section 10(b) of Republic Act No. 5979 and other existing laws, or presidential decrees to the contrary notwithstanding, adjustment of contract prices for public works project is hereby authorized, should any or both of the following conditions occur:
>
> (a) If during the effectivity of the contract, the cost of labor, materials, equipment rentals and supplies for construction should increase or decrease due to the direct acts of the government; and **for purposes of this Decree the increase of prices of gasoline and other fuel oils, and of cement shall be considered direct acts of the Government**;

(b) If during the effectivity of the contract, the costs of labor, equipment rentals, construction materials and supplies used in the project should cause the sum total of the prices of bid items to increase or decrease by more than five (5%) percent compared with the total contract price.

The increase or decrease in the contract price shall be determined by application of the appropriate official indices." (emphasis and underscoring supplied)

We find that the assigned error allegedly committed by the Court of Appeals is absent. The appellate court was, thus, correct in granting respondent's claim for payment of price escalation, and the assailed Decision must be upheld.

It will appear strange, to today's consumer, that the government would automatically accept — nay, decree under the express terms of PD 454 — that "the increase of prices of gasoline and other fuel oils, and of cement shall be considered direct acts of the Government," such that the effects of these price increases in the form of escalation of the prices of contracts with the government would be absorbed by it and, indirectly, by the taxpayer. It would appear that the context in which this policy decision to absorb costs from price increases was made in an era in which the government was strictly monitoring oil, cement and gasoline prices, and was itself controlling the price of oil before the Downstream Oil Deregulation Law[27] was passed.

Considering the deregulation of the oil industry and the removal of price control on gasoline and other fuel oils, we believe that the wisdom behind Section 1 of PD 454 may no longer hold true. Government is significantly less responsible today for the price of gasoline and other fuel oils, as well as cement, than it used to be. The dynamics of pricing of these commodities has changed dramatically. This law merits a thorough reevaluation. Congress and the Executive Department, it is suggested, must look at whether this policy should be maintained.

[27] Republic Act 8479

IN VIEW OF THE FOREGOING, the assailed 15 July 2009 Decision of the Court of Appeals is hereby *AFFIRMED in toto*. Let a copy of this Decision be served on the Office of the President, the Senate President and the Speaker of the House of Representatives.

SO ORDERED.

Carpio (Chairperson), Brion, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 191138-39. October 19, 2011]

MAGDALA MULTIPURPOSE & LIVELIHOOD COOPERATIVE and SANLOR MOTORS CORP., *petitioners, vs.* **KILUSANG MANGGAGAWA NG LGS, MAGDALA MULTIPURPOSE & LIVELIHOOD COOPERATIVE (KMLMS) and UNION MEMBERS/ STRIKERS, namely: THOMAS PADULLON, HERBERT BAUTISTA, ARIEL DADIA, AVELINO PARENAS, DENNIS MONTEALEGRE, SONNY CONSTANTINO, SHANDY CONSTANTINO, JOSEPH PERNIA, PETER ALCOY, EDILBERTO CERILLE, FERNANDO LEONOR, TEOTIMAR REGINIO, ALBERTO BAJETA, ALLAN MENESES, RONEL FABUL, JESUS COMENDADOR, JERRY PERNIA, OSCAR RIVERA, LEO MELGAR, ENRICO LAYGO, RICKY PALMERO, ROWELL GARCIA, LEOPITO MERANO, ALEJANDRO DE LARA, JOEL GARCIA, BONIFACIO PEREDA, REMEGIO CONSTANTINO, DICKSON PILAPIL, RANDY CORDANO, DARIUS PILAPIL, VENICE LUCERO,**

[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated October 3, 2011.

GREGORIO REANZARES, EULOGIO REGINIO, MICHAEL JAVIER, DENNIS MOSQUERA, FREDDIE AZORES, ROGELIO CABRERA, AURELIO TAGUINOD, OSCAR TAGUINOD, DEWELL PILAPIL, JOEL MASING, EDUARDO LOPEZ, GLICERIO REANZAREZ, JOSEPH FLORES, BUENATO CASAS, ROMEO AZAGRA, ALFREDO ROSALES, ESTELITO BAJETA, PEDY GEMINA, FERNANDO VELASCO, ALBERTO CANEZA, ALEJANDRO CERVANTES, ERICK CARVAJAL, RONALDO BERNADEZ, JERRY COROSA, JAYSON COROSA, JAYSON JUANSON, SHELLY NAREZ, EDGARDO GARCIA, ARIEL LLOSALA, ROMMEL ILAYA, RODRIGO PAULETE, MERVIN PANGUINTO, MARVIN SENATIN, JAYSON RILLORA, RAFAEL SARMIENTO, FREDERICK PERMEJO, NICOLAS BERNARDO, LEONCIO PAZ DE LEON, EDWARD DENNIS MANAHAN, ANTONIO BALDAGO, ALEXANDER BAJETA, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKE; STRIKE CONDUCTED BY THE WORKERS DECLARED ILLEGAL WHERE THEY COMMITTED ACTS OF INTERFERENCE BY OBSTRUCTING THE FREE INGRESS TO OR EGRESS FROM THE COMPANY'S COMPOUND AND COERCION AND INTIMIDATION.— There is likewise no dispute that when the May 6, 2002 illegal strike was conducted, the members of respondent KMLMS committed prohibited and illegal acts which doubly constituted the strike illegal. This is the unanimous factual finding of the courts *a quo* which the Court accords finality, as supported by evidence on record. The proscribed acts during a strike are provided under Art. 264 of the Labor Code, thus: ART. 264. *Prohibited Activities*. — x x x. (e) **No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes**, or obstruct public thoroughfares. (As amended by Batas Pambansa Bilang 227, June 1, 1982). Here, the striking workers committed acts of (1) interference by obstructing the free ingress to or egress from petitioners' compound and (2) coercion and

intimidation. x x x. Thus, We agree with the CA that the arguments of respondent KMLMS are bereft of merit as the May 6, 2002 strike was properly declared an illegal strike and the prohibited and illegal acts committed by union members during said strike were duly proved by substantial evidence on record. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

2. ID.; ID.; ID.; ID.; PROPER SANCTIONS FOR THE ILLEGAL STRIKE; LIABILITY OF UNION OFFICERS AND MERE MEMBERS OF THE UNION, DISTINGUISHED.— [A]rt. 264 of the Code presents a substantial distinction of the consequences of an illegal strike between union officers and mere members of the union. For union officers, knowingly participating in an illegal strike is a valid ground for termination of their employment. But for union members who participated in a strike, their employment may be terminated only if they committed prohibited and illegal acts during the strike and there is substantial evidence or proof of their participation, *i.e.*, that they are clearly identified to have committed such prohibited and illegal acts. As earlier explained, the May 6, 2002 strike is illegal for non-compliance with provisions of law and its implementing rules. Consequently, the termination of employment of the 14 union officers is proper. In the case of union members who participated in the May 6, 2002 strike and committed prohibited and illegal acts of interference by obstructing the free ingress to or egress from petitioners' compound, coercion and intimidation, the forfeiture of their employment is also proper.

3. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; TO BE RECOVERABLE, ACTUAL DAMAGES MUST NOT ONLY BE CAPABLE OF PROOF, BUT MUST ACTUALLY BE PROVED WITH REASONABLE DEGREE OF CERTAINTY.— [W]e affirm the courts *a quo*'s uniform findings and rulings that while petitioners prayed for damages and attorney's fees, they failed to substantiate their claims. Indeed, the grant of damages and attorney's fees requires factual, legal and equitable justification; its basis cannot be left to speculation or conjecture. Petitioners simply bank their claims on the Affidavit of Julito Sioson. The claim for actual damages for losses of PhP 10,000 daily or PhP 260,000 a month,

as averred by Sioson, cannot be sustained by a mere affidavit of the owner without being buttressed by other documentary evidence or unassailable substantiation. Even if attested to in an affidavit, the amount claimed for actual damages is merely speculative at most. To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. The Court cannot simply rely on speculation, conjecture, or guesswork in determining the amount of damages. Without any factual basis, it cannot be granted.

4. ID.; ID.; ATTORNEY'S FEES; THERE MUST BE FACTUAL, LEGAL AND EQUITABLE JUSTIFICATION FOR THE AWARD THEREOF; ATTORNEY'S FEES GRANTED UNDER ART. III OF THE LABOR CODE APPLY ONLY TO UNLAWFUL WITHHOLDING OF WAGES.— That petitioners had to litigate on the occasion of the illegal strike does not necessarily mean that attorney's fees will automatically be granted. On one hand, in labor cases, attorney's fees granted under Art. 111 of the Labor Code apply to unlawful withholding of wages, which indubitably does not apply to the instant case. On the other hand, Art. 2208(2) of the Civil Code does not *ipso facto* grant the award of damages in the form of attorney's fees to a winning party, for the exercise of protection of one's right is not compensable. Besides, jurisprudence instructs that for the award of attorney's fees to be granted, there must be factual, legal and equitable justification.

APPEARANCES OF COUNSEL

Roberto J. Santos for petitioners.
David B. Loste for respondnets.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Petitioners Magdala Multipurpose & Livelihood Cooperative and Sanlor Motors Corp. assail and seek the modification of

the June 30, 2009 Decision[1] and January 28, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP Nos. 88614 and 88645, which affirmed *in toto* the October 15, 2004 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC CA No. 040560-04 (NLRC RAB IV-9-1265-02-R).

The Facts

Respondent Kilusang Manggagawa ng LGS, Magdala Multipurpose and Livelihood Cooperative (KMLMS) is the union operating in Magdala Multipurpose & Livelihood Cooperative and Sanlor Motors Corp.

KMLMS filed a notice of strike on March 5, 2002 and conducted its strike-vote on April 8, 2002. However, KMLMS only acquired legal personality when its registration as an independent labor organization was granted on April 9, 2002 by the Department of Labor and Employment under Registration No. RO-400-200204-UR-002.[4] On April 19, 2002, it became officially affiliated as a local chapter of the *Pambansang Kaisahan ng Manggagawang Pilipino* when its application was granted by the Bureau of Labor Relations.[5]

Thereafter, on May 6, 2002, KMLMS—now a legitimate labor organization (LLO)—staged a strike where several prohibited and illegal acts were committed by its participating members.

On the ground of lack of valid notice of strike, ineffective conduct of a strike-vote and commission of prohibited and illegal acts, petitioners filed their Petition to Declare the Strike of

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[1] *Rollo*, pp. 60-84. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok.

[2] *Id.* at 86-87.

[3] *Id.* at 198-223. Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[4] CA *rollo* (CA-G.R. SP No. 88645), p. 238.

[5] *Rollo*, p. 363, Certificate of Creation of Local/Chapter No. PKMP-05.

May 6, 2002 Illegal[6] before the NLRC Regional Arbitration Board (RAB) No. IV in Quezon City, docketed as NLRC RAB IV-9-1265-02-R. In their petition, as well as their Position Paper,[7] petitioners prayed, *inter alia*, that the officers and members of respondent KMLMS who participated in the illegal strike and who knowingly committed prohibited and illegal activities, respectively, be declared to have lost or forfeited their employment status.

The Ruling of the Labor Arbiter

In her March 26, 2004 Decision,[8] Executive Labor Arbiter Lita V. Aglibut (LA Aglibut) found the May 6, 2002 strike illegal and declared 41 workers to have lost their employment, the dispositive portion reading:

> WHEREFORE, this Office finds the strike conducted by the Kilusang Manggagawa ng LGS, Magdala / Sanlor Motors-KMLMS, now known and registered as Kilusang [Manggagawa] Ng LGS/ Magdala Sanlor Motors Corporation – PKMP, illegal and the employment status of the following workers are hereby declared forfeited:xxx.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[9]

On the ground of non-compliance with the strict and mandatory requirements for a valid conduct of a strike under Article 263(c), (d) and (f) of the Labor Code and Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code, LA Aglibut found the May 6, 2002 strike illegal and accordingly dismissed all the 14 union officers of KMLMS. LA Aglibut likewise found 27 identified members of KMLMS to have committed prohibited and illegal acts proscribed under Art. 264 of the Labor Code and accordingly declared them to have forfeited their employment.

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[6] *Id.* at 258-264, dated September 23, 2002.

[7] *Id.* at 265-270, dated January 12, 2003.

[8] *Id.* at 384-404.

[9] *Id.* at 404.

Both parties appealed the Decision of LA Aglibut before the NLRC.

The Ruling of the NLRC

On October 15, 2004, the NLRC rendered its Decision affirming with modification LA Aglibut's Decision by declaring an additional seven (7) union members to have forfeited their employment status. The decretal portion reads:

> WHEREFORE, premises considered, the decision appealed from is affirmed with modification in that [said seven union members] are also declared to have lost their employment status for having committed prohibited acts.
>
> SO ORDERED.[10]

Unsatisfied, both parties again filed their respective appeals before the CA.

The Ruling of the CA

The CA rendered the assailed Decision on June 30, 2009 affirming *in toto* the NLRC Decision, the *fallo* reading:

> WHEREFORE, in view of the following disquisition, the respective petitions for *certiorari* in CA-G.R. SP. No. 88614 and CA-G.R. SP. No. 88645 are hereby DISMISSED for lack of merit. Accordingly, the assailed Decision, dated 15 October 2004, of the National Labor Relations Commission (NLRC) in NLRC CA No. 040560-04 (NLRC RAB IV-9-1265-02-R) is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[11]

Thus, petitioners have come to Us, praying for a partial modification of the assailed CA Decision by declaring additional 73[12] similarly erring KMLMS members to have lost their employment.

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[10] *Id.* at 222.

[11] *Id.* at 83.

[12] Only 72, for the name of Alexander Bajeta was indicated twice (Nos. 59 and 73) in petitioners' Prayer (1), *id.* at 51-52.

The Issues

A

THE COURT OF APPEALS ERRED IN REFUSING TO SIMILARLY DECLARE AS HAVING LOST THEIR EMPLOYMENT STATUS THE REST OF THE UNION STRIKERS WHO HAVE PARTICIPATED IN THE ILLEGAL STRIKE AND COMMITTED PROHIBITED/ILLEGAL ACTS, TO THE PREJUDICE OF PETITIONERS['] BUSINESS OPERATIONS.

B

THE COURT OF APPEALS ERRED IN REFUSING TO AWARD DAMAGES AND ATTORNEY'S FEES AS A RESULT OF THE ILLEGAL STRIKE THAT NEARLY CRIPPLED THE BUSINESS OPERATIONS OF PETITIONERS.[13]

The Court's Ruling

The petition is partly meritorious.

First Issue: The May 6, 2002 Strike Was Illegal

There is no question that the May 6, 2002 strike was illegal, *first*, because when KMLMS filed the notice of strike on March 5 or 14, 2002, it had not yet acquired legal personality and, thus, could not legally represent the eventual union and its members. And *second*, similarly when KMLMS conducted the strike-vote on April 8, 2002, there was still no union to speak of, since KMLMS only acquired legal personality as an independent LLO only on April 9, 2002 or the day after it conducted the strike-vote. These factual findings are undisputed and borne out by the records.

Consequently, the mandatory notice of strike and the conduct of the strike-vote report were ineffective for having been filed and conducted before KMLMS acquired legal personality as an LLO, violating Art. 263(c), (d) and (f) of the Labor Code and Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code. The Labor Code provisos pertinently provide:

[13] *Id.* at 27.

ART. 263. *Strikes, Picketing and Lockouts*. — (a) x x x

(c) In case of bargaining deadlocks, the **duly certified or recognized bargaining agent** may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof. In case of unfair labor practice, the period of notice shall be 15 days and **in absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members**. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting, where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately. (As amended by Executive Order No. 111, December 24, 1986.)

(d) The notice must be in accordance with such implementing rules and regulations as the Ministry of Labor and Employment may promulgate.

xxx xxx xxx

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided. (As amended by Batas Pambansa Bilang 130, August 21, 1981 and further amended by Executive Order No. 111, December 24, 1986.)

On the other hand, Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code likewise pertinently provides:

RULE XXII

CONCILIATION, STRIKES AND LOCKOUTS

xxx xxx xxx

SEC. 6. *Who may declare a strike or lockout.* — Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices. The employer may declare a lockout in the same cases. In the absence of a certified or duly recognized bargaining representative, **any legitimate labor organization** in the establishment may declare a strike but only on grounds of unfair labor practice. (Emphasis supplied.)

It is, thus, clear that the filing of the notice of strike and the conduct of the strike-vote by KMLMS did not comply with the aforequoted mandatory requirements of law and its implementing rules. Consequently, the May 6, 2002 strike is illegal. As the Court held in *Hotel Enterprises of the Philippines, Inc. (HEPI) v. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel and Restaurant and Allied Industries (SAMASAH-NUWHRAIN)*,[14] these requirements are mandatory and failure of a union to comply renders the strike illegal.

Striking KMLMS Members Committed Prohibited Acts

There is likewise no dispute that when the May 6, 2002 illegal strike was conducted, the members of respondent KMLMS committed prohibited and illegal acts which doubly constituted the strike illegal. This is the unanimous factual finding of the courts *a quo* which the Court accords finality, as supported by evidence on record.

The proscribed acts during a strike are provided under Art. 264 of the Labor Code, thus:

ART. 264. *Prohibited Activities*. — (a) No Labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or

[14] G.R. No. 165756, June 5, 2009, 588 SCRA 497.

without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of case involving the same grounds for the strike or lockout.

Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status**: *Provided*, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

xxx xxx xxx

(e) **No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes**, or obstruct public thoroughfares. (As amended by Batas Pambansa Bilang 227, June 1, 1982).

Here, the striking workers committed acts of (1) interference by obstructing the free ingress to or egress from petitioners' compound and (2) coercion and intimidation. As aptly pointed out by the appellate court:

This is clear from the Police Blotter Certifications, including a Complaint for Grave Coercion, Affidavits from several workers, including one from a proprietor, all of whom were prevented from entering the company premises and doing their work or conducting their business, and the countless photographs which show the striking workers blocking the gates of the company premises which became the basis of the judgment of the Labor Arbiter and NLRC.[15]

[15] *Rollo*, pp. 77-78.

Thus, We agree with the CA that the arguments of respondent KMLMS are bereft of merit as the May 6, 2002 strike was properly declared an illegal strike and the prohibited and illegal acts committed by union members during said strike were duly proved by substantial evidence on record. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[16]

Proper Sanctions for the Illegal Strike

We now come to the proper sanctions for the conduct of union officers in an illegal strike and for union members who committed illegal acts during a strike. The above-cited Art. 264 of the Code presents a substantial distinction of the consequences of an illegal strike between union officers and mere members of the union. For union officers, knowingly participating in an illegal strike is a valid ground for termination of their employment. But for union members who participated in a strike, their employment may be terminated only if they committed prohibited and illegal acts during the strike and there is substantial evidence or proof of their participation, *i.e.*, that they are clearly identified to have committed such prohibited and illegal acts.

As earlier explained, the May 6, 2002 strike is illegal for non-compliance with provisions of law and its implementing rules. Consequently, the termination of employment of the 14 union officers is proper.

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[16] *Formantes v. Duncan Pharmaceuticals, Phils., Inc.*, G.R. No. 170661, December 4, 2009, 607 SCRA 268, 281; citing *Japzon v. Commission on Elections*, G.R. No. 180088, January 19, 2009, 576 SCRA 331. Notably the Court held that:

> The findings of facts of quasi-judicial agencies, which have acquired expertise in the specific matters entrusted to their jurisdiction, are accorded by this Court not only respect but even finality if they are supported by substantial evidence. Only substantial, not preponderance, of evidence is necessary. Section 5, Rule 133 of the Rules of Court, provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

In the case of union members who participated in the May 6, 2002 strike and committed prohibited and illegal acts of interference by obstructing the free ingress to or egress from petitioners' compound, coercion and intimidation, the forfeiture of their employment is also proper.

LA Aglibut found 27 union members to have committed the illegal acts and properly declared the forfeiture of their employment status. The NLRC found additional seven (7) union members committing illegal acts and likewise declared the forfeiture of their employment status. Thus, a total of 34 union members have been declared to have lost their employment due to their commission of prohibited and illegal acts during the illegal strike of May 6, 2002. Petitioners, however, take umbrage for the non-declaration of the forfeiture of employment of 72 other union members who were similarly situated as the 34 union members whose employment was declared forfeited in committing prohibited and illegal acts during the May 6, 2002 strike.

In affirming the NLRC Decision and refusing to declare the other strikers as dismissed, the appellate court found that not all of the photographs in evidence sufficiently show the strikers committing illegal acts and that the identification of said strikers is questionable considering that some were still identified even when their faces were indiscernible from the photographs.

We, however, cannot agree with the appellate court's view that there is no substantial proof of the identity of the other 72 striking union members who committed prohibited and illegal activities. The prohibited and illegal acts are undisputed. It is only the identity of the striking union workers who committed said acts that is the crux of the partial modification prayed for by petitioners.

In the instant case, We have pored over the attachments to the pleadings of the parties and We find that petitioners have substantially proved the identity of 72 other union members who committed prohibited and illegal acts during the May 6, 2002 illegal strike, thus:

First, the photographs[17] submitted by petitioners graphically depict and show the identities of the union members who committed prohibited and illegal acts. *Second*, the identities of these union members were substantially proved through the eyewitnesses[18] of petitioners who personally knew and recognized them as those who committed the prohibited and illegal acts. Thus, the identities of these 72 other union members who participated in the strike and committed prohibited and illegal acts are not only shown through the photographs, but are also sufficiently supported, as earlier cited, by police blotter certifications,[19] a criminal complaint for grave coercion,[20] and affidavits of several workers[21] and a proprietor.[22] As aptly pointed out by petitioners, while several union members were penalized, other union members with them who are identifiable in the photographs and attested to by witnesses were not so penalized. This must be corrected, for these other unpenalized union members were similarly situated with those penalized in that they all committed the same prohibited and illegal acts during the strike. Absent any exculpating circumstance, they must all suffer the same fate with the statutorily provided consequence of termination of employment.

Thus, We find that there was patent misappreciation of evidence both by the LA and the NLRC, but it was not corrected by the CA.

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[17] *Rollo*, pp. 277-302, 319, 322, 324, 327, 331.

[18] *Id.* at 271-273 (Julito G. Sioson), at 278 (William Poblete), at 280 (Bernardo Montealegre), at 305-306 (Raul P. Olaya), at 313 (Angel Vidanes), at 316-317 (Nelson Abueg), at 318 and 320 (Alvin A. Catuira, Mario C. Pendon and Gaudencio N. Olea), at 323 (Elena Orseno), at 326 (Leoncio Anievas), at 329-330 (Renato Bracamonte).

[19] *Id.* at 275-276 (dated May 11, 2002), at 325 (dated September 9, 2002), at 328 (dated September 9, 2002).

[20] *Id.* at 314, Complaint for Grave Coercion, dated May 8, 2002.

[21] *Supra* note 18.

[22] *Supra* note 18, at 271-273, Affidavit of Julito G. Sioson.

Second Issue: Damages and Attorney's Fees

Anent the issue of the award of damages and attorney's fees, We affirm the courts *a quo*'s uniform findings and rulings that while petitioners prayed for damages and attorney's fees, they failed to substantiate their claims.

Indeed, the grant of damages and attorney's fees requires factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.[23] Petitioners simply bank their claims on the Affidavit[24] of Julito Sioson. The claim for actual damages for losses of PhP 10,000 daily or PhP 260,000 a month, as averred by Sioson, cannot be sustained by a mere affidavit of the owner without being buttressed by other documentary evidence or unassailable substantiation. Even if attested to in an affidavit, the amount claimed for actual damages is merely speculative at most. To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. The Court cannot simply rely on speculation, conjecture, or guesswork in determining the amount of damages.[25] Without any factual basis, it cannot be granted.

That petitioners had to litigate on the occasion of the illegal strike does not necessarily mean that attorney's fees will automatically be granted. On one hand, in labor cases, attorney's fees granted under Art. 111[26] of the Labor Code apply to unlawful

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[23] *Dutch Boy Philippines, Inc. v. Seniel*, G.R. No. 170008, January 19, 2009, 576 SCRA 231, 241; citing *Pang-Oden v. Leonen*, G.R. No. 138939, December 6, 2006, 510 SCRA 93, 102 and *Ranola v. Court of Appeals*, G.R. No. 123951, January 10, 2000, 322 SCRA 1, 11.

[24] *Rollo*, pp. 271-273, dated January 14, 2003.

[25] *Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 21-22.

[26] ART. 111. *Attorney's Fees*. — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

withholding of wages, which indubitably does not apply to the instant case. On the other hand, Art. 2208(2) of the Civil Code does not *ipso facto* grant the award of damages in the form of attorney's fees to a winning party, for the exercise of protection of one's right is not compensable.

Besides, jurisprudence instructs that for the award of attorney's fees to be granted, there must be factual, legal and equitable justification.[27] As the Court held in *Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine (AMEC-BCCM)*:

> It is an accepted doctrine that the award thereof as an item of damages is the exception rather than the rule, and counsel's fees 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 of the Civil Code demands factual, legal and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. In all events, the court must explicitly state in the text of the decision, and not only in the decretal portion thereof, the legal reason for the award of attorney's fees.[28]

The fact that the courts *a quo* did not award attorney's fees to petitioners persuasively shows that they found no factual, legal and equitable justification for it. Neither do We find any.

WHEREFORE, the instant petition is hereby *PARTIALLY GRANTED*. The assailed June 30, 2009 CA Decision in CA-G.R. SP Nos. 88614 and 88645 is *AFFIRMED* with *MODIFICATION* in that the following additional 72 union members who committed prohibited and illegal acts during the May 6, 2002 strike are also declared to have forfeited their employment: Thomas Padullon, Herbert Bautista, Ariel Dadia, Avelino Parenas, Dennis Montealegre, Sonny Constantino, Shandy Constantino, Joseph Pernia, Peter Alcoy, Edilberto Cerille, Fernando Leonor, Teotimar Reginio, Alberto Bajeta,

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[27] *Siga-an v. Villanueva*, G.R. No. 173227, January 20, 2009, 576 SCRA 696, 710-711.

[28] G.R. No. 141994, January 17, 2005, 448 SCRA 413, 438.

Allan Meneses, Ronel Fabul, Jesus Comendador, Jerry Pernia, Oscar Rivera, Leo Melgar, Enrico Laygo, Ricky Palmero, Rowell Garcia, Leopito Merano, Alejandro de Lara, Joel Garcia, Bonifacio Pereda, Remegio Constantino, Dickson Pilapil, Randy Cordano, Aurelio Taguinod, Oscar Taguinod, Dewell Pilapil, Joel Mas-ing, Eduardo Lopez, Glicerio Reanzarez, Joseph Flores, Buenato Casas, Romeo Azagra, Alfredo Rosales, Estelito Bajeta, Pedy Gemina, Fernando Velasco, Alberto Caneza, Alejandro Cervantes, Erick Carvajal, Ronaldo Bernadez, Jerry Corosa, Jayson Corosa, Jayson Juanson, Shelly Narez, Alexander Bajeta, Edgardo Garcia, Ariel Llosala, Rommel Ilaya, Rodrigo Paulete, Mervin Paquinto, Marvin Senatin, Jayson Rillora, Darius Pilapil, Venice Lucero, Gregorio Reanzares, Eulogio Reginio, Michael Javier, Dennis Mosquera, Freddie Azores, Rogelio Cabrera, Rafael Sarmiento, Frederick Permejo, Nicolas Bernardo, Leoncio Paz de Leon, Edward Dennis Manahan and Antonio Baldago.

No pronouncement as to costs.

SO ORDERED.

Peralta, Abad, Mendoza, and *Perlas-Bernabe, JJ.*, concur.

SECOND DIVISION

[G.R. No. 193234. October 19, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO MARTIN *Y* CASTANO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); SALE OF *SHABU*; THE PRE-OPERATION REPORT/COORDINATION SHEET PRESENTED IN EVIDENCE IS SUSPECT WHERE THE SAME WAS ACCOMPLISHED AND SENT TO THE PDEA HOURS BEFORE THE INFORMANT ARRIVED TO GIVE THE POLICE ANY INFORMATION ABOUT THE ALLEGED ILLEGAL ACTIVITY OF THE ACCUSED.— Various irregularities in the conduct of the buy-bust operation and the processing of the evidence in the present case have left the case against the accused too weak to overcome the presumption of innocence in his favor. The ***first irregularity*** attaches to the Pre-Operation Report/Coordination Sheet, which is intended to show the coordination between the PDEA and the police. Its importance lies in the fact that RA No. 9165 mandates close coordination between the Philippine National Police/National Bureau of Investigation and the PDEA on all drug-related matters, including investigations on violations of RA No. 9165, with the PDEA as the lead agency. In the case at bar, the original Pre-Operation Report/Coordination Sheet was not presented in court and the records contain only a photocopy thereof, provisionally marked Exhibit "D". Caution must be made that the failure of the prosecution to present the Pre-Operation Report, by itself, is not fatal to the prosecution's cause. Even if the Pre-Operation Report/Coordination Sheet was properly presented in evidence, however, it is suspect as it was apparently accomplished and sent to PDEA hours *before* the informant arrived to give the police any information about the alleged illegal drug activity of Martin.

2. ID.; ID.; ID.; THE NON-PRESENTATION OF THE ACTUAL MARKED MONEY RAISES DOUBTS REGARDING THE REGULARITY OF THE BUY-BUST OPERATION.— The actual marked money was likewise not presented in evidence since SPO1 Mora could no longer locate the marked money after he probably turned it over to the Investigator who photocopied it. While the Court has also had occasion to hold that presentation of the buy-bust money, as a lone defect, is not indispensable to the prosecution of a drug case, again it raises doubts regarding the regularity of the buy-bust operation.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURE LAID OUT IN SECTION 21 OF R.A. NO. 9165 IS NOT NECESSARILY FATAL TO THE PROSECUTION'S CASE BUT THE LAPSES IN PROCEDURE MUST BE RECOGNIZED AND EXPLAINED IN TERMS OF THEIR JUSTIFIABLE GROUNDS AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE SEIZED MUST BE SHOWN TO HAVE BEEN PRESERVED.— [T]he police officer did not comply with the procedure for seizure of evidence laid out in Section 21 of R.A. No. 9165 and its corresponding Implementing Rules without giving any reasonable excuse for the lapse. x x x. While noncompliance with the procedure laid out in Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case because the last sentence of the implementing rules provides 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," nevertheless, lapses in procedure "must be recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved." Otherwise, the procedure set out in the law will be mere lip service. In the present case, it was not shown that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. The only "reason" the police officers gave for not complying with the guidelines does not even hold water. The police justified their non-compliance with the procedure laid down in RA No. 9165 allegedly because these have not yet been "properly implemented" at the time. In truth, however, the implementing guidelines for R.A. No. 9165 took effect on November 27, 2002 while the arrest took place about four years later, or on 6 November 2006.

4. ID.; ID.; ID.; CHAIN OF CUSTODY; FAILURE TO ESTABLISH THE CHAIN OF CUSTODY IN A NARCOTICS CASE IS FATAL TO THE PROSECUTION'S CASE; EXPLAINED.— [T]he prosecution failed to establish the "chain of custody" of the seized item. After the buy-bust operation, the police officers proceeded to the DAID office

where they turned over the sachet and (probably) the marked money to the Investigator. It was this unidentified "investigator" who marked the *corpus delicti* (plastic sachet) and who had custody of both the *corpus delicti* and the marked money. Apparently, it was also he who turned over the plastic sachet to the Crime Laboratory for testing. However, he was not presented to testify as to the marking of the sachet, the whereabouts of the marked money and the completion of the chain of custody of the evidence from SPO1 Mora to the Crime Laboratory. Various reasons exist why failure to establish the chain of custody in a narcotics case, such as the case at bar, is fatal to the prosecution's case. As the Court exhaustively explained in *Carino v. People*, While a testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. x x x. Indeed, the Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over a narcotic specimen there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

5. ID.; ID.; ID.; THE PRESUMPTION THAT THE LAW ENFORCERS REGULARLY PERFORMED THEIR DUTY CANNOT, STANDING ALONE, OVERTURN THE CONSTITUTIONALLY RECOGNIZED PRESUMPTION OF INNOCENCE OF THE ACCUSED WHERE LAPSES IN THE BUY BUST OPERATION ARE SHOWN.— [T]he

presumption that the police officers regularly performed their duty cannot, standing alone, defeat the presumption of innocence of the accused herein. Generally, law enforcers are presumed to have regularly performed their duty, but this is a mere procedural presumption which cannot overturn the constitutionally recognized presumption of innocence of the accused where lapses in the buy bust operation are shown. As we held in *People v. Sanchez,* Admittedly, the defense did not adduce any evidence showing that xxx [the police officer] had any motive to falsify. The regularity of the performance of his duties, however, leaves much to be desired given the lapses in his handling of the allegedly confiscated drugs as heretofore shown. An effect of this lapse, as we held in *Lopez v. People*, is to negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no ifs and buts regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence. x x x. In this connection, since there were only three persons who had witnessed what actually transpired between SPO1 Mora and the accused prior to the arrest (the accused, SPO1 Mora and the confidential informant), the prosecution's failure to present the confidential informant left it without any witness to corroborate SPO1 Mora's testimony. In effect, it is SPO1 Mora's word against that of the accused. However, SPO1 Mora's testimony is unreliable.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; THE BURDEN OF PROVING BEYOND REASONABLE DOUBT THAT THE ACCUSED IS GUILTY OF THE CRIME CHARGED IS BASED ON THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED UNTIL THE CONTRARY IS PROVED.— The burden of proving beyond reasonable doubt that the accused is guilty of the crime charged is based on the constitutional presumption of innocence of the accused until the contrary is proven. Measured against this yardstick, and considering the foregoing discussion, the prosecution has fallen short of what is required for the conviction of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *J.*:

Before us on automatic review is the Decision of the Court of Appeals (CA) affirming the trial court's conviction of the accused for the sale of methylamphetamine hydrochloride or *shabu*. Accused cries foul, alleging extortion and citing various irregularities in the prosecution's evidence and in the conduct of the alleged buy-bust operation.

On 13 November 2006, an Information was filed against Roberto Martin *y* Castano *alias* Inpet (Martin) for violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in the following manner:

> That on or about November 6, 2006, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver, or give away to another, any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale ZERO POINT ZERO FIVE THREE (0.053) gram of white crystalline substance known as *shabu*, containing methylamphetamine hydrochloride which is a dangerous drug.
>
> Contrary to law.

The case was docketed as Criminal Case No. 06-248053 and was raffled to the Regional Trial Court (RTC), Branch 2, Manila presided over by Judge Alejandro G. Bijasa. Martin pleaded not guilty to the charge during arraignment.

Trial ensued with the prosecution presenting the testimonies of Police Officer 3 (PO3) Rodolfo Ong and Senior Police Officer 1 (SPO1) Jose Mora. Meanwhile, the defense presented

the testimonies of Juvilyn Caletisen, Jimmy Garote, and accused Martin himself.

According to the prosecution, the buy-bust operation and the subsequent events which led to the filing of the information against the accused were as follows:

SPO1 Mora testified that after they received information from a confidential informant,[1] who came to their office "at around 5:30 p.m." of 6 November 2006,[2] the Pre-Operation Report/ Coordination Sheet was prepared on the same day. On re-direct, SPO1 Mora stated that the informant came to their office at 5:00 p.m.[3] On the other hand, SPO3 Ong testified that they prepared the Pre-Operation Report/Coordination Sheet on 6 November 2006 "on or about 2:00 to 3:00p.m."[4] and that they submitted this document to the Philippine Drug Enforcement Agency (PDEA) at "around 2:30 p.m."[5] The confidential informant was neither identified nor presented in court.

A photocopy of the Pre-Operation Report/Coordination Sheet provisionally marked Exhibit "D" on 4 September 2007[6] (the original was never presented in court) showed that it was received by "SPO4 Mariano" of "PDEA-MMRO" but the date and time of receipt was not indicated in the space so provided. Assuming that the date and time of receipt by the PDEA-MMRO of the coordination document was either one of three faint stamps marked on the face thereof,[7] it received the said document hours ahead of the arrival of the confidential informant to the police station.

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[1] TSN, 11 September 2007, p. 11.

[2] *Id.* at 3.

[3] *Id.* at 13.

[4] TSN, 4 September 2007, p. 6.

[5] *Supra*, note 1at 8.

[6] TSN, 4 September 2007, p. 6.

[7] The following stamps were found on the face of the document: (1) "DTOC-WPD Rcvd by: PO1 Ariban, November 6, 2006 1:40 p.m."; (2) Received PNP DIID/INTEL Name: PO1 Romero, Date: Nov 06 2006, Time: 1400H; or (3) Received: PO1 Corpuz Nov 06 2006 1330H."

The Pre-Operation Report/Coordination Sheet named six (6) police officers as part of the team led by Senior Police Inspector Joselito Binayug. They planned on using six (6) vehicles, three (3) of them SUVs, to perform the operation against *alias* "Inpet" in the area broadly identified as "MPD AOR (PS1 to PS 11)". After accomplishing the Pre-Operation Report/Coordination Sheet, the police officers testified that they proceeded to Oro-B, Pandacan, Manila accompanied by the informant.

SPO1 Mora confirmed that he was designated as the *poseur* buyer, and that he was given the ₱100.00 marked money which he himself marked at the right hand portion with "DAID".[8] SPO1 Mora narrated that he arrived at the site together with the informant on board his car. The informant alighted from the car and, before he could reach Martin who was standing along Oro-B Street, the latter waved at the informant to come near.[9] SPO1 Mora then approached Martin together with the informant who introduced him to Martin as a buyer of ₱100.00 worth of *shabu*. Simultaneously, SPO1 Mora handed the ₱100.00 to Martin while the latter gave him a small plastic sachet.[10] SPO1 Mora grabbed Martin and introduced himself as a police officer while PO3 Ong assisted him with a body search of Martin.

The police officers testified that the pre-arranged signal to indicate the consummation of the buy bust operation was the arrest of the accused.[11] Only the *poseur*-buyer, SPO1 Mora, and the confidential informant were with Martin minutes prior to the latter's arrest. SPO3 Ong confirmed that he was 10 to 15 meters away from SPO1 Mora and Martin while the meeting was taking place such that he could not "ascertain what was going on between the poseur buyer, SPO1 Mora and the accused"[12] and that he was the only police officer who assisted SPO1 Mora

[8] TSN, 11 September 2007, p. 3.

[9] *Id.* at 4.

[10] *Id.* at 5.

[11] TSN, 4 September 2007, p. 5.

[12] *Id.* at 12.

during the arrest, as the other police officers were left inside their respective vehicles[13] and were "very far" from him.[14]

On the other hand, the defense witnesses testified as follows:

The accused denied that he is *alias* Inpet, or that he gave PO1 Mora a plastic sachet containing *shabu*.[15] He testified that on 6 November 2006, he was working at the junkshop with Jimmy Garrote whom he later invited for lunch at his house nearby. They were about to enter the alley near Oro-B when the accused's neighbor, Juvilyn Caletisen, called out to talk with him.[16] A certain Jayrold was also in the alley. It was then that six policemen arrived and forced them to go with the police.[17] When asked what their offense was, the police replied that they could explain their side at the precinct.[18]

Juvilyn Caletisen corroborated this with her testimony that six armed persons arrived at the alley near their house in Oro-B before lunch while she was conversing with the accused.[19] They arrested the accused, herself, Jimmy, Jayrold, and a certain Brian[20] and brought them to the police headquarters where they were detained for a night.

In their respective testimonies, Juvilyn Calitesen, [21]Jimmy Garote[22] and the accused[23] all testified that the police demanded that they give ₱5,000 each for their release or else, they will be

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[13] *Id.* at 11.

[14] *Id.* at 8.

[15] TSN, 12 November 2007, p. 6.

[16] *Id.* at 3.

[17] *Id.* at 4.

[18] *Id.* at 5.

[19] TSN, 2 October 2007, p. 3

[20] *Id.* at 5

[21] TSN, 2 October 2007, p. 7

[22] TSN, 9 October 2007, p. 5

[23] TSN, 12 November 2007, p. 4

charged with a crime. All the defense witnesses also testified that except for Martin who had no money, all of them were released because they were each able to give the ₱5,000 which the police demanded.[24]

On 10 March 2008, the trial court issued its Decision, the dispositive portion of which read in part:

> WHEREFORE, finding the accused, Roberto Martin *y* Castano @ Inpet, GUILTY, beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The trial court held that there was no showing of any ill motive on the part of the police in testifying against Martin. The integrity and evidentiary value of the seized item was properly preserved by SPO1 Mora. The defense of frame up is viewed with disfavor because it is easily concocted and commonly used as a standard line of defense in most prosecution of dangerous drugs cases. Assuming there was extortion, such fact is not determinative of his guilt or innocence as the demand was made after the offense was consummated.

The Court of Appeals (CA) denied Martin's appeal and affirmed the RTC decision.[25] Martin elevated the matter for review by this Court, alleging that the Court of Appeals' Decision was contrary to facts, law, and jurisprudence.

OUR RULING

The accused is acquitted of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

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[24] TSN, 2 October 2007, p. 10; TSN, 9 October 2007, p. 7; TSN, 12 November 2007, p. 5

[25] The Decision dated 30 April 2010 issued by the Court of Appeals Special First Division in CA-G.R. CR-HC No. 03283 was penned by Justice Isaias Dicdican and concurred in by Justices Andres Reyes, Jr. and Rodil Zalameda. Martin did not file a Motion for Reconsideration. Instead, he filed a Notice of Appeal.

Various irregularities in the conduct of the buy-bust operation and the processing of the evidence in the present case have left the case against the accused too weak to overcome the presumption of innocence in his favor.

The ***first irregularity*** attaches to the Pre-Operation Report/ Coordination Sheet, which is intended to show the coordination between the PDEA and the police. Its importance lies in the fact that RA No. 9165 mandates close coordination between the Philippine National Police/National Bureau of Investigation and the PDEA on all drug-related matters, including investigations on violations of RA No. 9165, with the PDEA as the lead agency.[26]

In the case at bar, the original Pre-Operation Report/ Coordination Sheet was not presented in court and the records contain only a photocopy thereof, provisionally marked Exhibit "D". Caution must be made that the failure of the prosecution to present the Pre-Operation Report, by itself, is not fatal to the prosecution's cause.[27] Even if the Pre-Operation Report/ Coordination Sheet was properly presented in evidence, however, it is suspect as it was apparently accomplished and sent to PDEA hours *before* the informant arrived to give the police any

[26] Section 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*.— The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves …

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters. (Underscoring supplied)

[27] *People v. Daria, Jr.*, G.R. No. 186138, 11 September 2009, 599 SCRA 688.

information about the alleged illegal drug activity of Martin. SPO1 Mora variably testified that the confidential informant came to their office at 5 p.m. or 5:30 p.m. of 6 November 2006. Meanwhile, from the three faint stamps marked on the face of the Pre-Operation Report/Coordination Sheet, it was received by PDEA-MMRO either at 1:30 p.m., 1:40 p.m. or 2:00 p.m. of 6 November 2006.

Second, the actual marked money was likewise not presented in evidence[28] since SPO1 Mora could no longer locate the marked money[29] after he probably turned it over to the Investigator who photocopied it.[30] While the Court has also had occasion to hold that presentation of the buy-bust money, as a lone defect, is not indispensable to the prosecution of a drug case,[31] again it raises doubts regarding the regularity of the buy-bust operation.

Third, the police officer did not comply with the procedure for seizure of evidence laid out in Section 21 of R.A. No. 9165[32]

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[28] What is contained in the record is a photocopy of the marked money, provisionally marked as "Exhibit F".

[29] TSN, 11 September 2007, p. 9.

[30] *Id.* at 12.

[31] *People v. Eugenio*, G.R. No. 146805, 16 January 2003, 395 SCRA 317.

[32] SEC. 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. xxx (Underscoring supplied)

and its corresponding Implementing Rules[33] without giving any reasonable excuse for the lapse. When confronted with the fact that they have not complied with the procedure for seizure of evidence laid out in Section 21 of R.A. No. 9165, SPO1 Mora testified:

Asst. Pros. Yap:

Q Now you said the marking was made by the Investigator. Why did you not mark the specimen at the scene of the transaction?

Witness:

A Because the Investigator will make an inventory regarding the recovered evidence and other pertinent documents, sir.

Asst. Pros. Yap:

That would be all, your Honor.

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[33] **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:

(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;

(b) xxx (Underscoring and emphasis supplied)

[34] TSN, 11 September 2007, pp. 9-10.

COURT:

Cross.

Atty. Cabrera:

With the kind permission of this Honorable Court.

Q Why did you not mark the specimen at the crime scene, you were not following the guidelines under the rules?

A Because it was not properly implemented yet those guidelines of RA 9165, sir.[34]

While noncompliance with the procedure laid out in Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case because the last sentence of the implementing rules provides 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," nevertheless, lapses in procedure "must be recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved."[35] Otherwise, the procedure set out in the law will be mere lip service.

In the present case, it was not shown that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. The only "reason" the police officers gave for not complying with the guidelines does not even hold water. The police justified their non-compliance with the procedure laid down in RA No. 9165 allegedly because these have not yet been "properly implemented" at the time. In truth, however, the implementing guidelines for R.A. No. 9165 took effect on November 27, 2002 while the arrest took place about four years later, or on 6 November 2006.

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[35] *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194.

Fourth, the prosecution failed to establish the "chain of custody"[36] of the seized item. After the buy-bust operation, the police officers proceeded to the DAID office where they turned over the sachet and (probably) the marked money to the Investigator.[37] It was this unidentified "investigator" who marked the *corpus delicti* (plastic sachet) and who had custody of both the *corpus delicti* and the marked money. Apparently, it was also he who turned over the plastic sachet to the Crime Laboratory for testing.[38] However, he was not presented to testify as to the marking of the sachet, the whereabouts of the marked money and the completion of the chain of custody of the evidence from SPO1 Mora to the Crime Laboratory.

Various reasons exist why failure to establish the chain of custody in a narcotics case, such as the case at bar, is fatal to the prosecution's case. As the Court exhaustively explained in *Carino v. People*, [39]

> While a testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard

[36] Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA No. 9165, defines "chain of custody" in this wise:

> b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition."

[37] TSN dated 11 September 2007, p. 6.

[38] *Id.* at 7.

[39] G.R. No. 178757, 13 March 2009, 581 SCRA 388.

likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. Hence, the risk of tampering, loss or mistake with respect to an exhibit of this nature is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. The danger, according to *Graham v. State*, is real. In that case, a substance later analyzed as heroin was excluded from the prosecution evidence because it was previously handled by two police officers prior to examination who, however, did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession. The court pointed out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

Indeed, the Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over a narcotic specimen there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. (Underscoring supplied)

Fifth, the presumption that the police officers regularly performed their duty cannot, standing alone, defeat the

presumption of innocence of the accused herein. Generally, law enforcers are presumed to have regularly performed their duty,[40] but this is a mere procedural presumption which cannot overturn the constitutionally recognized presumption of innocence of the accused where lapses in the buy bust operation are shown. As we held in *People v. Sanchez*,[41]

> Admittedly, the defense did not adduce any evidence showing that SPO2 Sevilla had any motive to falsify. The regularity of the performance of his duties, however, leaves much to be desired given the lapses in his handling of the allegedly confiscated drugs as heretofore shown.
>
> An effect of this lapse, as we held in *Lopez v. People*, is to negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no ifs and buts regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence.
>
> *People v. Santos* instructively tells us that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. (Underscoring supplied)

In this connection, since there were only three persons who had witnessed what actually transpired between SPO1 Mora and the accused prior to the arrest (the accused, SPO1 Mora and the confidential informant), the prosecution's failure to present the confidential informant left it without any witness to corroborate SPO1 Mora's testimony. In effect, it is SPO1 Mora's word against that of the accused.

However, SPO1 Mora's testimony is unreliable. *First*, he testified that after interviewing the confidential informant who arrived at their office either at 5 p.m. or 5:30 p.m. of 6 November

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[40] *People v. Alias Crysler Babac*, G.R. No. 97932, 23 December 1991, 204 SCRA 968.

[41] *Supra*

2006, they prepared the Pre-Operation Report/Coordination Sheet and sent it to PDEA on the same day. However, the time stamped on the Pre-Operation Report/Coordination Sheet showed that it was sent to PDEA much earlier — either at 1:30 p.m., 1:40 p.m. or 2 p.m. of 6 November 2006. *Second*, while SPO1 Mora claimed to have custody of the *shabu* specimen right after recovering it from Martin during the latter's arrest, he did not mark the same at the scene of the crime. This is contrary to the explicit procedure for seizure of evidence laid down in Section 21 of R.A. 9165. He justified his non-compliance by saying that at the time, the guidelines had not yet been "properly implemented." Contrary to SPO1 Mora's excuse, however, the implementing guidelines for R.A. No. 9165 took effect on November 27, 2002, or four years before this incident. *Third*, SPO1 Mora had custody of the buy-bust money at the time of Martin's arrest but when asked to explain its loss less than a year after the incident, he could not remember whether or not he handed it over to the investigator.[42]

In view of the cited irregularities in the buy bust operation and the processing of the evidence shown in the preceding discussion, SPO1 Mora's word cannot be given more weight than that of the accused.

The burden of proving beyond reasonable doubt that the accused is guilty of the crime charged is based on the constitutional presumption of innocence of the accused until the contrary is proven.[43] Measured against this yardstick, and considering the foregoing discussion, the prosecution has fallen short of what is required for the conviction of the accused.

IN VIEW THEREOF, the appealed Decision is hereby *SET ASIDE* and accused-appellant Roberto Martin *y* Castano is hereby *ACQUITTED* on grounds of reasonable doubt. His release from detention is hereby ordered forthwith, unless he is detained for some other lawful cause.

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[42] TSN dated 11 September 2007, p. 12.

[43] 1987 Constitution, Article III, Section 14(2).

SO ORDERED.

Carpio (Chairperson), Brion, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 193479. October 19, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNARD G. MIRTO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; ELEMENTS; PRESENT.— The elements of Qualified Theft committed with grave abuse of confidence are as follows: 1. Taking of personal property; 2. That the said property belongs to another; 3. That the said taking be done with intent to gain; 4. That it be done without the owner's consent; 5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; 6. **That it be done with grave abuse of confidence**. All of the foregoing elements for Qualified Theft are present in this case.

2. ID.; ID.; MONEY RECEIVED BY AN EMPLOYEE IN BEHALF OF HIS EMPLOYER IS CONSIDERED TO BE ONLY IN THE MATERIAL POSSESSION, NOT JURIDICAL POSSESSION, OF THE EMPLOYEE.— The duty to collect payments is imposed on accused-appellant because of his position as Branch Manager. Because of this employer-employee relationship, he cannot be considered an agent of

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[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated 3 October 2011.

UCC and is not covered by the Civil Code provisions on agency. Money received by an employee in behalf of his or her employer is considered to be only in the material possession of the employee. The fact that accused-appellant had authority to accept payments from customers does not give him the license to take the payments and deposit them to his own account since juridical possession is not transferred to him. On the contrary, the testimony he cites only bolsters the fact that accused-appellant is an official of UCC and had the trust and the confidence of the latter and, therefore, could readily receive payments from customers for and in behalf of said company.

3. ID.; ID.; ACCUSED-APPELLANT FOUND GUILTY OF FOUR COUNTS OF QUALIFIED THEFT; IMPOSABLE PENALTY.— [C]onsidering that accused-appellant is convicted of four (4) counts of Qualified Theft with corresponding four penalties of *reclusion perpetua*, Art. 70 of the RPC on **successive service of sentences** shall apply. Art. 70 pertinently provides that "the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period. Such **maximum period shall in no case exceed forty years**." Applying said rule, despite the four penalties of *reclusion perpetua* for four counts of Qualified Theft, accused-appellant shall suffer imprisonment for a period not exceeding 40 years.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the Decision[1] dated August 24, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03444, which affirmed the March 24, 2008 Decision[2] in Criminal Case Nos. 9034, 9115, 9117 and 9130 of the Regional Trial Court (RTC), Branch 5 in Tuguegarao City, Cagayan. The RTC found accused Bernard G. Mirto guilty beyond reasonable doubt of the crime of Qualified Theft.

The Facts

Seven Informations for Qualified Theft were filed against the accused, docketed as Criminal Case Nos. 9034, 9115, 9117, 9120, 9123, 9126, and 9130. The Informations similarly show how the offenses were allegedly committed, differing only as to the dates of the commission, the number of bags of cement involved, the particulars of the checks paid by the cement purchasers, the amounts involved, and the depositary accounts used by accused. The Information for Criminal Case No. 9034 indicted accused, thus:

> The undersigned City Prosecutor of Tuguegarao City accuses BERNARD G. MIRTO of the crime of QUALIFIED THEFT, defined and penalized under Article 310, in relation to Articles 308 and 309 of the Revised Penal Code, committed as follows:
>
> That on June 21, 2001, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, said accused BERNARD G. MIRTO, being the Branch Manager of UCC-Isabela (Tuguegarao Area), with intent to gain but without violence against or intimidation of persons nor force upon things, did then and there willfully, unlawfully and feloniously, with grave abuse of

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[1] *Rollo*, pp. 2-14. Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Magdangal M. de Leon and Ricardo R. Rosario.

[2] CA *rollo*, pp. 15-28. Penned by Presiding Judge Jezarene C. Aquino.

confidence and without the consent and knowledge of complainant, UNION CEMENT CORPORATION, a duly organized Corporation operating under existing laws, represented by REYNALDO S. SANTOS, Assistant Vice President – Marketing/North Luzon, whose business address is located at 5th Floor Kalayaan Building, 164 Salcedo Street, Makati, Metro Manila, take, steal and deposit into his personal Security Bank & Trust Co. (Tuguegarao Branch) Account No. 0301261982001, the proceeds of 4,600 bags of Portland cement, owned by herein complainant-Corporation, paid to him by the Philippine Lumber located at Bonifacio Street, this City, in the form of Checks, namely: METROBANK CHECK NOS. 103214898 and 1032214896, for ₱67,000.00 & ₱241,200.00, respectively, in the total amount of P308,200.00, which accused is obligated to convey to the complainant-Union Cement Corporation represented by its Vice-President-Marketing, REYNALDO S. SANTOS, to its loss, damage and prejudice, in the aforesaid amount of THREE HUNDRED EIGHT THOUSAND TWO HUNDRED PESOS, (₱308,200.00) Philippine Currency.

Contrary to law.[3]

To summarize, the seven Informations showed the following details:

Criminal Case	Date of offense	Cement bags	Purchaser/ Buyers	Check payments	Amount (PhP)	Checks deposited In	Total Amount (PhP)
9034	June 21, 2001	4,600	Philippine Lumber	MBTC 103214898	67,000.00	SBTC 0301-261982-001	
				MBTC 1032214896	241,200.00	SBTC 0301-261982-001	**308,200.00**
9115	May 25, 2001	4,750 out of 5,850	Philippine Lumber	MBTC 1030214835 MBTC 1030214833 MBTC 1030214836 MBTC 1030214834 MBTC 1030214849 MBTC 1030214848 MBTC 1030214847	116,000.00 116,000.00 116,000.00 79,750.00 58,000.00 87,000.00 116,000.00	SBTC 0301-261982-001 SBTC 0301-261982-001 SBTC 0301-261982-001 SBTC 0301-261982-001 MBTC 124-5 [Magno Lim] MBTC 124-5 [Magno Lim] MBTC 124-5 [Magno Lim]	**688,750.00**
9117	May 22, 2001	9,950	Mapalo Trucking	PNB 0015659 PNB 0015661	616,100.00 597,800.00	SBTC 0301-261982-001 SBTC 0301-261982-001	**1,213,900.00**
9120	June 6, 2001	900 out of 5,100	Alonzo Trucking	MBTC 1140171726	113,400.00	MBTC 124-5 [Magno Lim]	**113,400.00**
9123	June 22, 2001	2,700 out of 7,100	Mapalo Trucking	[no details] [no details]	123,300.00 246,600.00	[no details] [no details]	**369,900.00**
9126	June 19, 2001	1,800 out of 7,100	Alonzo Trucking	MBTC 114071731	244,800.00	EPCIB 71820-8 [Magno Lim]	**244,800.00**
9130	June 27, 2001	500	Rommeleens Enterprises	DBP 0000155348	68,500.00	SBTC 0301-261982-001	**68,500.00**

[3] Records, Vol. 1, p. 1.

Per records,[4] the accused was branch manager of Union Cement Corporation (UCC) for the Tuguegarao City area. At the UCC office in Isabela, he shared an office room with Restituto P. Renolo, Branch Manager for the province. On June 29, 2001, at about noon, the accused confided to Renolo that he had misappropriated company funds. Renolo advised him to explain his misdeeds in writing to Assistant Vice-President and Head of UCC-North Luzon Reynaldo S. Santos (AVP Santos).

Later that day, at about 5:00 p.m., the accused told Renolo that he would be going to Tuguegarao City. Just before Renolo left the office, he saw on the accused's table a piece of partly-folded paper, which turned out to be a handwritten letter of the accused to AVP Santos, in which he admitted taking company funds and enumerated the particular accounts and amounts involved. Renolo took the letter home, read it over the phone to AVP Santos at about 7:00 p.m., and faxed it to AVP Santos the following day.

AVP Santos, in turn, sent a copy of the letter to the top management of UCC, which then instructed the Group Internal Audit of the Phinma Group of Companies to conduct a special audit of the UCC-Tuguegarao City Branch. Antonio M. Dumalian, AVP and Head of the Group Internal Audit, organized the audit team composed of Onisimo Prado, as head, with Emmanuel R. Reamico, Adeodato M. Logronio, and Glenn Agustin, as members.

The audit team conducted the special audit of the UCC-Tuguegarao City Branch from July 3 to July 25, 2001. They interviewed several cement buyers/dealers, among them Wilma Invierno of Rommeleen's Enterprises, Arthur Alonzo of Alonzo Trucking, Robert Cokee of Philippine Lumber, and Russel Morales of Mapalo Trucking. All four executed affidavits attesting that UCC cement bags were sold directly to them instead of to dealers with credit lines and that, as payment, they issued "Pay to Cash" checks pursuant to the instruction of the accused.

AVP Santos and Dr. Francis Felizardo, Senior Vice-President (SVP) and Head of the Marketing Group of UCC, met with the

[4] *Rollo*, pp. 3-5.

accused at the UCC Sales Office in Poro Point, San Fernando City, La Union. In that meeting, the accused admitted misusing company money, but pleaded to them not to terminate him as he was willing to pay back the amount from his salary on installment. He also asked them not to file charges against him.

In a Report dated August 8, 2001, the Group Internal Audit confirmed the veracity of the June 29, 2001 handwritten admission letter of the accused and his July 20, 2001 Certification enumerating the names of the specific bank accounts, specific bank holders, and the banks wherein he had deposited the funds of UCC-Tuguegarao City Branch. It appeared that the total unremitted collections of the accused from May 25, 2001 to June 23, 2001 amounted to PhP 6,572,750.

UCC found that the accused gravely abused the trust and confidence reposed on him as Branch Manager and violated company policies, rules, and regulations. Specifically, he used the credit line of accredited dealers in favor of persons who either had no credit lines or had exhausted their credit lines. He diverted cement bags from the company's Norzagaray Plant or La Union Plant to truckers who would buy cement for profit. In these transactions, he instructed the customers that payments be made in the form of "Pay to Cash" checks, for which he did not issue any receipts. He did not remit the checks but these were either encashed or deposited to his personal bank account at Security Bank & Trust Co. (SBTC)-Tuguegarao City Branch with Account No. 0301-261982-001 or to the accounts of a certain Magno Lim at MetroBank and Equitable PCIBank, both in Tuguegarao City. Conchito Dayrit, Customer Service Officer and Representative of SBTC-Tuguegarao City, confirmed the findings of the UCC internal auditors through the accused's Statement of Account showing the various checks deposited to his account, and which subsequently cleared.

Upon arraignment on August 6, 2002, the accused entered a plea of "not guilty" to the seven separate charges of qualified theft.[5] Trial on the merits ensued.

[5] Records, Vol. 1, p. 38.

The Ruling of the RTC

On March 24, 2008, the RTC rendered its Decision, acquitting the accused in Criminal Case Nos. 9120, 9123, and 9126, but finding him guilty beyond reasonable doubt of committing Qualified Theft in Criminal Case Nos. 9034, 9115, 9117, and 9130. The dispositive portion reads:

WHEREFORE, premises considered, the Court renders judgment thus:

1. In Criminal Case No. 9034: finding the accused GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft;
2. In Criminal Case No. 9115: finding the accused GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft;
3. In Criminal Case No. 9117: finding the accused GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft;
4. In Criminal Case No. 9120: finding the accused NOT GUILTY, as there is no showing how he profited from deposits he made to the account of Mr. Magno Lim;
5. In Criminal Case No. 9123: finding the accused NOT GUILTY by reason of insufficiency of evidence;
6. In Criminal Case No. 9126: finding the accused NOT GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft;
7. In Criminal Case No. 9130: finding the accused GUILTY BEYOND REASONABLE DOUBT of the crime of qualified theft.

In view of the foregoing, in the imposition of the penalties upon the accused, this Court is guided by the following doctrinal pronouncement of the Supreme Court in *People v. [Mercado]*, G.R. No. 143676, February 12, 2003:

> *"Appellant asserts that the trial court erred in applying the proper penalty. As reasoned by appellant, the penalty for*

> *Qualified Theft under Article 310 of the Revised Penal Code is prision mayor in its minimum and medium periods, raised by two degrees. Hence, the penalty high by two degrees should be reclusion temporal in its medium and maximum periods and not reclusion perpetua as imposed by the trial court. Being a divisible penalty, the Indeterminate Sentence Law could then be applied.*
>
> *On the other hand, [appellee] cites the cases of People v. Reynaldo Bago and People v. Cresencia C. Reyes to show that the trial court properly imposed the penalty of reclusion perpetua.*
>
> *We agree with the appellee that the trial court imposed the proper penalty."*

In accordance with the doctrine laid down in People v. Mercado, the accused is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*. Accused is ordered to restitute the private complainant the total amount of TWO MILLION TWO HUNDRED SEVENTY NINE THOUSAND THREE HUNDRED FIFTY PESOS (Php 2,279,350.00) covering the amount represented by the checks involved in these cases.

Set the promulgation of this Decision on 15 April 2008, at 8:30 o'clock in the morning.

SO ORDERED.[6]

In convicting the accused, the RTC relied on his admission when he testified on February 15, 2007 and his Memorandum of the fact of his having deposited the checks payments from UCC cement sales in his personal account with SBTC, Tuguegarao City Branch. Contrary to the accused's argument, the RTC found that he did not hold his collections in trust for UCC, since he was never authorized by UCC to retain and deposit checks, as testified to by AVP Santos. Moreover, the RTC found fatal to accused's defense his handwritten letter, dated June 29, 2001, addressed to AVP Santos, which reads in part, "Sir, I regret to say that a total amount of PhP6,380,650.00

[6] CA *rollo*, pp. 26-28.

was misused by me for various reasons,"[7] which the accused admitted to in open court during his testimony on February 15, 2007.

Aggrieved, accused appealed his conviction before the CA.

The Ruling of the CA

On August 24, 2009, the appellate court rendered the appealed decision, affirming the findings of the RTC and the conviction of accused-appellant. The *fallo* reads:

> WHEREFORE, premises considered, the Decision of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5, in *Criminal Case Nos. 9034, 9115, 9117 and 9130*, dated March 24, 2008 and promulgated on April 15, 2008, finding accused-appellant guilty beyond reasonable doubt of the crime of Qualified Theft is hereby AFFIRMED and UPHELD.
>
> With costs against the accused-appellant.
>
> SO ORDERED.[8]

Accused-appellant argued that, *first*, the Informations indicting him for Qualified Theft did not adequately inform him of the nature of the offense charged against him; and *second*, he had juridical possession of the subject checks, not merely material possession; hence, the qualifying circumstance of "grave abuse of confidence" cannot be appreciated against him.

The CA, however, found that accused-appellant only had material possession of the checks and not juridical possession[9]

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[7] Records, Folder of "Formal Offer of Prosecution's Evidence," pp. 27-28, Exhibit "A".

[8] *Rollo*, p. 14.

[9] [It is well-settled that when the money, goods, or any other personal property is received by the offender from the offended party in trust or on commission or for administration, the offender acquires both material or physical possession and juridical possession of the thing received.] Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner (*Chua-Burce v. Court of Appeals*, G.R. No. 109595, April 27, 2000, 331 SCRA 1, 13, cited in *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 544).

as these checks payments were made to UCC by its customers and accused-appellant had no right or title to possess or retain them as against UCC. The fact that accused-appellant was obliged, as per company policy, to immediately turn over to UCC the payments he received from UCC customers was attested to by the prosecution witness, UCC Branch Manager Renolo. Thus, the CA concluded that there was neither a principal-agent relationship between UCC and accused-appellant nor was accused-appellant allowed to open a personal account where UCC funds would be deposited and held in trust for UCC.

Hence, We have this appeal.

The Office of the Solicitor General, representing the People of the Philippines, submitted a Manifestation and Motion,[10] opting not to file any supplemental brief, there being no new issues raised nor supervening events transpired. Accused-appellant manifested also not to file a supplemental brief.[11] Thus, in resolving the instant appeal, We consider the sole issue and arguments accused-appellant earlier raised in his Brief for the Accused-Appellant before the CA.

Accused-appellant raises the same sole assignment of error already passed upon and resolved by the CA, in that "THE TRIAL COURT ERRED IN CONCLUDING THAT, BASED ON THE EVIDENCE, THE ACCUSED IS GUILTY OF QUALIFIED THEFT."[12]

The Court's Ruling

The appeal is bereft of merit.

Accused-appellant argues that the prosecution failed:

(a) To establish that he had material possession of the funds in question;

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[10] *Rollo*, pp. 25-27, dated January 6, 2011.

[11] *Id.* at 39-40, Manifestation and Motion dated April 18, 2011.

[12] *Id.* at 41.

(b) To refute the authority given to him by UCC;

(c) To establish the element of "taking" under Art. 308 of the Revised Penal Code (RPC);

(d) To establish that the funds were taken without the consent and knowledge of UCC;

(e) To establish the element of "personal property" under Art. 308 of the RPC; and

(f) To establish, in sum, the ultimate facts constitutive of the crime of Qualified Theft under Art. 310, in relation to Art. 308, of the RPC.

For being closely related, We will discuss together the arguments thus raised.

Article 308 of the Revised Penal Code (RPC), which defines Theft, provides:

ART. 308. *Who are liable for theft*.—Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and

3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

Thus, the elements of the crime of Theft are: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was

accomplished without violence or intimidation against the person or force upon things.[13]

Theft is qualified under Art. 310 of the RPC, when it is, among others, committed with grave abuse of confidence, thus:

> ART. 310. *Qualified Theft*.—The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, **or with grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied.)

The elements of Qualified Theft committed with grave abuse of confidence are as follows:

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain;
4. That it be done without the owner's consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things;
6. **That it be done with grave abuse of confidence**.[14] (Emphasis supplied.)

All of the foregoing elements for Qualified Theft are present in this case.

First. The presence of the first and second elements is abundantly clear. There can be no quibble that the fund collections

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[13] *Cruz v. People*, G.R. No. 176504, September 3, 2008, 564 SCRA 99, 110; citing *People v. Bago*, G.R. No. 122290, April 6, 2000, 330 SCRA 115, 138-139.

[14] *People v. Puig*, G.R. Nos. 173654-765, August 28, 2008, 563 SCRA 564, 570; *Roque v. People*, G.R. No. 138954, November 25, 2004, 444 SCRA 98, 120.

through checks payments—all issued payable to cash—are personal properties belonging to UCC. These funds through checks were paid by UCC clients for the deliveries of cement from UCC. One with the courts *a quo,* We will not belabor this point in the fifth argument raised by accused-appellant.

Second. The third element is likewise abundantly clear. The collected amounts subject of the instant case belonged to UCC and not to accused-appellant. When accused-appellant received them in the form of "Pay to Cash" checks from UCC customers, he was obliged to turn them over to UCC for he had no right to retain them. That he kept the checks and deposited them in his account and in the accounts of Magno Lim knowing all the while that these checks and their proceeds were not his only proves the presence of unlawful taking.

As the trial court aptly pointed out, accused-appellant's theory that he only kept the funds in trust for UCC with the elaborate explanation that once the checks cleared in his account then he remits them to UCC is completely incredulous. For one, accused-appellant has not adduced evidence that he indeed remitted the funds once the corresponding checks were cleared. For another, accused-appellant could not explain why he deposited some of the checks he collected in the accounts of Magno Lim in MetroBank (MBTC Account No. 124-5) and Equitable PCIBank (EPCIB Account No. 71820-8). Moreover, accused-appellant's contention of such alleged management practice[15] is unsupported by any evidence showing that prior to the events in mid-2001 there was indeed such a practice of depositing check collections and remitting the proceeds once the checks cleared.

Third. The element of intent to gain is amply established through the affidavit[16] of Wilma Invierno of Rommeleen's Enterprises, one of UCC's customers, who confirmed that she had been sold cement bags instead of to dealers with credit lines and she was required by accused-appellant to issue "pay

[15] *Rollo,* p. 61.

[16] Records, Folder of "Formal Offer of Prosecution's Evidence," p. 39, Exhibit "N".

to cash" checks as payment. The affidavits of Arthur Alonzo[17] of Alonzo Trucking, Robert Cokee[18] of Philippine Lumber, and Russel Morales[19] of Mapalo Trucking similarly attested to the same type of sale and payment arrangement. In so doing, accused-appellant facilitated the collection of "pay to cash" checks which he deposited in his bank account and in the bank accounts of Magno Lim. Thus, the fourth element of intent to gain is duly proved.

Fourth. Equally clear and undisputed is the presence of the fifth element. Accused-appellant admitted having received these checks and depositing them in his personal account and in the accounts of Magno Lim. Thus, the element of taking was accomplished without the use of violence or intimidation against persons, nor of force upon things.

Fifth. That UCC never consented to accused-appellant's depositing the checks he collected in his or other accounts is demonstrated by the immediate action UCC took upon being apprised of the misappropriation and accused-appellant's confession letter. UCC lost no time in forming a special audit group from the Group Internal Audit of Phinma Group of Companies. The special audit group conducted an internal audit from July 3 to 25, 2001 and submitted a Special Audit Report[20] dated August 8, 2001, showing that the total unremitted collections of accused-appellant from the period covering May 25, 2001 through June 23, 2001 amounted to PhP 6,572,750.

AVP Santos and UCC SVP and Head of Marketing Group Dr. Felizardo met with accused-appellant who admitted misappropriating company funds. AVP Santos testified[21] in open court on what transpired in that meeting and accused-appellant's verbal admission/confession. And with the findings of the auditors

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[17] *Id.* at 35, Exhibit "K".

[18] *Id.* at 253-254, Exhibit "Z".

[19] *Id.* at 264-265, Exhibit "II".

[20] *Id.* at 39-50, Exhibit "O".

[21] TSN, November 17, 2004.

that not only did accused-appellant unlawfully take UCC funds but he also committed the offense of violating company policies, rules, and regulations, UCC was compelled to file seven criminal complaints against accused-appellant. This swift and prompt action undertaken by UCC argues against the notion that it consented to accused-appellant's act of depositing of check proceeds from company sales of cement products in his account or in the accounts of Magno Lim.

Sixth. That accused-appellant committed the crime with grave abuse of confidence is clear. As gathered from the nature of his position, accused-appellant was a credit and collection officer of UCC in the Cagayan-Isabela area. His position entailed a high degree of confidence, having access to funds collected from UCC clients. In *People v. Sison*,[22] involving a Branch Operation Officer of Philippine Commercial International Bank (PCIB), the Court upheld the appellant's conviction of Qualified Theft, holding that "the management of the PCIB reposed its trust and confidence in the appellant as its Luneta Branch Operation Officer, and it was this trust and confidence which he exploited to enrich himself to the damage and prejudice of PCIB x x x."[23] In *People v. Mercado*,[24] involving a manager of a jewelry store, the Court likewise affirmed the appellant's conviction of Qualified Theft through grave abuse of confidence.

In the instant case, it is clear how accused-appellant, as Branch Manager of UCC who was authorized to receive payments from UCC customers, gravely abused the trust and confidence reposed upon him by the management of UCC. Precisely, by using that trust and confidence, accused-appellant was able to perpetrate the theft of UCC funds to the grave prejudice of the latter. To repeat, the resulting report of UCC's internal audit showed that accused-appellant unlawfully took PhP 6,572,750 of UCC's funds.

The courts *a quo*'s finding that accused-appellant admitted misappropriating UCC's funds through the appropriation of the

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[22] G.R. No. 123183, January 19, 2000, 322 SCRA 345.

[23] *Id.* at 364-365.

[24] G.R. No. 143676, February 19, 2003, 397 SCRA 746.

subject checks is buttressed by the testimonies of Renolo and Santos,[25] who heard and understood accused-appellant's extrajudicial confession. True enough, they were competent to testify as to the substance of what they heard from accused-appellant—his declaration expressly acknowledging his guilt to the offense—that may be given in evidence against him.[26]

That he deposited most of the subject checks in his account was proved by accused-appellant's statement of account with SBTC (Account No. 0301-261982-001) through the testimony of Conchito Dayrit, the Customer Service Officer and representative of SBTC-Tuguegarao City Branch.[27]

Moreover, accused-appellant issued a written certification[28] dated July 20, 2001, attesting to the fact of the ownership of the bank accounts where he deposited the checks he collected from UCC clients, which reads:

07/20/01

To whom it may concern:

This is to certify that to my knowledge, the owner of the following bank accounts are as follows:

Bank account	Owner
SBC – TUG 0301261982001	B. G. Mirto
MBTC – TUG 124-5	Magno Lim
EPCI – TUG 71320-8	Magno Lim

This certification is issued for whatever purpose it may serve.

(Sgd.) Bernard G. Mirto 7/20/01
Signature over printed name date

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[25] Testimony of Restituto Renolo, TSN, September 23, 2003; testimony of Reynaldo Santos, TSN, November 17, 2004.

[26] *People v. Mercado*, *supra* note 24, at 752-753; citing *People v. Maqueda*, G.R. No. 112983, March 22, 1995, 242 SCRA 565, 590.

[27] TSN, July 27, 2006, pp. 28-29.

[28] Records, Folder of "Formal Offer of Prosecution's Evidence," p. 28, Exhibit "B".

Further, as can be amply gleaned from accused-appellant's handwritten admission and duly borne out by the internal audit team's findings, he deliberately used a scheme to perpetrate the theft. This was aptly pointed out by the CA, which We reproduce for clarity:

> UCC found that accused-appellant gravely abused the trust and confidence reposed on him as Branch Manager and violated company policies, rules and regulations. **He did not remit collections from customers who paid "Pay to Cash" checks**. **He used the credit line of accredited dealers in favor of persons who did not have credit lines or other dealers who had exhausted their credit line**. **He diverted cement bags from Norzagaray Plant or La Union Plant to truckers who would buy cement for profit**. In these transactions, **he instructed dealers that check be made in the form of "pay to cash"**. **He did not issue them receipts**. The **checks were either encashed or deposited to accused-appellant's personal account No. 0301-261982-001 at Security Bank & Trust Co. (SBTC) Tuguegarao Branch or deposited to the accounts of a certain Mr. Magno Lim maintained at MetroBank and EquitablePCIBank, both located at Tuguegarao City**.[29] (Emphasis supplied.)

It is, thus, clear that accused-appellant committed Qualified Theft. And as duly pointed out above, even considering the absence of the handwritten extrajudicial admission of accused-appellant, there is more than sufficient evidence adduced by the prosecution to uphold his conviction. As aptly pointed out by the trial court, the prosecution has established the following:

1. That checks of various customers of UCC were written out as bearer instruments. Payments in cash were also made.
2. These were received by the accused Mirto who deposited them in his personal account as well as in the account of Mr. Magno Lim.
3. The monies represented by the checks and the case payments were consideration for bags of cement purchased from the UCC, the complainant-corporation.

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[29] *Rollo*, pp. 4-5.

4. The accused Mirto was never authorized nor was it part of his duties as branch manager to deposit these proceeds in his account or in the account of Mr. Magno Lim.[30]

Defense of Agency Unavailing

As his main defense, accused-appellant cites the testimonies of prosecution witnesses Restituto Renolo and Reynaldo Santos to impress upon the Court that he is an agent of UCC. And as an agent, so he claims, an implied trust is constituted by his juridical possession of UCC funds from the proceeds of cement sales:

ATTY. CARMELO Z. LASAM: Mr. Renolo, can you tell us the specific duties and responsibilities of your area sales managers?

RESTITUTO RENOLO: The duties and responsibilities of an area sales officer, we are in charge of the distribution of our products, cement and likewise its collection of its sales.[31]

xxx xxx xxx

ATTY. RAUL ORACION: Okay, now as Assistant Vice-President for Marketing and supervisor of all area sales offices and branch managers, could you tell the duties and responsibilities of the accused Bernard Mirto at that time?

REYNALDO SANTOS: x x x, also collect sales and for the cash for the collection of our sales.[32]

To accused-appellant, he had authority to collect and accept payments from customers, and was constituted an agent of UCC. As collection agent of UCC, he asserts he can hold the collections in trust and in favor of UCC; and that he is a trustee of UCC and, therefore, has juridical possession over the collected funds. Consequently, accused-appellant maintains there was no unlawful taking, for such taking was with the knowledge and consent of UCC, thereby negating the elements of taking personal property

[30] CA *rollo*, pp. 25-26.

[31] TSN, September 23, 2003, p. 26.

[32] TSN, November 17, 2004, p. 27.

and without the owner's consent necessary in the crime of Qualified Theft.

This contention fails.

The duty to collect payments is imposed on accused-appellant because of his position as Branch Manager. Because of this employer-employee relationship, he cannot be considered an agent of UCC and is not covered by the Civil Code provisions on agency. Money received by an employee in behalf of his or her employer is considered to be only in the material possession of the employee.[33]

The fact that accused-appellant had authority to accept payments from customers does not give him the license to take the payments and deposit them to his own account since juridical possession is not transferred to him. On the contrary, the testimony he cites only bolsters the fact that accused-appellant is an official of UCC and had the trust and the confidence of the latter and, therefore, could readily receive payments from customers for and in behalf of said company.

Proper Penalty

The trial court, as affirmed by the appellate court, sentenced accused-appellant to restitute UCC the aggregate amount of PhP 2,279,350, representing the amount of the checks involved here. The trial court also imposed the single penalty of *reclusion perpetua*. Apparently, the RTC erred in imposing said single penalty, and the CA erred in affirming it, considering that accused-appellant had been convicted on four (4) counts of qualified theft under Criminal Case Nos. 9034, 9115, 9117 and 9130. Consequently, accused-appellant should have been accordingly sentenced to imprisonment on four counts of qualified theft with the appropriate penalties for each count. Criminal Case No. 9034 is for PhP308,200, Criminal Case No. 9115 is for PhP 688,750, Criminal Case No. 9117 is for PhP1,213,900,

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[33] *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 543.

and Criminal Case No. 9130 is for 68,500 for the aggregate amount of PhP2,279,350.

Now to get the proper penalty for each count, We refer to *People v. Mercado*,[34] where We established that the appropriate penalty for Qualified Theft is *reclusion perpetua* based on Art. 310 of the RPC, which provides that "**[t]he crime of [qualified] theft shall be punished by the penalties next higher by two degrees than those respectively specified in [Art. 309]** x x x." (Emphasis supplied.)

Applying the computation made in *People v. Mercado* to the present case to arrive at the correct penalties, We get the value of the property stolen as determined by the trial court, which are PhP 308,200, PhP 688,750, PhP 1,213,900 and PhP 68,500. Based on Art. 309[35] of the RPC, "since the value of the items exceeds ₱22,000.00, the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, which is 8 years, 8 months and 1 day to 10 years of *prision mayor*."[36]

And in order to determine the additional years of imprisonment, following *People v. Mercado,* We deduct PhP 22,000 from each amount and each difference should then be divided by PhP 10,000, disregarding any amount less than PhP 10,000. We now have 28 years, 66 years, 119 years and 4 years, respectively, that

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[34] *Supra* note 24.

[35] Art. 309(1) of the RPC on simple theft provides:

1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

[36] *People v. Mercado, supra* note 24, at 758.

should be added to the basic penalty. But the imposable penalty for simple theft should not exceed a total of 20 years. Therefore, had accused-appellant committed simple theft, the penalty for each of Criminal Case Nos. 9034, 9115 and 9117 would be 20 years of *reclusion temporal*; while Criminal Case No. 9130 would be from 8 years, 8 months and 1 day of *prision mayor*, as minimum, to 14 years of *reclusion temporal*, as maximum, before the application of the Indeterminate Sentence Law. However, as the penalty for Qualified Theft is two degrees higher, the correct imposable penalty is *reclusion perpetua* for each count.

In fine, considering that accused-appellant is convicted of four (4) counts of Qualified Theft with corresponding four penalties of *reclusion perpetua*, Art. 70 of the RPC on **successive service of sentences** shall apply. Art. 70 pertinently provides that "the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period. Such **maximum period shall in no case exceed forty years**." Applying said rule, despite the four penalties of *reclusion perpetua* for four counts of Qualified Theft, accused-appellant shall suffer imprisonment for a period not exceeding 40 years.

WHEREFORE, the appeal is hereby *DENIED*. The appealed CA Decision dated August 24, 2009 in CA-G.R. CR-H.C. No. 03444 is *AFFIRMED* with *MODIFICATION* in that accused-appellant Bernard G. Mirto is convicted of four (4) counts of Qualified Theft and accordingly sentenced to serve four (4) penalties of *reclusion perpetua*. But with the application of Art. 70 of the RPC, accused-appellant shall suffer the penalty of imprisonment for a period not exceeding 40 years.

Costs against accused-appellant.

SO ORDERED.

Peralta, Abad, Mendoza, and *Perlas-Bernabe, JJ.*, concur.

SECOND DIVISION

[G.R. No. 193872. October 19, 2011]

SIOCHI FISHERY ENTERPRISES, INC., JUN-JUN FISHING CORPORATION, DEDE FISHING CORPORATION, BLUE CREST AQUA-FARMS, INC., and ILOILO PROPERTY VENTURES, INC., *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION; INTERIM RULES OF PROCEDURE; LIBERAL CONSTRUCTION THEREOF MAY NOT BE INVOKED IF IT WILL RESULT IN THE UTTER DISREGARD OF THE RULES.— Petitioners claim that the Interim Rules of Procedure are construed liberally; thus, the RTC may disregard the Rules. The Court disagrees. Indeed, the Rules are construed liberally. However, this does not mean that courts may disregard the Rules. In *North Bulacan Corporation v. Philippine Bank of Communications*, the Court held that, "These rules are to be construed liberally to obtain for the parties a just, expeditious, and inexpensive disposition of the case. The parties may not, however, invoke such liberality if it will result in the utter disregard of the rules."

2. ID.; ID.; ID.; ID.; BASIC PROCEDURE IN CORPORATE REHABILITATION CASES; NOT COMPLIED WITH.— In *New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City*, the Court enumerated the basic procedure in corporate rehabilitation cases. The Court held: As provided in the Interim Rules, the basic procedure is as follows: (1) The petition is filed with the appropriate Regional Trial Court; (2) If the petition is found to be sufficient in form and substance, the trial court shall issue a Stay Order, which shall provide, among others, for the appointment of a Rehabilitation Receiver; the fixing of the initial hearing on the petition; a directive to the petitioner to publish the Order in a newspaper of general

circulation in the Philippines once a week for two (2) consecutive weeks; and a directive to all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents[;] (3) Publication of the Stay Order; (4) **Initial hearing on any matter relating to the petition or on any comment and/or opposition filed in connection therewith**. If the trial court is satisfied that there is merit in the petition, it shall give due course to the petition; (5) **Referral for evaluation of the rehabilitation plan to the rehabilitation receiver who shall submit his recommendations to the court**; (6) **Modifications or revisions of the rehabilitation plan as necessary**; (7) **Submission of final rehabilitation plan to the trial court for approval**; (8) Approval/disapproval of rehabilitation plan by the trial court[.] In the present case, the RTC hastily approved the rehabilitation plan in the same order giving due course to the petition. The RTC confined the initial hearing to the issue of jurisdiction and failed to address other more important matters relating to the petition and comment. The RTC also failed to refer for evaluation the rehabilitation plan to the rehabilitation receiver. Thus, the rehabilitation receiver was unable to submit his recommendations and make modifications or revisions to the rehabilitation plan as necessary. Moreover, the RTC denied the rehabilitation receiver's motion to issue an order directing petitioners and their creditors to attend a meeting.

3. ID.; ID.; ID.; REHABILITATION PLAN; AN INDISPENSABLE REQUIREMENT IN CORPORATE REHABILITATION PROCEEDINGS; ESSENTIAL REQUISITES OF A REHABILITATION PLAN; REQUIRED LIQUIDATION ANALYSIS, NOT COMPLIED WITH.— The rehabilitation plan is an indispensable requirement in corporate rehabilitation proceedings. Section 5 of the Rules enumerates the essential requisites of a rehabilitation plan: The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts

or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest; (e) **a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated**; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan. The Court notes that petitioners failed to include a liquidation analysis in their rehabilitation plan.

4. ID.; ID.; A CORPORATION IS A JURIDICAL ENTITY WITH LEGAL PERSONALITY SEPARATE AND DISTINCT FROM THOSE ACTING FOR AND IN ITS BEHALF AND, IN GENERAL, FROM THE PEOPLE COMPRISING IT.— The Court notes that, contrary to the factual finding of the RTC, petitioners do not own all of the properties with a total estimated value of ₱393,922,000. Some of the properties are owned by Ferdinand, Gerald and Jose Patrick Siochi, and Mario Siochi, Jr., not by petitioners. A corporation has a legal personality distinct from its stockholders and directors. In *Santos v. National Labor Relations Commission*, the Court held that, "A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it."

APPEARANCES OF COUNSEL

Karlo L. Calingasan for petitioners.
Benedicto Verzosa Gealogo & Burkley for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 20 October 2009

[1] *Rollo*, pp. 10-42.

Decision[2] and 22 September 2010 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 93278. The Court of Appeals set aside the 9 January 2006 Order[4] of the Regional Trial Court (RTC), National Capital Judicial Region, Malabon City, Branch 74, in Sec. Corp. Case No. S4-03-MN.

The Facts

Petitioners Siochi Fishery Enterprises, Inc., Jun-Jun Fishing Corporation, Dede Fishing Corporation, Blue Crest Aqua-Farms, Inc. and Iloilo Property Ventures, Inc. (petitioners) are domestic corporations of the Siochi family. Petitioners are engaged in various businesses and have interlocking stockholders and directors. Their principal office is located at 31 Don B. Bautista Boulevard, Dampalit, Malabon City.

In the course of their business, petitioners borrowed from respondent Bank of the Philippine Islands (BPI) and from Ayala Life Assurance, Inc. As of 30 June 2004, petitioners' total obligation amounted to ₱85,362,262.05.

On 15 July 2004, petitioners filed with the RTC a petition[5] for corporate rehabilitation. Petitioners prayed that the RTC (1) issue a stay order; (2) declare petitioners in a state of suspension of payments; (3) approve petitioners' proposed rehabilitation plan; and (4) appoint a rehabilitation receiver.

RTC's Ruling

In its 26 July 2004 Order,[6] the RTC (1) stayed enforcement of all claims against petitioners; (2) prohibited petitioners from disposing their properties, except in the ordinary course of business; (3) prohibited petitioners from paying their obligations;

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[2] *Id.* at 51-75. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla concurring.

[3] *Id.* at 93-94.

[4] *Id.* at 146-149. Penned by Judge Leonardo L. Leonida.

[5] *Id.* at 101-108.

[6] *Id.* at 121-124.

(4) prohibited petitioners' suppliers from withholding supply of goods and services; and (5) appointed Atty. Cesar C. Cruz (Atty. Cruz) as rehabilitation receiver.

BPI filed with the RTC a comment to the 26 July 2004 Order. BPI alleged, among others, that (1) the RTC had no jurisdiction over Blue Crest Aqua-Farms, Inc. and Iloilo Property Ventures, Inc.; (2) petitioners submitted only one affidavit of general financial condition for all five corporations; (3) the market values of petitioners' real properties were unsubstantiated and inconsistent; (4) the photocopies of the Transfer Certificates of Title were incomplete; (5) the interest rate had already been reduced to 12%; (6) typhoons were not an excuse to default on payments; (7) the Asian financial crisis and the peso devaluation did not affect petitioners; (8) petitioners' total liability should have been lowered from ₱79,848,920.23 to ₱70,135,649.50; (9) petitioners had no sufficient cash flow to pay their debts; (10) the rehabilitation plan was unfeasible and prejudicial to BPI; and (11) petitioners did not present a liquidation analysis.

In his 14 December 2004 motion,[7] Atty. Cruz prayed that the RTC issue an order directing petitioners and their creditors to attend a meeting. In its 18 January 2005 Order,[8] the RTC denied the motion.

In its 9 January 2006 Order,[9] the RTC approved petitioners' rehabilitation plan. The RTC held:

> Jurisdiction over the instant petition has been acquired upon the publication of the stay order which serves as the notice of the commencement of the proceedings x x x. In the instant petition, all the petitioning corporations have, as admitted also by BPI, interlocking directors which means that the said directors are all members of the "Siochi" family. In addition thereto, three (3) of the petitioning corporations x x x hold their respective principal offices in Malabon City. In line therefore with the settled policy of avoiding multiplicity

[7] *Id.* at 141-143.

[8] *Id.* at 144.

[9] *Id.* at 146-149.

of suits, the Court finds it proper to include Blue Crest Aqua-Farms, Inc. and Iloilo Property Ventures in the instant petition. x x x

xxx xxx xxx

Based on the Consolidated Schedule of Debts and Liabilities x x x the total principal liability of the petitioners is Seventy Nine Million, Eight Hundred Forty Eight [sic] Nine Hundred Twenty and 23/100 (₱79,848,920.23) Pesos. On the other hand, the petitioning corporations own properties among which are titled lands located in Malabon City, Navotas, Obando, Bulacan and Iloilo Province with an estimated value of Three Hundred Ninety Three Million Nine Hundred Twenty Two Thousand and 00/100 (₱393,922,000.00) Pesos, as appraised by the Philippine Appraisal Co., Inc. x x x. Accordingly, the petitioning corporations could still be considered net worthy, capable of being rehabilitated.

As regards the rehabilitation plan, the Court, contrary to BPI and ALAI's stand, finds the same feasible, and viable. A moratorium period of five (5) years on the payment of its loans/obligations will enable said petitioners to generate additional capital/funds to continue its [sic] business operations. This is in line with the petitioners' intention to source fund from its [sic] internal operations, the growth of which is expected to favorably expand. To achieve this goal, an extension period for the payment of petitioners' obligations is just and proper. This is precisely the main reason why petitioners filed the instant petition as corporate rehabilitation can, in one way, be effected by suspension of payments of obligation for a certain period. Thereafter, payment of their loan/obligations could be ably resumed.

Further, petitioners, thru its [sic] President, is [sic] in the process of negotiating with prospective investors to put up additional capital and diversifying its [sic] operation and, if still necessary, funds can still be generated from the real estate properties of the petitioners mentioned in Exhibit "I" whose value has not been exposed to the limit of their loan value. Aside from the repayment plan in an amount of Php3,241,514.83 per quarter beginning the 1st quarter of the 6th year up to ten years thereafter, petitioners are open to negotiations with their creditors, to enter into *dacion en pago* and/or sales of assets as means of payment.

The sale of petitioners' assets, as claimed by BPI, in order to pay off their matured obligation/s with it and not the suspension of payments is, as the Court sees, not a solution because this would

mean a forced sale of their assets at a much lower price thereby adding significant loss in the value of the petitioner's [sic] assets, making said petitioners insolvent rather than giving it [sic] a chance to rehabilitate their business operations.

The success therefore of the rehabilitation plan largely depends on its ability to reduce its debt obligations to a manageable level by the suspension of payments of obligations. This scheme enables the petitioners to restore their profitability and solvency and maintain it [sic] as an on-going business, to the benefit not only of the stockholders and investors but to BPI and ALAI as petitioners' creditors.[10]

BPI appealed the RTC's 9 January 2006 Order to the Court of Appeals.

The Court of Appeals' Ruling

In its 20 October 2009 Decision, the Court of Appeals set aside the RTC's 9 January 2006 Order. The Court of Appeals held:

In the case at bar, the proceeding before the court *a quo* was rife with procedural infirmities. Under the Interim Rules, the court is directed to summarily hear the parties on any matter relating to the petition as well as any comment and/or opposition filed in connection therewith. Accordingly, the creditor or any interested party is required to file a verified opposition to or comment on the petition for rehabilitation so as to aid the court in making an informed and rational decision as to whether or not the petition for rehabilitation should be given due course. Pursuant thereto, petitioner filed its Oppositions and Comments wherein it raised the following significant issues, among others, *viz*: that the court *a quo* has no jurisdiction over Blue Crest Aqua-Farms, Inc. and Iloilo Property Ventures, Inc.; that the Consolidated Schedule of Debts and Liabilities is misleading; that respondent corporations have no sufficient cash flow to repay their debts; that the proposal in the Rehabilitation Plan does not ensure actual loan repayment nor respondent corporations' recovery; that the proposed repayment period thereunder is grossly disadvantageous; and that respondent corporations are undercapitalized. Instead of discussing these issues, the court *a quo*

[10] *Id.* at 147-148.

merely confined the hearing on the issue of jurisdiction. It should be pointed out that while the Interim Rules direct the court to summarily hear the parties, it [sic] do not authorize the court to disregard the comment and/or opposition filed by the parties, especially when there are material issues raised therein, as in the present case. The rules itself [sic] mandate a just, expeditious and inexpensive determination of cases. Certainly, disregarding the arguments raised by petitioner would not result in a just determination of the case.

The most glaring procedural infirmity committed by the court *a quo*, however, is its failure to refer respondent corporations' petition for rehabilitation and Rehabilitation Plan to the rehabilitation receiver despite the explicit and clear mandate of the Interim Rules that if the court is satisfied that there is merit in the petition, it shall give due course to the petition and "immediately" refer the same and its annexes to the rehabilitation receiver x x x.

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We have likewise observed that the court *a quo* made an unwarranted procedural shortcut as its finding that there was merit in respondent corporations' petition for rehabilitation was made in the same Order approving their Rehabilitation Plan. The court *a* quo's propensity in ignoring the procedure laid down in the Interim Rules can also be seen in its failure to issue an Order directing respondent corporations and their creditors to attend a meeting notwithstanding the Manifestation and Motion filed by the rehabilitation receiver for this purpose. Further, the court *a quo* ignored the patent defect in the allegations in the petition for rehabilitation. A perusal of the records reveals that out of the five (5) respondent corporations, it is only Iloilo Property Ventures, Inc. which has a threat or demand from Ayala Life Assurance, Inc. x x x. However, in their respective Affidavits of General Financial Condition, respondent corporations uniformly alleged that petitioner and Ayala Life Assurance, Inc. "will initiate legal actions including foreclosure proceedings to enforce collection of the obligations." Interestingly, Blue Crest Aqua-Farms, Inc. alleged the same in its Affidavit of General Financial Condition even as petitioner and Ayala Life Assurance, Inc. were not listed among its creditors in its Schedule of Debts and Liabilities. In actuality, Blue Crest Aqua-Farms, Inc. does not even qualify as a financially distressed corporation as it has no threats/demands for the enforcement of claims and its cash

on hand and in bank is sufficient to pay its financial obligations. x x x

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In cases where the creditors oppose the approval of the rehabilitation plan, the court may only approve the same upon the concurrence of two conditions — one, that the rehabilitation of the debtor is feasible and two, that the opposition of the creditors is manifestly unreasonable. x x x

In the present case, the court *a quo* found the rehabilitation of respondent corporations feasible and viable on the basis of the following circumstances: (1) that the real properties they own have an estimated value of ₱393,922,000.00 x x x as opposed to their consolidated debts and liabilities in the amount of ₱79,848,920.23; and (2) that the moratorium period of five (5) years on the payment of its [sic] loans/obligations will enable respondent corporations to generate additional capital/funds to continue its [sic] business operations from the expected growth of its [sic] internal operations, from negotiations with prospective investors, and from their real properties whose value has not been exposed to the limit of their loan value. However, the court *a quo's* conclusion that respondent corporations' rehabilitation is feasible and viable is not supported by their financial condition, commitments and proposed measures for rehabilitation/recovery.

With respect to the Appraisal Report, it bears to stress that the same was commissioned by respondent corporations and petitioner was not afforded the opportunity to contest the same. Also, it is extant from the records that some of the properties included therein do not belong to respondent corporations but to their officers, namely, Ferdinand Siochi, Mario Siochi, Jr., Gerald Siochi and Jose Patrick Siochi. Thus, these properties should not be considered as part of respondent corporations' assets as their officers have a separate personality from the corporation itself. x x x

As to respondent corporations' financial condition, the same is reflected in their respective Affidavits of General Financial Condition and Consolidated Cash Flow Statement. In their respective Affidavits of General Financial Condition x x x, the average annual income and average annual net loss for the past three (3) years prior to the filing of the petition for rehabilitation are: (1) income of ₱4,781,833.21

and loss of ₱2,079,499.80 — Siochi Fishery Enterprises, Inc., (2) income of ₱65,254.48 and loss of ₱1,081,921.15 — Jun-Jun Fishing Corporation, (3) income of ₱34,633.36 and loss of ₱1,051,300.03 — Dede Fishing Corporation. A scrutiny of their Consolidated Cash Flow Statement for the past three (3) months prior to the filing of the petition shows that respondent corporations' cash balance is ₱2,839,921.70 while an examination of respondent corporations' cash flow for three (3) months after the filing of the petition shows that their cash inflow amounts to ₱4,788,230.59 and their cash outflow is pegged at ₱1,574,976.76, thereby leaving a cash balance of ₱3,213,253.83.

On the other hand, an examination of the Consolidated Schedule of Debts and Liabilities shows that the total claim of petitioner is ₱30,445,608.73 while that of Ayala Life Assurance, Inc. is ₱44,038,428.54 or an aggregate amount of ₱74,484,037.27. x x x

Given these facts, it can readily be seen that respondent corporations are in dire financial condition. Their Affidavits of General Financial Condition show that Jun-Jun Fishing Corporation and Dede Fishing Corporation had bigger average annual net loss than average annual income for the past three (3) years prior to the filing of the petition for rehabilitation. x x x It must be noted that their Consolidated Cash Flow Statement and the cash balance reflected reflected therein incorporates the amount belonging to Blue Crest Aqua-Farms, Inc. which should have been excluded from the petition. Even with the inclusion of Blue Crest's money, respondent corporations' cash balance is still insufficient to service their debts. Therefore, the feasibility and viability of their rehabilitation would have to depend on their financial commitments to support the Rehabilitation Plan, as well as the proposed measures for rehabilitation/recovery, which are reflected in their Rehabilitation Plan.

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At this juncture, it must be emphasized that the debtor's material financial commitments are of critical value in gauging the sincerity of its intention in the projected rehabilitation as these signify the debtor's resolve to financially support the rehabilitation plan. Corollarily, respondent corporations' material financial commitments were stated in this manner:

"1. The petitioners intend to source fund from its internal operations, the growth of which is expected to favorably expand.

2. The president is currently negotiating with prospective investors to put up additional fresh capital and diversifying its operation.

3. The real estate properties of petitioner [sic] have not been exposed to the limit of their loan value and if necessary funds can still be sourced from them to ensure working fund/capital for petitioners' operations."

Notably, in concluding that the moratorium period of five (5) years on the payment of its [sic] loans/obligations will enable respondent corporations to generate additional capital/funds from their internal operations, prospective investors, and their properties which had not been exposed to the limit of their loan value, the court *a quo* heavily relied on the above-quoted commitments. However, these hardly qualify as a concrete undertaking on the part of respondent corporations to financially support their Rehabilitation Plan.

Firstly, the sourcing of funds from their internal operations is based on a mere expectancy. Respondent corporations did not even allege in their Rehabilitation Plan their operational plan or definite management which would bring about growth and expansion in their internal operations. x x x In fact, petitioner correctly contends that inspite of the supposed modernization program on the 5th year of the rehabilitation period, the sales projection of respondent corporations was constantly pegged at 5%.

Secondly, respondent corporations failed to give the specific details regarding their prospective investors who will supposedly put up additional fresh capital. This should have been considered by the court *a quo* considering that in their respective Affidavits of General Financial Condition, respondent corporations uniformly answered that none, so far, has expressed interest in investing new money into respondent corporations' business.

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Noticeably, some of respondent corporations' subscribed capital stock remained unpaid and their respective boards of directors failed to take concrete steps to compel the shareholders to pay their subscribed capital stock in full or to order the conversion of their debts to equity or to offer the remaining shares of stock from their authorized capital stock for subscription. x x x [P]etitioner correctly pointed out that the proposed rehabilitation is deemed to succeed in only

one thing: to extend the loan repayment term and does not ensure actual loan repayment nor business recovery of the petitioners.

Thirdly, by stating that their real estate properties have not been exposed to the limit of their loan values, respondent corporations are implying that they will use the mortgaged properties as collaterals to secure another loan. This hardly constitutes a material financial commitment as the real properties x x x referred to by respondent corporations were already mortgaged to petitioner and Ayala Life Assurance, Inc. Respondent corporations had no right to assume that petitioner and Ayala Life Assurance, Inc., who have a superior lien over these properties, would allow them to obtain another loan from a new creditor secured by the aforementioned properties. In the same vein, respondent corporations may not compel petitioner and Ayala Life Assurance, Inc. to grant them a new loan with the same properties as collaterals so as to enable them to obtain their full loanable value. x x x

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In this case, there was nothing in the records that would show that the rehabilitation receiver recommended the approval of the Rehabilitation Plan or that the shareholders or owners of the debtor will lose their controlling interest as a result thereof. Also, there was no showing that the plan would likely provide petitioner with compensation greater than that which it would have received if the assets of respondent corporations were sold by a liquidator within a three-month period. Ergo, petitioner's opposition to the Rehabilitation Plan is not manifestly unreasonable.

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In the case at bar, the interest of herein petitioner should be protected and preserved as it is engaged in the banking business which is imbued with public interest. x x x

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Similarly, the reduction of interest on these loans from 12% to 8% is unwarranted as it is not the province of the court *a quo* to relieve respondent corporations from the obligations they had voluntarily assumed. x x x The rule is that the parties to a loan agreement have been given wide latitude to agree on any interest

rate and an interest of 12% per annum is deemed fair and reasonable.[11]

Petitioners filed a motion for reconsideration. In its 22 September 2010 Resolution, the Court of Appeals denied the motion. Hence, the present petition.

Issue

Petitioners raise as issue that the Court of Appeals erred in setting aside the RTC's 9 January 2006 Order because "it is within [the RTC's] discretion to disregard the procedural formalities," and "the lower court has x x x factual basis in [sic] its finding that [petitioners] are capable of rehabilitated [sic]."

The Court's Ruling

The petition is unmeritorious.

Petitioners claim that the Interim Rules of Procedure are construed liberally; thus, the RTC may disregard the Rules. The Court disagrees. Indeed, the Rules are construed liberally. However, this does not mean that courts may disregard the Rules. In *North Bulacan Corporation v. Philippine Bank of Communications*,[12] the Court held that, "These rules are to be construed liberally to obtain for the parties a just, expeditious, and inexpensive disposition of the case. The parties may not, however, invoke such liberality if it will result in the utter disregard of the rules."[13]

In *New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City*,[14] the Court enumerated the basic procedure in corporate rehabilitation cases. The Court held:

As provided in the Interim Rules, the basic procedure is as follows:

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[11] *Id.* at 60-74.

[12] G.R. No. 183140, 2 August 2010, 626 SCRA 260.

[13] *Id.* at 263.

[14] G.R. No. 165001, 31 January 2007, 513 SCRA 601.

(1) The petition is filed with the appropriate Regional Trial Court;

(2) If the petition is found to be sufficient in form and substance, the trial court shall issue a Stay Order, which shall provide, among others, for the appointment of a Rehabilitation Receiver; the fixing of the initial hearing on the petition; a directive to the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; and a directive to all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents[;]

(3) Publication of the Stay Order;

(4) Initial hearing on any matter relating to the petition or on any comment and/or opposition filed in connection therewith. If the trial court is satisfied that there is merit in the petition, it shall give due course to the petition;

(5) Referral for evaluation of the rehabilitation plan to the rehabilitation receiver who shall submit his recommendations to the court;

(6) Modifications or revisions of the rehabilitation plan as necessary;

(7) Submission of final rehabilitation plan to the trial court for approval;

(8) Approval/disapproval of rehabilitation plan by the trial court[.][15] (Emphasis supplied)

In the present case, the RTC hastily approved the rehabilitation plan in the same order giving due course to the petition. The RTC confined the initial hearing to the issue of jurisdiction and failed to address other more important matters relating to the petition and comment. The RTC also failed to refer for evaluation the rehabilitation plan to the rehabilitation receiver. Thus, the rehabilitation receiver was unable to submit his recommendations and make modifications or revisions to the rehabilitation plan as necessary. Moreover, the RTC denied the

[15] *Id.* at 608-609.

rehabilitation receiver's motion to issue an order directing petitioners and their creditors to attend a meeting. In its 20 October 2009 Decision, the Court of Appeals found:

> The most glaring procedural infirmity committed by the court *a quo*, however, is its failure to refer respondent corporations' petition for rehabilitation and Rehabilitation Plan to the rehabilitation receiver despite the explicit and clear mandate of the Interim Rules that if the court is satisfied that there is merit in the petition, it shall give due course to the petition and "immediately" refer the same and its annexes to the rehabilitation receiver x x x.
>
> It is discernible from the foregoing that there are serious matters which should be determined before rehabilitation may be had. For this reason, the Interim Rules required the appointment of a rehabilitation receiver simultaneously with the issuance of the Stay Order and prescribed the following qualifications — expertise and acumen to manage and operate a business similar in size and complexity to that of the debtor, knowledge in management, finance, and rehabilitation of distressed companies, and general familiarity with the rights of creditors in rehabilitation, *etc*. to further emphasize the significance of the role of the rehabilitation receiver in rehabilitation proceedings, the Interim Rules directed the rehabilitation receiver to evaluate the rehabilitation plan and submit his recommendations to the court. In fact, his recommendation bears much weight as it is one of the factors which must be considered by the court if it were to approve the rehabilitation plan. More importantly, it must be emphasized that the purpose of the law in directing the appointment of receivers is to protect the interests of the corporate investors and creditors. Thus, the court *a quo* committed serious error when it failed to refer the petition for rehabilitation and its annexes to the appointed receiver.
>
> We have likewise observed that the court *a quo* made an unwarranted procedural shortcut as its finding that there was merit in respondent corporations' petition for rehabilitation was made in the same Order approving their Rehabilitation Plan.[16]

As an officer of the court and an expert, the rehabilitation receiver plays an important role in corporate rehabilitation

[16] *Rollo*, pp. 60-62.

proceedings. In *Pryce Corporation v. Court of Appeals*,[17] the Court held that, "the purpose of the law in directing the appointment of receivers is to protect the interests of the corporate investors and creditors."[18] Section 14 of the Interim Rules of Procedure on Corporate Rehabilitation enumerates the powers and functions of the rehabilitation receiver: (1) verify the accuracy of the petition, including its annexes such as the schedule of debts and liabilities and the inventory of assets submitted in support of the petition; (2) accept and incorporate, when justified, amendments to the schedule of debts and liabilities; (3) recommend to the court the disallowance of claims and rejection of amendments to the schedule of debts and liabilities that lack sufficient proof and justification; (4) submit to the court and make available for review by the creditors a revised schedule of debts and liabilities; (5) investigate the acts, conduct, properties, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceedings or to the formulation of a rehabilitation plan; (6) examine under oath the directors and officers of the debtor and any other witnesses that he may deem appropriate; (7) make available to the creditors documents and notices necessary for them to follow and participate in the proceedings; (8) report to the court any fact ascertained by him pertaining to the causes of the debtor's problems, fraud, preferences, dispositions, encumbrances, misconduct, mismanagement, and irregularities committed by the stockholders, directors, management, or any other person; (9) employ such person or persons such as lawyers, accountants, appraisers, and staff as are necessary in performing his functions and duties as rehabilitation receiver; (10) monitor the operations of the debtor and to immediately report to the court any material adverse change in the debtor's business; (11) evaluate the existing assets and liabilities, earnings and operations of the debtor; (12) determine and recommend to the court the best way to salvage and protect the interests of the creditors, stockholders, and the

[17] G.R. No. 172302, 4 February 2008, 543 SCRA 657.

[18] *Id.* at 664.

general public; (13) study the rehabilitation plan proposed by the debtor or any rehabilitation plan submitted during the proceedings, together with any comments made thereon; (14) prohibit and report to the court any encumbrance, transfer, or disposition of the debtor's property outside of the ordinary course of business or what is allowed by the court; (15) prohibit and report to the court any payments outside of the ordinary course of business; (16) have unlimited access to the debtor's employees, premises, books, records, and financial documents during business hours; (17) inspect, copy, photocopy, or photograph any document, paper, book, account, or letter, whether in the possession of the debtor or other persons; (18) gain entry into any property for the purpose of inspecting, measuring, surveying, or photographing it or any designated relevant object or operation thereon; (19) take possession, control, and custody of the debtor's assets; (20) notify the parties and the court as to contracts that the debtor has decided to continue to perform or breach; (21) be notified of, and to attend all meetings of the board of directors and stockholders of the debtor; (22) recommend any modification of an approved rehabilitation plan as he may deem appropriate; (23) bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the rehabilitation plan; (24) recommend the appointment of a management committee in the cases provided for under Presidential Decree No. 902-A, as amended; (25) recommend the termination of the proceedings and the dissolution of the debtor if he determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public; and (26) apply to the court for any order or directive that he may deem necessary or desirable to aid him in the exercise of his powers.

The rehabilitation plan is an indispensable requirement in corporate rehabilitation proceedings.[19] Section 5 of the Rules enumerates the essential requisites of a rehabilitation plan:

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[19] *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*, G.R. Nos. 178768 and 180893, 25 November 2009, 605 SCRA 503, 515.

The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest; (e) **a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated**; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan. (Emphasis supplied)

The Court notes that petitioners failed to include a liquidation analysis in their rehabilitation plan.

Petitioners claim that the RTC had factual basis in giving due course to the petition for corporate rehabilitation, and in approving the rehabilitation plan. The Court disagrees. In its 9 January 2006 Order, the RTC stated:

Based on the Consolidated Schedule of Debts and Liabilities x x x the total principal liability of the petitioners is Seventy Nine Million, Eight Hundred Forty Eight [sic] Nine Hundred Twenty and 23/100 (₱79,848,920.23) Pesos. On the other hand, the petitioning corporations own properties among which are titled lands located in Malabon City, Navotas, Obando, Bulacan and Iloilo Province with an estimated value of Three Hundred Ninety Three Million Nine Hundred Twenty Two Thousand and 00/100 (₱393,922,000.00) Pesos, as appraised by the Philippine Appraisal Co., Inc. x x x. Accordingly, the petitioning corporations could still be considered net worthy, capable of being rehabilitated.

As regards the rehabilitation plan, the Court, contrary to BPI and ALAI's stand, finds the same feasible, and viable. A moratorium period of five (5) years on the payment of its loans/obligations will enable said petitioners to generate additional capital/funds to continue its [sic] business operations. This is in line with the petitioners' intention to source fund from its [sic] internal operations, the growth of which is expected to favorably expand. x x x

Further, petitioners, thru its [sic] President, is [sic] in the process of negotiating with prospective investors to put up additional capital and diversifying its [sic] operation and, if still necessary, funds can still be generated from the real estate properties of the petitioners mentioned in Exhibit "I" whose value has not been exposed to the limit of their loan value.[20]

The Court notes that, contrary to the factual finding of the RTC, petitioners do not own all of the properties with a total estimated value of ₱393,922,000. Some of the properties are owned by Ferdinand, Gerald and Jose Patrick Siochi, and Mario Siochi, Jr., not by petitioners. A corporation has a legal personality distinct from its stockholders and directors. In *Santos v. National Labor Relations Commission*,[21] the Court held that, "A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it."[22] In its 20 October 2009 Decision, the Court of Appeals found:

With respect to the Appraisal Report, it bears to stress that the same was commissioned by respondent corporations and petitioner was not afforded the opportunity to contest the same. Also, **it is extant from the records that some of the properties included therein do not belong to respondent corporations but to their officers, namely, Ferdinand Siochi, Mario Siochi, Jr., Gerald Siochi and Jose Patrick Siochi. Thus, these properties should not be considered as part of respondent corporations' assets as their officers have a separate personality from the corporation itself**. In turn, this renders doubtful their declaration in their Rehabilitation Plan that they have "sufficient collaterals to back-up their bank loans."[23] (Emphasis supplied)

The Court of Appeals also found:

Firstly, the sourcing of funds from their internal operations is based on a mere expectancy. Respondent corporations did not even

[20] *Rollo*, pp. 147-148.

[21] 325 Phil. 145 (1996).

[22] *Id.* at 156.

[23] *Rollo*, p. 64.

allege in their Rehabilitation Plan their operational plan or definite management which would bring about growth and expansion in their internal operations. In their Consolidated Cash Flow Statement for the 15-year reahibilitation period, respondent corporations allocated a fund of ₱30 million for a modernization program. But they did not sufficiently describe and adequately explain as to how the alleged modernization program would translate to a growth in or expansion of their internal operations. In fact, petitioner correctly contends that inspite of the supposed modernization program on the 5th year of the rehabilitation period, the sales projection of respondent corporations was constantly pegged at 5%.

Secondly, respondent corporations failed to give the specific details regarding their prospective investors who will supposedly put up additional fresh capital. This should have been considered by the court *a quo* considering that in their respective Affidavits of General Financial Condition, respondent corporations uniformly answered that none, so far, has expressed interest in investing new money into respondent corporations' business.[24]

Incidentally, since the time of filing on 15 July 2004 of the petition for corporate rehabilitation, there has been no showing that petitioners' situation has improved or that they have complied faithfully with the terms of the rehabilitation plan.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the 20 October 2009 Decision and 22 September 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 93278.

SO ORDERED.

Brion, Sereno, Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[24] *Id.* at 67.

[*] Designated Acting Member per Special Order No. 1114 dated 3 October 2011.

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— Generally viewed with caution because it is easy to contrive and difficult to disprove and is a common and standard line of defense in the prosecution of violations of the Dangerous Drugs Act. (People of the Phils. *vs*. Mondejar *y* Bocarili, G.R. No. 193185, Oct. 12, 2011) p. 91

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— Double jeopardy attaches if the following elements are present: (1) a valid complaint or information; (2) a court of competent jurisdiction; (3) the defendant had pleaded to the charge; and (4) the defendant was acquitted, or convicted or the case against him was dismissed or otherwise terminated without his express consent. *(Id.)*

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Next in rank rule — Does not apply to positions created in the course of a valid reorganization. (Cotiangco *vs*. The Province of Biliran and the CA, G.R. No. 157139, Oct. 18, 2011) p. 211

CIVIL SERVICE COMMISSION

CSC Regulations — The CSC Office Regulation denying CSC employees privacy expectation in their computer files and excludes from its ambit the three CSC Commissioners is constitutionally infirmed. (Pollo *vs*. Chairperson Karina Constantino-David, G.R. No. 181881, Oct. 18, 2011; *Carpio, J., separate-concurring opinion*) p. 225

Memorandum orders — A Memorandum order issued by the CSC chair which is merely internal in nature need not be published prior to its effectivity. (Pollo *vs*. Chairperson Karina Constantino-David, G.R. No. 181881, Oct. 18, 2011) p. 225

Power — The Civil Service Commission may initiate an investigation and resolve an administrative case on the basis of an anonymous complaint. (Pollo *vs*. Chairperson Karina Constantino-David, G.R. No. 181881, Oct. 18, 2011) p. 225

COMMISSION ON ELECTIONS (COMELEC)

Grave abuse of discretion — Failure of the COMELEC En Banc to resolve whether the petition was one for disqualification or for the cancellation of certificate of candidacy constitutes grave abuse of discretion. (Munder *vs*. COMELEC and Atty. Tago R. Sarip, G.R. No. 194076, Oct. 18, 2011) p. 300

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

EVIDENCE

Circumstantial evidence — Sufficient to sustain a conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. (People of the Phils. *vs*. Galo, G.R. No. 187497, Oct. 12, 2011) p. 53

Demurrer to evidence — An acquittal by virtue of a demurrer to evidence may be subject to review only by a petition for certiorari under Rule 65 of the Rules of Court. (Bangayan, Jr. *vs*. Go Bangayan, G.R. No. 172777, Oct. 19, 2011) p. 656

— Court cannot review an order granting the demurrer to evidence and acquitting the accused on the ground of insufficiency of evidence because to do so will place the accused in double jeopardy. *(Id.)*

Equipose rule — Elucidated. (Candao *vs*. People of the Phils., G.R. Nos. 186659-710, Oct. 19, 2011) p. 776

Flight of the accused — Discloses a guilty conscience. (People of the Phils. *vs*. Lalli y Purih, G.R. No. 195419, Oct. 12, 2011) p. 126

Notarized documents — A defective notarization will strip the document of its public character and reduce it to a private instrument. (Adelaida Meneses [deceased] *vs*. Venturozo, G.R. No. 172196, Oct. 19, 2011) p. 641

Positive identification — A witness' familiarity with the accused, although accepted as basis for a positive identification, does not always pass the test of moral certainty due to possibility of mistake. (People of the Phils. *vs*. Caliso, G.R. No. 183830, Oct. 19, 2011) p. 742

— Lack of bad faith or ill motive on the part of the witness to impute the killing to the accused does not guarantee the reliability and accuracy of her identification of him. *(Id.)*

PRESUMPTIONS

Presumption of regularity in the performance of official duty — 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. (David *vs*. People of the Phils., G.R. No. 181861, Oct. 17, 2011) p. 182

— The presumption that the law enforcers regularly performed their duty cannot, standing alone, overturn the constitutionally recognized presumption of innocence of the accused where lapses in the buy-bust operation are shown. (People of the Phils. *vs*. Martin *y* Castano, G.R. No. 193234, Oct. 19, 2011) p. 877

PROSECUTION OF OFFENSES

Criminal prosecution — There can be no conviction without proof of identity of the criminal beyond reasonable doubt. (People of the Phils. *vs*. Caliso, G.R. No. 183830, Oct. 19, 2011) p. 742

PUBLIC OFFICERS AND EMPLOYEES

Statement of assets, liabilities and net worth — It is imperative that every public official or government employee must make and submit a complete disclosure of his assets, liabilities and net worth in order to suppress any questionable accumulation of wealth. (OCAD *vs*. Judge Usman, A.M. No. SCC-08-12, Oct. 19, 2011) p. 467

QUALIFIED THEFT

Commission of — Elements of the crime are: (1) taking of personal property; (2) that the said property belongs to another; (3) that the said taking be done with intent to gain; (4) that it be done without the owner's consent; (5) that it be accomplished without the use of violence or intimidation against persons, nor force upon things; and (6) that it be done with grave abuse of confidence. (People of the Phils. *vs*. Mirto, G.R. No. 193479, Oct. 19, 2011) p. 895

Statutory rape — How committed; the law presumes that the victim does not and cannot have a will of her own on account of her tender years. (People of the Phils. *vs.* Dollano, Jr., G.R. No. 188851, Oct. 19, 2011) p. 827

— It is not necessary to state the precise time when the offense was committed, except when time is a material ingredient of the offense. *(Id.)*

RECRUITMENT AND PLACEMENT

Illegal recruitment — A person or entity engaged in recruitment and placement activities without the requisite authority from the Department of Labor and Employment (DOLE), whether for profit or not, is engaged in illegal recruitment. (People of the Phils. *vs.* Lalli *y* Purih, G.R. No. 195419, Oct. 12, 2011) p. 126

— Defined as any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority. *(Id.)*

Syndicated illegal recruitment — Elements thereof are: (1) the offender undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13(b), or any of the prohibited practices enumerated under Art. 34 of the Labor Code; (2) he has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and (3) the illegal recruitment is committed by a group of three (3) or more persons conspiring or confederating with one another. (People of the Phils. *vs.* Lalli *y* Purih, G.R. No. 195419, Oct. 12, 2011) p. 126

SALES

Innocent purchaser for value — One who buys property of another, without notice that some other person has a right to, or interest in, such property and pays a full and fair price for the same at the time of such purchase or

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